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DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY

FINAL

MINUTES OF THE November 19, 2004 BOARD MEETING

The Crowne Plaza Hotel
5985 West Century Blvd.
Los Angeles, CA 90045-5463
Telephone: (310) 642-7500
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I. Call to Order.

President Ian B. Thomas called the meeting to order at 9:02 a.m. on Friday, November 19, 2004, at the Crowne Plaza Hotel in Los Angeles and ALJ Magnuson and the Board heard Agenda Item XI.A. The Board then convened into closed session to deliberate and consider Agenda Items X.B-I. The Board reconvened into open session at 11:46 a.m. The Board broke for lunch at 12:24 p.m. and reconvened at 1:28 p.m. The Board adjourned at 2:32 p.m.

Board Members	November 19, 2004
Ian B. Thomas, President	9:02 a.m. to 2:32 p.m.
Renata Sos, Vice President	9:02 a.m. to 2:32 p.m.
Stuart Waldman, Secretary-Treasurer	9:02 a.m. to 2:32 p.m.
Ronald Blanc	9:02 a.m. to 2:32 p.m.
Richard Charney	9:02 a.m. to 2:32 p.m.
Ruben Davila	9:25 a.m. to 2:32 p.m.
Donald Driftmier	9:02 a.m. to 2:32 p.m.
Charles Drott	Absent
Sally A. Flowers	11:30 a.m. to 2:32 p.m.
Sara Heintz	9:02 a.m. to 2:32 p.m.
Gail Hillebrand	9:02 a.m. to 2:32 p.m.

Thomas Iino	9:02 a.m. to 2:32 p.m.
Clifton Johnson	9:02 a.m. to 2:32 p.m.
Olga Martinez	9:02 a.m. to 2:32 p.m.
David Swartz	9:02 a.m. to 2:32 p.m.

Staff and Legal Counsel

Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General, Board Liaison
Aronna Granick, Legislation/Regulation Analyst
Robert Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Liza Walker, Renewal and Continuing Competency Analyst

Committee Chairs and Members

Nancy Corrigan, Chair, Qualifications Committee
Harish Khanna, Chair, Administrative Committee
Randy Miller, Member, Administrative Committee
Gary O'Krent, Member, Peer Review Task Force
Michael Williams, Vice Chair, Qualifications Committee

Other Participants

Bruce Allen, California Society of Certified Public Accountants (CalCPA)
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)
Mike Duffey, Ernst & Young LLP
Katy Gould, Society of California Accountants (SCA)
Richard Robinson, Big 4 Accounting Firms
Hal Schultz, California Society of Certified Public Accountants (CalCPA)
Harold Shively, Society of California Accountants (SCA)
Norma Nick Taylor, California Society of Accounting and Tax Professionals (CSATP)
Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)
Sarah Weber, Center for Public Interest Law (CPIL)
Charlene Zettel, Director, Department of Consumer Affairs

II. Board Minutes.

A. Draft Board Minutes of the September 10, 2004, Board Meeting.

The draft minutes of the September 10, 2004, Board meeting were adopted on the Consent Agenda. (See Agenda Item XII.B.)

The minutes of the September 9, 2004, CPC meeting were adopted on the Consent Agenda. (See Agenda Item XII.B.)

D. Legislative Committee.

1. Update on Legislation.

Mr. Waldman reported that the Board had been monitoring the following bills and that they had been signed into law by the Governor.

AB 2150 by Assembly Member Levine was sponsored by the Board. It amends the cost recovery law to permit cost recovery in disciplinary matters involving any violation of the Accountancy Act. This law goes into effect January 1, 2005.

Mr. Waldman reported that the Board sponsored provisions in SB 136 by Senator Figueroa, an omnibus bill, to extend the deadline for applicants for licensure under Pathway 0 and to allow those applicants to transition to the new requirements. Mr. Waldman indicated that this bill was an urgency measure and it is currently in effect.

SB 1262 by Senator Sher was sponsored by the Attorney General's Office with the objective of improving the administration of charitable trusts. It includes requirements for audits of charitable trusts. Mr. Waldman noted that former AC Chair, Mr. Olaf Falkenhagen, provided comments that lead to amendments improving the bill. SB 1262 will go into effect on January 1, 2005.

Mr. Waldman reported that SB 1543 by Senator Figueroa was the Board's Sunset Review bill and included the practice privilege provisions and the Board's expanded fine authority. SB 1543 will go into effect on January 1, 2005; however, the practice privilege provisions will not become operative until January 1, 2006.

Mr. Waldman indicated that the Board was also monitoring the following bills that were vetoed by the Governor.

AB 320 by Assembly Member Correa would have prohibited a licensee of a DCA board (including this Board) from including in a civil settlement a provision that prohibits the other party from filing a complaint with the Board or cooperating in a Board disciplinary action against the licensee. The Board supported this bill. In his veto message, Governor Schwarzenegger indicated that AB 320 would

needed to address this matter. Instead, staff were directed to develop questions and answers to provide general guidance to practitioners in this subject area.

It was moved by Ms. Hillebrand, seconded by Mr. Driftmier, and unanimously carried to adopt the revised language.

E. Enforcement Program Oversight Committee (EPOC).

1. Draft Minutes of the September 9, 2004, EPOC Meeting.

   The draft minutes of the September 9, 2004, EPOC meeting were adopted on the Consent Agenda adding that Mr. Driftmier was in attendance. (See Agenda Item XII.B.)

F. Practice Privilege Task Force (PPTF).

1. Minutes of the September 9, 2004, Practice Privilege Task Force Meeting.

   The minutes of the September 9, 2004, Practice Privilege Task Force meeting were adopted on the Consent Agenda. (See Agenda Item XII.B.)

2. Minutes of the October 5, 2004, Practice Privilege Task Force Meeting.

   It was moved by Mr. Thomas, seconded by Mr. Driftmier, and unanimously carried to adopt the October 5, 2004, Practice Privilege Task Force minutes changing the date on Agenda Item I from July 15, 2004, to September 9, 2004.

3. Report on the October 5, 2004, Practice Privilege Task Force Meeting.

   Ms. Sos thanked Ms. Sigmann and her staff for their incredible work during the nine-month process of getting the practice privilege statute from concept to signed legislation. Mr. Thomas also congratulated Ms. Sos for her hard work throughout the process and indicated that the Board owed a tremendous debt of gratitude to her for spearheading this project. Ms. Sos thanked the Task Force, Ms. D'Angelo Fellmeth, Mr. Duffey, and Mr. Robinson for working with the Board on this from the beginning.

a. Recommendation Regarding a Process to Address Changes in Reported Information That Occur During the Term of the Practice Privilege.

As background, Ms. Sos reported that under the usual practice privilege process, an individual provides the notification and fee to the Board and then may begin practicing under the privilege. However, there are certain disqualifying conditions which will prevent the individual from getting a privilege without approval by the Board. Ms. Sos indicated that the Task Force developed a procedure to address the situation in which a disqualifying condition occurs during the one-year term of the practice privilege. Ms. Sos noted that the Task Force was recommending Board approval of this procedure which is outlined in Ms. Granick's November 5, 2004, memo **(Attachment 6.)** with one modification: if a disqualifying condition occurs during the term of the practice privilege, the individual is obligated to cease the practice of public accountancy in California immediately.

It was moved by Ms. Sos, seconded by Mr. Driftmier, and unanimously carried to adopt the Task Force's recommendation.

b. Recommendation Regarding Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges.

Ms. Sos reported that the Board is empowered by statute to impose by regulation disqualifying conditions in addition to the ones specified in statute. Ms. Sos noted that this Board has already specified that it is a disqualifying condition to have an unresolved administrative suspension and to fail to respond to a Board inquiry. The Task Force is recommending to the Board that it also be a disqualifying condition to have an unpaid fine related to a prior practice privilege.

It was moved by Ms. Sos, seconded by Mr. Swartz, and unanimously carried to adopt the Task Force's recommendation.

4. Report on the November 18, 2004, Practice Privilege Task Force Meeting.

See Agenda Item VIII.F.4.b.

a. Consideration of a Method for Verification of Attest Experience Through Random Audit.

There was no report on this agenda item.

b. Consideration of Draft Regulations.

Ms. Sos reported that there was a copy of the draft regulations provided in the agenda packet. The Task Force is currently in the process of fine-tuning the regulations and concurrently refining the form. Ms. Sos indicated that a revised version of the regulations will be presented to the Board for its consideration at the January meeting.

c. Consideration of Revised Notification Form.

Ms. Sos reported that the Board had previously approved as a policy matter that the notification form itself would not be put into the regulations, but that the regulation would instead describe the contents of the form in sufficient detail. She indicated that the Task Force is debating whether that approach will work and may bring back to the Board in January a request to reconsider that decision.

i. Consideration of Language for Electronic Signature.

See Agenda Item VIII.F.4.c.

d. Consideration of a Checklist for Processing Notifications That Contain Disqualifying Conditions.

There was no report on this agenda item.

G. Peer Review Task Force.

1. Report on the October 12, 2004, Peer Review Task Force Meeting.

Ms. Hillebrand indicated that she was giving the report for Mr. Drott who could not be in attendance. Ms. Hillebrand reported that following a 19-month hiatus in which the Task Force was waiting for things to develop at the federal level, the Peer Review Task Force met on October 12, 2004, for its third and final information-gathering meeting. The Task Force heard reports about the AICPA's two peer review programs and about the PCAOB's inspection program.

State of California Department of Consumer Affairs

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Board Agenda Item VIII.F.1
November 19, 2004

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING

FINAL

September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Present:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

Other Participants
Richard Charney, Board Member
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law
Donald Driftmier, Baord Member
Michael Duffey, Ernst and Young LLP

Harish Kahnna, Administrative Committee Chair
Olga Martinez, Board Member
Richard Robinson, Richard Robinson and Associates
Diane Rubin, NASBA Vice Chair-Elect
Jeannie Tindel, California Society of Certified Public Accountants

I. Minutes of the July 15, 2004, Meeting.

It was moved by Ms. Hillebrand, seconded by Mr. Schultz, and unanimously carried to approve the minutes of the July 15, 2004, meeting.

II. Update on Status of Practice Privilege Legislation.

Ms. Sos reported that SB 1543 (Figueroa), the legislation containing the practice privilege provisions, was on the Governor's desk. She noted that the votes on the bill both in the Assembly and the Senate were closer than expected and many Republicans voted "no." However, she believed the practice privilege provisions were not the source of their concern. Ms. Sigmann added that the Department of Consumer Affairs was finishing its analysis of the bill. It appeared that the provision related to outsourcing and the Franchise Tax Board were the most troubling.

III. Consideration of Whether the Board Should Accept NASBA's Designation of States as Substantially Equivalent (Subject to Board Review) or Develop its Own List.

A. Presentation by Diane Rubin of NASBA.

Ms. Sos welcomed Ms. Rubin. Ms Sos then indicated she would like the Task Force to consider Agenda Items III and IV together. In her introductory remarks, Ms. Sos noted that the National Association of State Boards of Accountancy (NASBA) already makes determinations regarding which states are "substantially equivalent" and, through CredentialNet, performs a similar service for individuals who meet education, exam, and experience requirements substantially equivalent to the Uniform Accountancy Act (UAA).

Ms. Sos noted that the practice privilege statutes give the Board the authority, subject to its own continuous oversight and monitoring, to accept determinations made by entities such as NASBA. She indicated the issue before the Task Force is whether this is an appropriate course of action. She added that the guiding factors for this discussion are the same factors that guided the development of the practice privilege proposal: first and foremost to protect California's consumers, second to avoid unnecessary workload for staff, and also to promote uniformity across states and make the movement of qualified individuals across borders as seamless as possible.

Ms. Sos noted that after reviewing the materials that had been provided at previous Task Force meetings, it appeared to her that NASBA uses a very rigorous process to determine substantial equivalency, both for states and for individuals. Ms Sos welcomed Ms. Rubin and explained that Ms. Rubin was attending to help the Task

Force sort through this information. Ms. Rubin was uniquely positioned to assist the Task Force because she was a former Board President and shares the Board's commitment to consumer protection. In addition Ms. Rubin, as Vice Chair-elect of NASBA was able to provide a national perspective.

Ms. Rubin complimented the Task Force for its work in developing the practice privilege statutes which she described as a significant step forward beyond the temporary practice rules. She noted that practice privileges are consistent with the goal of maximizing consumer protection while at the same time having an efficient and effective cross-border procedure that encourages compliance.

Ms. Rubin explained that substantial equivalency focuses on the "3Es" of education, examination, and experience. For states, NASBA's National Qualification Appraisal Service Board reviews a state's laws and regulations to determine if it is substantially equivalent to the UAA. This review is done on a very regular basis. Based on a recent review, Colorado had been removed from the list because it no longer has the 150 hour requirement. Also, Pennsylvania had been added.

Ms. Rubin noted that sometimes a state asks to be reviewed. For example, California requested to be reviewed because California law requires 150 hours of education at the point of licensure and not at the point of the examination. California was determined to be substantially equivalent in spite of this variation. The emphasis on "substantial" rather than "absolute" equivalency provides for consumer protection while at the same time facilitating efficient and effective cross-border practice.

Ms. Rubin indicated that the list of substantially equivalent states is available at no charge from NASBA. The alternative would be for Board staff or a Board committee to review the laws and regulations of all of the states and to repeat this review on a regular basis.

Ms. Rubin then discussed ethics and ethics education. She indicated it is an important focus for NASBA even though it is not part of the substantial equivalency determination. She reported that the Education Committee of NASBA is proposing that ethics be a required component of the 150 hours of education. She also indicated that the Ethics Committee of NASBA is considering a continuing education course that would be acceptable to various state boards. She observed that most ethics courses are similar and emphasize independence which is the second Generally Accepted Auditing Standard. She noted that questions related to independence make up a significant portion of the auditing section of the Uniform CPA Examination. Consequently, CPAs from other states are very familiar with this subject.

Ms. Rubin then discussed substantial equivalency determinations for individuals. She explained that when making a determination of an individual's substantial equivalency, NASBA's CredentialNet conducts a very thorough review which includes reviewing college transcripts and verifying experience. She noted that CredentialNet tailors its services to the needs of a particular state.

Ms. Rubin concluded her remarks by indicating she believed NASBA was doing a very thorough job and that its services facilitated cross-border practice while at the same time providing excellent consumer protection.

B. Discussion

Ms. Flowers asked for more information regarding CredentialNet. Ms. Sos clarified that CredentialNet would be used by CPAs from non-substantially equivalent states who do not qualify for practice privileges under the "four of ten" rule. It is anticipated that there will not be many CPAs in this group. A CPA seeking a substantial equivalency determination would provide CredentialNet with documents establishing his or her professional credentials and would pay the $100 fee. CredentialNet's review would take approximately six to eight weeks. After being deemed substantially equivalent by CredentialNet, the CPA would make this assertion, under penalty of perjury, by checking the appropriate box on the Board's practice privilege notification form. Ms. Rubin added that CredentialNet is the only entity providing this service and that it is driven by what each state needs.

Ms. Hillebrand inquired if an ethics course becomes part of the 150 hour requirement, would ethics be required for substantial equivalency. Ms. Rubin indicated that this would be decided by the National Qualification Appraisal Service Board. Ms. Rubin also indicated it would take time for it to become part of the curriculum at colleges.

Ms. Sos indicated that the question for the Task Force is, given that ethics are embedded in the professional standards and many states have some kind of ethics requirement, will California consumers be put at risk if CPAs from other states are permitted to practice here without meeting California's requirements. Ms. Rubin indicated she did not believe there was much risk to California's consumers since the practice privilege provisions provide greater consumer protection than the temporary practice rules they replace. Mr. Schultz agreed with Ms. Rubin, adding that a CPA practicing with a practice privilege is putting his or her home state license at risk. He noted that, at a recent NASBA meeting, every state appeared to have a different ethics requirement, however all states indicated ethics was a focus. He encouraged the Board to view the ethics requirements established by other state boards as valid. He further suggested that enforcing a specific California requirement would have little incremental benefit and could impede practice across borders.

Ms. Sos thanked Ms. Rubin for her input and indicated that the question before the Task Force is whether the Board should accept states on NASBA's list as substantially equivalent for the purpose of permitting practice privileges. The second question is whether the board should accept, for purposes of permitting practice privileges, individuals from non-substantially equivalent states who have been determined to be substantially equivalent by CredentialNet. Both decisions would be reflected in regulations.

It was moved by Ms. Flowers and seconded by Mr. Schultz to recommend that the Board accept NASBA's determinations in both areas. It was the intent of the motion that this would be the only method through which these determinations would be made. During the discussion Ms. Hillebrand asked if the Board could request that CredentialNet consider ethics requirements in making its determinations. Ms. Sos indicated that the Board could inform CredentialNet that ethics is a priority and request that CredentialNet's review ensure that the ethics requirement in the CPA's home state had been met. Ms. Sos also indicated that it was her understanding that, consistent with the Board's obligation not to delegate its authority, the Board's acceptance of NASBA's list and credentialing program would be subject to continuous monitoring, and the Board would have the ability to add or subtract states from the list as appropriate. **After discussion, the motion was unanimously carried.**

IV. Consideration of Whether the Board Should Accept NASBA's Determination of an Individual's Substantial Equivalency or Use Some Other Method for Assessing the Qualifications of CPAs from Non-Substantially Equivalent States
   A. Presentation by Diane Rubin of NASBA.
   B. Discussion.

See Agenda Item III.

V. Consideration of Whether There Should Be a "Safe Harbor" Period for Providing Notification to the Board.

Ms. Sos introduced Agenda Items V and VI together. She indicated that they relate to two questions: 1) When is notice due? and 2) What should the Board do when the payment is not received, is lost, or the payment check is dishonored? She noted that the statute authorizes the Board to address both issues in regulations.

With regard to whether there should be a "safe harbor" period, Ms. Sos indicated that the materials for the meeting included two memos (see Attachments 1 and 2) summarizing the arguments for and against establishing a safe harbor period. Ms. Sos indicated she would like to focus the discussion on the following issues: 1) the extent of the problem that would be created if notice were required at or before the practice begins, 2) the potential for consumer harm if practice is permitted for a specified time period before notification is required, 3) the risk of snaring people who have done nothing wrong if there is no safe harbor, 4) the impact of various alternatives in terms of providing an incentive for giving notice. Ms. Sos indicated she would appreciate input from the profession on these issues. Also, she encouraged the Task Force to be mindful of its general approach of not proposing regulations to address purely hypothetical situations or situations which would only impact a small percentage of the CPA population.

Ms. Sos added, that should the Task Force decide not to require notice at or before the practice privilege begins, there are two ways this could be addressed: one is to indicate that notice is due some specified number of days after the practice privilege begins.

The other alternative is to have an emergency clause which would indicate that notice is due at or before practice begins, however if the means of providing notice are not available at that time, notice is due as soon as possible after the means become available provided a good faith effort is made to acquire the means. The second option would address those situations in which people are unable to provide notice through no fault of their own.

Mr. Iino commented that he initially voted to require notice on or before the work began, however a situation occurred recently which illustrated some of the issues raised by Ms. Sos. When he was in Japan, an urgent need for more resources at the client's Torrance California plant was identified. Because of time differences, his call requesting resources, placed at noon Tokyo time, was received at 8:00 p.m. Sunday night in California. They were successful in getting the necessary people to the client's Torrance office by 9:30 a.m. the following day, however it was very challenging, especially since one of the people had been on vacation. Mr. Iino indicated that, based on this incident, he believed consideration should be given to establishing some kind of safe harbor or emergency provision.

Ms. Flowers inquired if it would impede enforcement efforts if a violation occurred during a safe harbor period. Ms. Sos noted that Section 5096.1 was intended to address CPAs who are practicing without practice privileges. Mr. Granen agreed, but indicated that the Board could more effectively communicate its enforcement action to other state boards if the CPA held an actual practice privilege.

Ms. Hillebrand expressed concern that having a safe harbor period would permit people to come in and practice legally for a short time without ever giving notice. She indicated that it appeared to be proper law enforcement to require people to agree to abide by California law and consent to the Board's jurisdiction before they begin work in California.

Mr. Duffey commented that he believed there would a very small universe of people who would abuse the notice requirement in the way Ms. Hillebrand suggested. On the other hand, he believed there would be a number of situations in which people would want to comply, but would find it difficult without a reasonable safe harbor period. He expressed the view that a safe harbor period would encourage compliance. For example, if there were a reasonable safe harbor period, firms could establish compliance systems to centralize and oversee compliance by their employees. Otherwise all of the responsibility for compliance rests on the individual. Mr. Schultz agreed that compliance would be encouraged if the Board provided a small opportunity to provide notice after practice begins.

Mr. Robinson added that his clients, the "Big Four" accounting firms, were interested in a safe harbor period from enforcement actions. They want to comply, but have concern that without a safe harbor period they could violate the law inadvertently. He agreed with Mr. Duffey that a safe harbor period would encourage compliance. He indicated that he was seeking a compromise. He added that he had talked with Senator Figueroa

and that, if consensus could not be reached in this area, the implementation date for practice privileges would be extended for another year.

Ms. D'Angelo Fellmeth indicated that she believed a grace period would discourage compliance because someone could enter the state, do the job, and leave without giving notice. The potential for consumer harm is less when the safe harbor period is shorter. She noted that the one of the primary reasons the concept of practice privileges was developed was to accommodate the very large accounting firms so that they could comply with partner rotation and other requirements. She indicated that they are professionals with massive support staff and the practice privilege concept has a great deal of ease and convenience built in, so it was unclear to her why they needed a safe harbor period.

She further indicated that she had reviewed the requirements of other licensing agencies, and none allow people from out-of-state to simply self-certify and then come in and practice. The closest example she could find is the process for out-of-state attorneys to appear before California courts. However, this process lacks the ease and convenience associated with practice privileges.

Mr. Iino commented that the large firms, by virtue of their size and the movement of people and transactions, are confronted with many complexities that make a safe harbor period important. He then commented on consumer risk and added that for services such as tax, audits and reviews, and consulting, licensees could do little harm in those service areas in five days.

Ms. Flowers indicated that her primary concern was whether a safe harbor provision would negatively impact enforcement. It appeared that it would not, so she had no objection to a brief safe harbor period. She suggested a fine if notice is not received until after the safe harbor period has ended.

Ms. Hillebrand expressed an interest in discussing the emergency clause alternative described by Ms. Sos. She noted that if there is a safe harbor period, people might interpret this as indicating the notice is not really due until the end of the period. She suggested that an emergency clause would not create this impression.

After further discussion, Ms. D'Angelo Fellmeth proposed that because the notification requirements are new and it will take time for people to become familiar with them, perhaps the Board could permit a five day (or five business days) safe harbor period which would sunset after two years. This would permit phased-in compliance to give the profession a chance to learn about the program. Mr. Robinson added that the notification form could request information on why the notice is late so that the data would be available. Ms. Hillebrand indicated that, even though she was not in favor of a safe harbor period, she believed that this was a reasonable proposal to allow for transition.

Mr. Granen summarized the proposal as follows: notice is required on or before beginning practice, but there shall be no penalty if the notice is given within five business days of commencing practice. This provision would remain in effect for two years from the effective date of the regulation and then would sunset. Ms. Sos moved that the Task Force recommend to the Board the proposal outlined by Mr. Granen adding that there will be an item on the form requesting the reason why the notice is late and the date when the practice began. She noted that the purpose of the two year time period is to permit transition. The motion was seconded by Mr. Schultz and carried. (Ms. Hillebrand voted "no.") Ms. Sos requested a recommendation from staff regarding fines and penalties for failure to notify within the safe harbor period.

VI. Consideration of the Procedure if the Individual's Fee is Not Received on Time or the Check is Dishonored.

Ms. Sos indicated that the materials for the meeting included a memo summarizing the recommendations of the sub-Task Force that focused on payment issues. She noted that these recommendations reflect her interpretation of the statute at that time. However, she subsequently reconsidered this interpretation and concluded a different interpretation was consistent with the statute. Ms. Sos then indicated that, based on this conclusion, she would like to recommend a different approach to address payment concerns. She explained that the statute states that the practice privilege begins with proper notification. It also requires that payment must be received within 30 days. She then recommended that if a CPA provides proper notice but then fails to provide payment timely or if the check is subsequently dishonored, that the CPA's practice privilege be administratively suspended and that the CPA be notified that the administrative suspension remains in effect until the problem is cured. If the CPA cures the problem by providing payment, the administrative suspension would be lifted and practice would be permitted for the remaining term of the practice privilege. If the problem is not cured, failure to cure would become a disqualifying condition preventing the CPA from automatically receiving a practice privilege the next time he or she gives notice. Ms. Sos commented that she believed this procedure would be straightforward, easy to tract, and consistent with the statute. It would also avoid penalizing people for circumstances beyond their control.

Mr. Duffey inquired if the procedure could include some additional steps to avoid penalizing people for administrative or processing errors. Ms. Hillebrand suggested that prior notification could address this concern. Ms. Crocker indicated that prior notification would be administratively impractical. However, staff would always resolve any situation in which there was an administrative or processing error.

During the discussion Ms. Flowers suggested that there could be a penalty or fine for failure to pay timely. Mr. Newington expressed support for this suggestion and noted that a fine is an additional incentive for timely payment. He also indicated that making failure to pay a disqualifying condition would result in increased workload and that a fine would be a less workload intensive alternative.

After discussion, it was moved by Ms. Hillebrand that the following procedure be recommended to the Board to address the payment issues under discussion: at such time as it is determined that payment is not received, is late, or that the check was dishonored, and that this is not the result of an administrative error, the Board shall issue an administrative suspension and a fine. The administrative suspension would remain in effect until the problem was cured. If it is not cured, the administrative suspension would remain in effect until the expiration of the practice privilege. A dishonored check would be a disqualifying condition and cause the person to not automatically receive a practice privilege the next time. In addition, staff would be directed to develop a recommendation related to fine amounts and conditions with a range of fines for repeat occurrences. Mr. Newington reiterated his concern that establishing a new disqualifying condition would generate additional work for Enforcement Program staff. Ms. Hillebrand amended her motion to remove the proposed disqualifying condition. The amended motion was seconded by Ms. Flowers and unanimously carried.

VII. Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege.

Mr. Newington reported on a recommended procedure for determining how the disqualifying conditions listed in Section 5096(g) should be applied to denial of the practice privilege (see Attachment 3). He recommended that guidelines for disqualifying conditions related primarily to convictions and license discipline should parallel the guidelines currently employed by Licensing Program staff when reviewing applications for licensure.

With regarded to disqualifying conditions related primarily to pending investigations and civil judgments, he recommended that practice privileges should not be granted without a thorough review by Enforcement Program staff. He further recommended that if there is a pending investigation and the outcome of the investigation will not be known for some time, a practice privilege should not be granted and the person should be encouraged to apply for licensure. **It was the consensus of the Task Force to recommend to the Board that staff proceed as outlined in Mr. Newington's memo (Attachment 3).**

VIII. Consideration of What, If Any, Additional Disqualifying Conditions Should be Specified by Regulations.

Mr. Newington reported that review by Enforcement Program staff did not identify any additional disqualifying conditions that should be adopted by the Board in regulations. He noted that there was a proposal that there be a disqualifying condition related to unpaid fees, but the Task Force did not adopt this proposal.

During the discussion, an additional disqualifying condition was identified and it was moved by Ms. Sos, seconded by Ms. Flowers, and unanimously carried to recommend that the Board adopt a regulation to clarify that it is a "disqualifying condition" to have an unresolved administrative suspension.

IX. Consideration of What Minor Infractions Related to Licensing Should be Exempted From the Disqualifying Conditions.

Mr. Newington recommended an approach to identifying minor infractions that should not be considered disqualifying conditions (Attachment 4). He noted that rather than create a "laundry list" of all possible infractions, he was recommending an approach based on the type of penalty that resulted from the infraction. The recommendation was to exempt violations for which the discipline or sanction is limited to administrative citations resulting in fines of $5,000 or less or continuing professional education. Ms. Hillebrand inquired about the $5,000 fine amount and asked how it related to what other states are doing. Mr. Newington indicated he had tried to develop the concept and that the amount of the fine was not firm.

With regard to continuing professional education, Ms. Sos indicated that practice privilege holders are required to certify that their continuing education is current. Mr. Newington indicated that sometimes, additional continuing education is mandated for continuing competency.

After discussion, it was moved by Ms. Flowers, seconded by Ms. Sos, and unanimously carried to recommend that the Board proceed as outlined in Mr. Newington's memo and exempt violations for which the discipline or sanction is limited to administrative citations resulting in fines of $5,000 or less or continuing professional education. Staff were directed to research whether $5000 is the appropriate amount.

X. Consideration of What Should be the Criteria and Level of Discretion for Administrative Suspension.

Mr. Newington recommended as suggested criteria for administrative suspensions 1) representations made in the notice, 2) the individual's competence or qualifications to practice under the practice privilege in question and 3) the individual's failure to timely respond to a Board inquiry or request for information or documents (see Attachment 5). He indicated that he believed administrative suspension was fairly serious and that these three areas involve reasonably significant acts. **It was moved by Ms. Flowers, seconded by Mr. Schultz, and unanimously carried to recommend Mr. Newington's proposal to the Board.**

XI. Comments from Members of the Public.

Members of the public provided comments during the course of the meeting.

XII. Agenda Items for Next Meeting.

Ms. Flowers expressed an interest in discussing education and outreach at the next meeting. Ms. Sos indicated it is scheduled for discussion at the January 2005, meeting and a revised schedule of topics and meeting dates would be provided to all participants. She added that the next meeting is scheduled for October 5, 2004, from 10:00 a.m. to 4:00 p.m. at the Board office in Sacramento.

There being no further business, the meeting was adjourned at 12:30 p.m.

State of California
Department of Consumer Affairs

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

Attachment 1

Memorandum

Practice Privilege TF Agenda Item V
September 9, 2004

Board Agenda Item VIII.F.6.
September 10, 2004

To : Practice Privilege Task Force
Board Members

Date : August 16, 2004

Telephone : (916) 561-1718
Facsimile : (916) 263-3674

From : Renata M. Sos, Chair
Practice Privilege Task Force

Subject : Consideration of a Safe Harbor Provision for Notices

Under our proposed statutes, the practice privilege commences once proper notice is given and payment is submitted to the Board. The Practice Privilege Task Force (PPTF) early on voted to recommend to the Board that notice be required at or before the time the practice of public accountancy commenced.

The statutes give the Board flexibility to adopt by regulation a "safe harbor" period for the submission of notifications to the Board: that is, although notification would be due at the time the practice of public accountancy begins, the notification form could be submitted to the Board some number of days later. The statutes also provide that if it chooses to adopt a safe harbor, the Board may by regulation shorten the life of the practice privilege (ordinarily one year) in cases where notice does not occur simultaneously with the start of the practice of public accountancy in this state. The issues of whether to recommend a safe harbor and its duration are now before this task force.

Arguments For and Against a Safe Harbor Period

This topic has been discussed at length in task force and Board meetings. Here are the arguments that have been made for and against, as I understand them:

For: A safe harbor will encourage reporting to this Board and discourage avoidance of notification. Certain CPAs may be unable to notify the Board simultaneously with the start of practice in this state (for example, the junior CPA who is sent at a moment's notice to do an inventory in California). It is better for consumer protection to get notice a little late than to not get it at all. Moreover, the lack of a safe harbor could unfairly penalize qualified CPAs for innocent and arguably insignificant failures to timely submit notifications. There is, moreover, no enforcement risk in a reasonable safe harbor period. The statutes give this Board disciplinary authority over those who try to use the safe harbor period to practice without notice. Those individuals can be found in violation of Section 5096.1 of the statutes (Practice Without Notice) and appropriately disciplined by the Board.

Against: The notice form will be on-line, simple and straightforward. Given today's technologies, simultaneous notification should not be a problem, even for CPAs under intense time pressures. A safe harbor undermines the fundamental concept of the practice privilege – that it does not commence until notification and payment are submitted. It is in the interest of consumer protection for the Board to know immediately who is practicing public accountancy in California.

Firms versus Individuals

As you will recall, the issue of a safe harbor period originally arose, and continues to surface, in the context of larger firms. They maintain that there are circumstances in which immediate notification is impossible, given firm procedures and administrative obstacles. One option discussed by the PPTF in its May meeting was to offer a safe harbor only to CPAs employed by firms that are registered in California. As I recall, Michael Granen suggested this approach as potentially addressing the concerns raised by the large firms regarding immediate notification without compromising consumer protection. In deciding whether to take such an approach, this task force needs to consider, among other things, the fairness to CPAs *not* employed by firms registered in California.

Time Period

Should it proceed with a safe harbor, the task force also needs to consider its length. Section 23 of the UAA suggests 30 days. A few states have adopted that approach; others have settled on something in the 10-15 day range; still others are silent as to when notification is due.

In past discussions, the task force identified the following factors as salient to the question of the length of any safe harbor period: (1) encouraging compliance by all; (2) permitting compliance in circumstances where there may be delays in notification due to firm bureaucracy or time pressures on the out-of-state CPA; and (3) avoiding underreporting – that is, the time period is so long that it invites unauthorized practice without notification. I believe that these factors still apply and should guide the task force's deliberations on this point.

Attached to this memo is a revised notification form. I have attempted to conform it to the provisions of the statutes. Please note that item 10 now includes a safe harbor allowance for CPAs employed by registered firms. This revision is solely for the purposes of discussion and illustrates how a safe harbor, so limited, could affect the duration of the practice privilege.

I look forward to our discussions on September 9th.

Attachment

State of California 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.dca.ca.gov/cba*

DRAFT

Attachment 1

NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION XXXX:

Name: _____

Prior Names: _____

Firm Name: _____

Address Of Principal Place Of Business: _____

Telephone Number (business hours): _____

Fax Number (business hours): _____

E-Mail: _____
(To facilitate contact in the event of a problem in processing your notice)

Date Of Birth: _____

Social Security Number: _____

In connection with this privilege to practice, I wish to be able to sign a report on an attest engagement. ☐ Yes ☐ No

QUALIFICATION REQUIREMENTS:

1. I am an individual.

2. My principal place of business is not in California and I do not have an office in California other than through a firm that is registered in California and of which I am an employee.

3. I have a valid license to practice public accounting in the state/jurisdiction of my principal place of business.

State/Jurisdiction: _____ License Number: _____ Date Issued: _____

4. ☐ a. The state/jurisdiction identified in item 3 above is deemed substantially equivalent by the California Board of Accountancy (see Appendix 1 for list of substantially equivalent states); **OR**

☐ b. My individual qualifications have been determined by NASBA to be substantially equivalent (NASBA file no. ____). **OR**

☐ c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for 4 of the last 10 years.

5. I understand that I may sign a report on an attest engagement under this privilege to practice only if I meet California's requirements to sign attest reports.

6. I agree to abide by the laws of the State of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at *http://www.dca.ca.gov/cba/acnt_act.htm*) and the regulations thereunder (accessible at *http://www.dca.ca.gov/cba/regs.htm*).

7. I consent to the personal and subject matter jurisdiction of the California Board of Accountancy (CBA) including, but not limited to, the following:
   a. To suspend or revoke, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
   b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
   c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the SEC, PCAOB or other relevant regulatory authorities.

8. I agree to respond fully and completely to all inquiries by the CBA relating to my California practice privilege.

9. I consent to the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
   a. Contacting other states;
   b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
   c. Contacting NASBA.

10. ☐ I am submitting this notice to the CBA at or before the time I begin the practice of public accountancy in California and understand that this practice privilege expires one year from the date of this notice or; **OR**

☐ I am an employee of a firm registered in California and am submitting this notice within [____] days of beginning the practice of public accountancy in California. I understand that this practice privilege expires [11 months] from the date of this notice.

11. I have met the continuing education requirements and any ethics exam requirements for the state of my principle place of business.

12. In the event that any of the information in this notice changes, I will provide the CBA written notice of any such change within 30 days of its occurrence.

13. I am concurrently submitting the fee of $100.00.

ADDITIONAL INFORMATION:

In addition to the state of my principal place of business, I am also authorized to practice in the following states or jurisdictions.

State/Jurisdiction: _____ License Number: _____ Other Authority: _____

State/Jurisdiction: _____ License Number: _____ Other Authority: _____

Please check any of the items below that apply. *For any checked items in (1)-(4), you must provide additional information as requested in Attachment X and* ***you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.***

☐ 1. I have been convicted of a crime other than a minor traffic violation.

☐ 2. I have had a license, registration, permit or authority to practice surrendered, denied, suspended, revoked, put on probationary status or otherwise limited.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have had a judgment or arbitration award in an amount greater than $30,000 entered against me in a civil action alleging actionable conduct in the practice of public accountancy.

☐ 5. I failed timely to submit the required fee with a notification submitted immediately prior to this one.

I, _____, **understand that any misrepresentation or omission in connection with this notification is cause for termination of any practice privilege in California and that the California Board of Accountancy will act accordingly, including the notification of other state or federal authorities.** I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. If your payment is not received by CBA within 30 days of this notification, you do not hold a valid practice privilege.

Privacy Statement:
The information provided in this form will be used by the California Board of Accountancy to determine whether you qualify for practice privileges in California. Sections 5080 through 5095 of the Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is grounds for rejection of the notification as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, or to another governmental agency as may be necessary to permit the Board, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in Civil Code Section 1798.24. Each individual has the right to review his or her file, except as otherwise provided by the Information Practices Act. The Executive Officer of the California Board of Accountancy is responsible for maintaining the information in this application, and may be contacted via written correspondence at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, or by calling (916) 263-3680, regarding questions about this notice or access to records.

State of California 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.dca.ca.gov/cba*

ATTACHMENT X

1. If you checked items 1, 2, or 3 under additional information, please provide explanatory details:

_____

_____

_____

2. If you checked item 4 under additional information, please provide:

Date of Judgment/ Arbitration Award: _____ Jurisdiction /Court: _____ Docket No: _____

State of California
Department of Consumer Affairs

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

Attachment 2

Memorandum

Practice Privilege TF Agenda Item V
September 9, 2004

Board Agenda Item VIII.F.6
September 10, 2004

To : Practice Privilege Task Force
Board Members

Date : September 1, 2004

Telephone : (916) 561-1718
Facsimile : (916) 263-3674

From : Renata M. Sos, Chair
Practice Privilege Task Force

Subject : Additional Arguments Related to Consideration of a Safe Harbor Provision for Notices

Some additional arguments have been identified that are relevant for our discussion of a Safe Harbor Provision. They are being provided for consideration in advance of the meeting:

1. A safe harbor allows a person to begin practicing in California before the person has told the California Board, under penalty of perjury, that he or she does not have any of the disqualifying conditions, or the conditions that require review by the Board staff before the privilege can first be granted. A safe harbor would allow someone who is not qualified for an instant practice privilege to use the privilege anyway until the time that the form is due, and then, and only then, learn of or disclose to the Board the disqualifying condition.

2. A safe harbor means that someone who practices in California for a short time with no intention of ever filing the form, and never does file it, may not have violated the California Accountancy Act, or at least, it will be difficult to prove a violation. The practical effect of a safe harbor is that anyone can come in for the time period of the safe harbor.

3. Delayed filing of the form under a safe harbor means that the person can practice in California for a period of time without first making the promises required in sections 6 - 9 of the form, which include agreement to abide by California's laws and regulations, consent to personal and subject matter jurisdiction of the Board, agreement to cooperate with CBA inquiries, and consent to the release of information from other state and federal agencies, and from NASBA. (Delayed filing of the form also delays the making of the promise in item 5 not to sign a report on an attest engagement under the practice privilege unless the person meets California requirements to sign attest reports.)

I look forward to our discussions on September 9th.

State of California
Department of Consumer Affairs

Attachment 3

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

Memorandum

Practice Privilege TF Agenda Item VII.
September 9, 2004

Board Agenda Item VIII.F.8.
September 10, 2004

To : Practice Privilege Task Force
Board Members

Date : August 24, 2004

Telephone : (916) 561-1731
Facsimile : (916) 561-3673
E-mail : gnewington@cba.ca.gov

From : Gregory P. Newington
Chief, Enforcement Division

Subject : Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege

Proposed Business and Professions Code Section 5096(g) lists disqualifying conditions for the practice privilege (Attachment 1). Proposed Section 5096.2(a) provides relevant criteria (Attachment 2). This memo discusses the disqualifying conditions in Section 5096(g) and the standards and process for evaluating how they may result in denial of the practice privilege. Business and Professions Code Section 480 related to the denial of licenses is included for reference in Attachment 3.

Section 5096(g)(1) precludes practice under a practice privilege if a listed disqualifying condition is present until Board approval is obtained. It should be expected that disqualifying conditions will be encountered on a recurring basis and that prompt review and consistent reasonable evaluation will be necessary by Board staff. For each listed disqualifying condition the following evaluation guidelines are recommended:

Section 5096(g)(2) – Paragraphs (A) and (B)

(g) (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.

Generally the presence of any of the conditions listed in paragraphs (A) or (B) of Section 5096(g) would equate to likely serious violations or unprofessional conduct and should preclude practice in California under the practice privilege model. Exceptions will, however, be experienced. Examples under paragraph (A) could include convictions with no relationship to the practice of public accounting (spousal abuse) or a misdemeanor violation committed several years ago with no

reoccurrence (shoplifting). Examples under paragraph (B) could include revocation of a Texas CPA certificate for failure to renew the license timely.

Evaluation guidelines should be established that will allow licensing staff to identify and pass (allow practice privilege) on convictions having no relationship with the practice of public accountancy, misdemeanor convictions over 10 years old, and license sanctions in other jurisdictions caused by administrative procedural actions versus discipline for unprofessional conduct. The Board's licensing staff currently employ similar guidelines in their evaluation of applicants for licensure and that system is operating smoothly. Situations involving disqualifying conditions that fall outside these guidelines should be referred to the Enforcement Division where a review will be conducted to determine if there is a factual basis to deny practice under a practice privilege, or actual California licensure, pursuant to Business and Professions Code Section 480 (Grounds for Denial).

Section 5096(g)(2) – Paragraphs(C) and (D)

(h) (2) Disqualifying conditions include:

(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.

The presence of any of the conditions listed in paragraphs (C) or (D) of Section 5096(g) will indicate the possibility of serious violations or unprofessional conduct, and practice rights via the practice privilege option should not be granted without thorough review by Enforcement Division personnel. This review may require investigative action or inquiry to obtain an adequate understanding of the facts and issues underlying the disqualifying condition and how those facts would fit into the criteria referenced in Business and Professions Code Section 480. In many cases, particularly those that involve a pending investigation or proceeding before another agency, the facts will not be fully developed or available. If so, practice rights via a practice privilege should not be granted, and the applicant should be required to apply for a California CPA license should he or she desire to practice in California. Practice rights via practice privilege should only be granted if Enforcement Division personnel are able to obtain an understanding of the facts sufficient to conclude there is no factual basis to deny practice under Business and Professions Code Section 480. The Board will need to determine if this is an appropriate use of enforcement resources.

Section 5096(g) – Paragraphs (2)(E)

(h) (2) Disqualifying conditions include:

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

Evaluation guidelines will depend on the specific disqualifying conditions adopted by the Board in regulation.

GPN

Attachments

Proposed Section 5096(g)

(g) (1) No individual may practice under a practice 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.

(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.

ATTACHMENT 1

Proposed Section 5096.2(a)

(a) Practice privileges may be denied 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.

ATTACHMENT 2

Section 480

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

State of California
Department of Consumer Affairs

Attachment 4

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

Memorandum

Practice Privilege TF Agenda Item IX.
September 9, 2004

Board Agenda Item VIII.F.10.
September 10, 2004

To : Practice Privilege Task Force Members
Board Members

Date : August 24, 2004

Telephone : (916) 561-1731
Facsimile : (916) 263-3673
E-mail : gnewington@cba.ca.gov

From : Gregory P. Newington
Chief, Enforcement Division

Subject : Consideration of What Minor Infractions Related to Licensing Should be Exempted from the Disqualifying Conditions

Proposed Business and Professions Code Section 5096(g)(3) states "The Board may adopt regulations exempting specified minor occurrences of the conditions listed in paragraph (2)(B) from being disqualifying conditions under this subdivision." Section 5096(g)(2)(B) lists as disqualifying conditions 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.

Generally minor infractions would not result in revocation, suspension, denial, or surrender of a license or other authority to practice. An example of an exception to this generality is the Texas State Board of Public Accountancy which revokes CPA licenses for failure to renew timely. Texas is unusual in this action and our attention is probably better focused on minor infractions that result in "other discipline or sanctions." Since an exhaustive list of violations would be difficult to keep current, we recommend an approach that describes the level of discipline or sanctions that will be exempted from disqualifying conditions. Our suggested list for exemption includes violations for which the discipline or sanction is limited to:

- Administrative citations resulting in fines of $5,000 or less, or
- Continuing professional education.

GPN

State of California
Department of Consumer Affairs

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

Attachment 5

Memorandum

Practice Privilege TF Agenda Item X.
September 9, 2004

Board Agenda Item VIII.F.11.
September 10, 2004

To : Practice Privilege Task Force Members
Board Members

Date : August 24, 2004

Telephone : (916) 561-1731
Facsimile : (916) 263-3673
E-mail : gnewington@cba.ca.gov

From : Gregory P. Newington
Chief, Enforcement Division

Subject : Consideration of What Should be the Criteria and Level of Discretion for Administrative Suspension

Statutory guidance for Administrative Suspension is contained in proposed Business and Professions Code Section 5096.4(a), which states:

"The right of an individual to 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 representation 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."

Administrative suspension provides a prompt method to suspend practice rights obtained under a practice privilege, even in advance of hearing. Based upon the content of Section 5096.4(a), suggested criteria for its use is as follows:

Representations made in the notice.
Administrative suspension may be employed whenever it is suspected or confirmed that a material false statement was made in the notification form (Attachment 1).

The individual's competence or qualifications to practice under the practice privilege in question.
Administrative suspension may be employed whenever probable cause exists to suggest the individual lacks competence or qualifications to practice under practice privilege.

This would include, but not be limited to the following occurrences:

- The individual fails to meet qualification requirements cited in Section 5096(a) (Attachment 2).
- The individual experiences a disqualifying condition as described in Sections 5096(g)(2) (Attachment 2).
- The individual commits an act of unprofessional conduct as referenced in Section 5100 (Attachment 3).

The individual fails to timely respond to a Board inquiry or request for information or documents.

Administrative suspension may be employed whenever an individual fails to respond timely to a board inquiry or request for information or documents.

GPN

Attachments

State of California 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.dca.ca.gov/cba*

DRAFT

Attachment 1

NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION XXXX:

Name: _____

Prior Names: _____

Firm Name: _____

Address Of Principal Place Of Business: _____

Telephone Number (business hours): _____

Fax Number (business hours): _____

E-Mail: _____
(To facilitate contact in the event of a problem in processing your notice)

Date Of Birth: _____

Social Security Number: _____

In connection with this privilege to practice, I wish to be able to sign a report on an attest engagement. ☐ Yes ☐ No

QUALIFICATION REQUIREMENTS:

1. I am an individual.

2. My principal place of business is not in California and I do not have an office in California other than through a firm that is registered in California and of which I am an employee.

3. I have a valid license to practice public accounting in the state/jurisdiction of my principal place of business.

State/Jurisdiction: _____ License Number: _____ Date Issued: _____

4. ☐ a. The state/jurisdiction identified in item 3 above is deemed substantially equivalent by the California Board of Accountancy (see Appendix 1 for list of substantially equivalent states); **OR**

☐ b. My individual qualifications have been determined by NASBA to be substantially equivalent (NASBA file no. _____); **OR**

☐ c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for 4 of the last 10 years.

5. I understand that I may sign a report on an attest engagement under this privilege to practice only if I meet California's requirements to sign attest reports.

6. I agree to abide by the laws of the State of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at *http://www.dca.ca.gov/cba/acnt_act.htm*) and the regulations thereunder (accessible at *http://www.dca.ca.gov/cba/regs.htm*).

7. I consent to the personal and subject matter jurisdiction of the California Board of Accountancy (CBA) including, but not limited to, the following:
   a. To suspend or revoke, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
   b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
   c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the SEC, PCAOB or other relevant regulatory authorities.

8. I agree to respond fully and completely to all inquiries by the CBA relating to my California practice privilege.

9. I consent to the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
   a. Contacting other states;
   b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
   c. Contacting NASBA.

10. ☐ I am submitting this notice to the CBA at or before the time I begin the practice of public accountancy in California and understand that this practice privilege expires one year from the date of this notice or; **OR**

☐ I am an employee of a firm registered in California and am submitting this notice within [_____] days of beginning the practice of public accountancy in California. I understand that this practice privilege expires [11 months] from the date of this notice.

11. I have met the continuing education requirements and any ethics exam requirements for the state of my principle place of business.

12. In the event that any of the information in this notice changes, I will provide the CBA written notice of any such change within 30 days of its occurrence.

13. I am concurrently submitting the fee of $100.00.

ADDITIONAL INFORMATION:

In addition to the state of my principal place of business, I am also authorized to practice in the following states or jurisdictions.

State/Jurisdiction: _____ License Number: _____ Other Authority: _____

State/Jurisdiction: _____ License Number: _____ Other Authority: _____

Please check any of the items below that apply. *For any checked items in (1)-(4), you must provide additional information as requested in Attachment X and* ***you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.***

☐ 1. I have been convicted of a crime other than a minor traffic violation.

☐ 2. I have had a license, registration, permit or authority to practice surrendered, denied, suspended, revoked, put on probationary status or otherwise limited.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have had a judgment or arbitration award in an amount greater than $30,000 entered against me in a civil action alleging actionable conduct in the practice of public accountancy.

☐ 5. I failed timely to submit the required fee with a notification submitted immediately prior to this one.

I, _____, **understand that any misrepresentation or omission in connection with this notification is cause for termination of any practice privilege in California and that the California Board of Accountancy will act accordingly, including the notification of other state or federal authorities.** I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. If your payment is not received by CBA within 30 days of this notification, you do not hold a valid practice privilege.

Privacy Statement:
The information provided in this form will be used by the California Board of Accountancy to determine whether you qualify for practice privileges in California. Sections 5080 through 5095 of the Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is grounds for rejection of the notification as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, or to another governmental agency as may be necessary to permit the Board, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in Civil Code Section 1798.24. Each individual has the right to review his or her file, except as otherwise provided by the Information Practices Act. The Executive Officer of the California Board of Accountancy is responsible for maintaining the information in this application, and may be contacted via written correspondence at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, or by calling (916) 263-3680, regarding questions about this notice or access to records.

State of California 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.dca.ca.gov/cba*

ATTACHMENT X

1. If you checked items 1, 2, or 3 under additional information, please provide explanatory details:

_____

_____

_____

2. If you checked item 4 under additional information, please provide:

Date of Judgment/ Arbitration Award: _____ Jurisdiction /Court: _____ Docket No: _____

Section 5096(a)

(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 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 issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which 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 substantially equivalent to this state's qualifications under Section 5093.

Section 5096(g)

(g) (1) No individual may practice under a practice 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.

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

Section 5100

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.
(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.
(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.
(d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.
(e) Violation of Section 5097.
(f) Violation of Section 5120.
(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.
(h) Suspension or revocation of the right to practice before any governmental body or agency.
(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.
(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.
(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.
(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

State of California Department of Consumer Affairs

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Practice Privilege TF Agenda Item I
November 18, 2004

Board Agenda Item VIII.F.2
November 19, 2004

DRAFT

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
October 5, 2004
California Board of Accountancy
2000 Evergreen Street
Sacramento, CA 95815

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 10:20 a.m. and welcomed the participants. Ms. Sos indicated that Governor Schwarzenegger signed into law SB 1543, the bill containing the practice privilege provisions. She complimented all participants for their successful efforts. She noted that the Task Force's first meeting was on December 19, 2003, and that in less than a year a controversial concept was developed into signed legislation. Ms. Sos extended special recognition to Ms. Granick, Mr. Granen, and Ms. Sigmann for their hard work and contributions to the success of the project. She also thanked the Task Force members and the entire Board staff for their good work.

Task Force Members:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz (Absent)
Ian Thomas

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

Other Participants
Michael Duffey, Ernst and Young LLP
Jeannie Tindel, California Society of Certified Public Accountants

I. Minutes of the July 15, 2004, Meeting.

It was moved by Mr. Iino, seconded by Ms. Hillebrand, and unanimously carried to approve the minutes of the July 15, 2004, meeting.

II. Consideration of What, if any, Additional Requirements Should be Established for Signers of Attest Reports.

A. Qualification Requirements.

Ms. Sos began the discussion by noting that the statute requires that signers of attest reports meet California's attest experience requirement. There is also an authorization for the Board to add, by regulation, additional continuing education requirements for those signing attest reports. She indicated that the issue before the Task Force is what, if any, additional requirements should be established (see Attachment 1). Ms Sos added that the signers of attest reports are already subject to California's audit documentation requirements including the rebuttable presumption and California's self-reporting requirements. She asked for comments from the CPA member of the Task Force and others who could help the Task Force better understand who the signers of attest reports are likely to be and what other standards already apply to them.

Mr. Iino responded that signers of attest reports are different from other people who come to California physically to practice here. Partners in large firms who come to work on audits are subject to Public Company Accounting Oversight Board (PCAOB) requirements which involve very high standards. He added that signers of audit reports are also likely to be employed by peer reviewed firms. He noted that there may be some individuals from small accounting firms who do not meet these requirements, however he believed this would be a very small group of people. Mr. Duffey added that, speaking for the large firms, it takes more than ten years to become a partner and only senior partners sign audit reports. In addition, the large firms are subject to the PCAOB inspection process.

Ms. Sos indicated that she believed, regardless of the Task Force's decision on this agenda item, it would be useful to inquire if the individuals who indicate they want to sign attest reports are PCAOB registrants and if their firms are subject to peer review. Mr. Granen indicated he believed the correct term was "associated person" of a firm registered with the PCAOB. Mr. Duffey expressed his support for this approach indicating that no one else is collecting this data and it could provide a great deal of useful information. Ms. Hillebrand suggested the form should require an affirmative statement that the person has at least 500 hours of attest experience and also ask if the individual has completed continuing education related to fraud detection. Ms. Sos

agreed and indicated she believed the statement related to the 500 hours should come first, and then the individual should be asked about fraud continuing education, peer review, and PCAOB registration.

After discussion, it was moved by Ms. Hillebrand, seconded by Mr. Iino, and unanimously carried to revise the notification to include an express statement by persons who indicate they desire to sign attest reports that they have completed 500 hours of attest experience as required by California law, and also, solely for the purpose of gathering information, to ask the following questions: Is the person an associated person of a PCAOB registrant? Has the person completed continuing education in fraud detection? Is the person part of a firm that has completed peer review?

Ms. Sos asked if the Task Force wanted to add any additional requirements for signers of attest reports. It was the consensus of the Task Force to collect the data first and to defer consideration of additional requirements until there is an opportunity to review the data. Ms. Hillebrand noted that this is not the same as a substantive decision that no additional requirements are needed. Ms. Sos noted that this approach is consistent with the approach the Task Force adopted related to the "safe harbor" period.

B. Documentation Requirements.

Ms. Hillebrand indicated that she had assumed that persons asserting that they had completed 500 hours of attest experience would maintain documentation that could be provided at the time of the random audit. Ms. Tindel indicated that it was her observation that licensees with many years of professional experience no longer maintain that kind of information. Mr. Duffey concurred and indicated he had talked with Task Force member Hal Schultz and that Mr. Schultz had indicated that it would be extraordinarily difficult for someone in the upper levels of a firm who has been a CPA for 25 to 30 years to provide that kind of documentation. Mr. Duffey suggested that a self-certification should be sufficient. Ms. Hillebrand suggested that one documentation option would be for the licensee to provide a list of audits with the cover pages attached.

The Task Force took no action specific to this agenda item. (See Agenda Item IIIB below for the discussion of whether the random audit should include verification that 500 hours of attest experience have been completed.)

III. Consideration of the Process for Auditing Notifications.

Ms. Sos indicated that the next issue before the Task Force was the process for auditing notifications. She noted that the matter was summarized very well in Ms. Franz' memo (Attachment 2).

A. Notification Selection Process.

Ms. Hillebrand inquired which sampling process would work best for identifying individuals who do not provide the complete truth on their notification forms. Ms. Franz responded a purely random selection process would be most effective for that purpose. Ms. Crocker agreed and noted that it would easiest to extrapolate and draw conclusions from a random sample. She also indicated that the categories discussed in the memo represent a guess regarding where the greatest consumer risk might be.

During the discussion, Mr. Thomas expressed support for Alternative 3 which would provide a random sample and also a selection emphasizing categories that may be areas of concern. Ms. Hillebrand expressed support for a large random sample with some oversampling in particular areas of concern such as those who file during the safe harbor period and those who indicate a desire to sign attest reports. Ms. Sos expressed support for initially using a random sample and later making a determination regarding whether it is appropriate to oversample particular categories. Mr. Thomas asked if increased staff time would be needed to oversample in the categories suggested by Ms. Hillebrand. Ms. Franz responded that during the first year a random sample would be easier. **It was then moved by Ms. Flowers, seconded by Mr. Thomas, and unanimously carried to use a random sample in the beginning and review the process at a future date.**

The Task Force then briefly discussed whether the sampling method should be disclosed to the public. Mr. Miller recommended against it indicating he would be reluctant for the Board to disclose to the public its method for selecting the notifications to be audited, however this information could be disclosed in response to an inquiry. It was the consensus of the Task Force to concur with Mr. Miller's recommendation.

B. Contents of the Audit.

Ms. Franz indicated that she envisioned that information would be requested from the licensee's home state or jurisdiction regarding the licensee's address of record, certification of license status, certification that the home jurisdiction's continuing education requirements were met for renewal purposes, and information regarding any disciplinary actions (see Attachment 2). Ms. Franz indicated that staff anticipated asking the licensee to submit this request to his or her home state or jurisdiction in case a fee would be charged or a release would be required. It was noted that the form includes an item where the licensee consents to the release of information to the Board. This could be printed out and provided to other state boards.

During the discussion, Mr. Duffey suggested going directly to the home state/jurisdiction and only involving the licensee if there is a problem. Ms. Hillebrand concurred and indicated that it would be appropriate to inform the home state that this information is being sought as part of a random audit. Mr. Granen indicated he believed it was not necessary to inform the licensee. Ms. Tindel agreed with Mr. Granen. **It was then moved by Ms. Sos and seconded by Ms. Flowers that the information would first**

be requested from the state board in the home state and not from the licensee. After discussion, the motion was revised to indicate that information would first be requested from the original source which would generally be the state board in the home state, but which could also include NASBA's CredentialNet. The motion was unanimously carried.

Ms. Hillebrand indicated she would like to also inquire if there were any subsequent reportable events. Mr. Duffey suggested this could be a frustrating process as many states do not maintain these records. Ms. Sigmann agreed it may be difficult to get this information from other state boards.

The Task Force then discussed verification of attest experience. Ms. Tindel suggested that the only meaningful question to ask the home state board is whether the licensee is authorized to sign attest reports in that state. Ms. Hillebrand expressed support for this suggestion.

After discussion it was moved by Ms. Flowers, seconded by Mr. Thomas, and unanimously carried for the audit to cover the four items discussed in Ms. Franz memo – the licensee's address of record, certification of license status, certification that the home jurisdiction's continuing education requirements were met for renewal purposes, and information regarding any disciplinary action – (see Attachment 2) plus information regarding whether the licensee is authorized to sign attest reports in his or her home state/jurisdiction.

The Task Force then considered whether the practice privilege holders selected for audit should be subject to a fingerprinting requirement. Ms. Sos indicated she believed fingerprinting was not appropriate as part of the random audit and instead should be considered an investigative tool to be used when Board had reason to believe an individual may not be qualified because of his or her criminal background. Mr. Duffey expressed support for this approach. He noted that it is important to balance the consumer protection benefits of finding an undisclosed criminal record against the inconvenience of requiring fingerprinting of everyone selected for the random audit. Mr. Granen indicated that as long as the Board has the correct name, information regarding criminal convictions is available through the Department of Justice Database. He suggested the only benefit in obtaining fingerprints is that it would allow the Board to obtain information when the person does not provide his or her correct name. It was the consensus of the Task Force not to establish a fingerprint requirement.

The Task Force then considered whether the random audit should include some verification that 500 hours of attest experience have been completed. Mr. Duffey indicated that it was important that the verification process not be burdensome to licensees. He added that it is hard to conceive of someone from a large firm signing audit reports without at least 500 hours of audit experience. During the discussion Ms. Sos suggested that the Board could request a narrative in which the licensee explains in his or her own words the basis for the assertion that he or she has 500 hours of attest experience. Ms. Franz expressed concern that it might be difficult for licensees to

respond to the request and many would contact the Board to get more complete guidance. Ms. Franz suggested it would be easier to give them some kind of form such as a modified "Form E" in which they could check the boxes to report their experience. Ms. Sos expressed an interest in reviewing such a modified Form E which would be responsive to the documentation difficulties that might be faced by licensees who have been practicing for many years. Consideration of this form was scheduled for discussion at the next meeting.

The Task Force then considered the time frames for response. It was the consensus of the Task Force that the time frames outlined in the memo were appropriate. Participants noted that failure to respond to inquiry is already a disqualifying condition. Ms. Franz indicated that the licensee would not be penalized if the home jurisdiction failed to respond timely to the Board's request for information.

The next issue considered by the Task Force related to what would happen to the practice privilege if the individual being audited unintentionally failed to meet the practice privilege requirements. It was the consensus of the Task Force that in such a situation, the practice privilege should be administratively suspended until the deficiency is remedied.

IV. Consideration of a Process to Address Changes in Reported Information That Occur During the Term of the Practice Privilege.

Ms. Sos indicated that staff had developed a procedure to address changes in reported information that occur during the term of the practice privilege (Attachment 3). **It was moved by Ms. Flowers, seconded by Mr. Iino, and unanimously carried to recommend Board adoption of the procedure in Attachment 3.**

V. Consideration of Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges.

Ms. Sos called the Task Force's attention to a brief memo prepared by Ms. Granick specific to this agenda item (Attachment 4). **It was moved by Ms. Flowers, seconded by Ms. Sos, and unanimously carried for the Task Force to recommend to the Board that it be a disqualifying condition to have an unpaid fine.**

VI. Update on Task Force Actions Related to When an Out-of-State CPA Needs to Apply for a California License Rather than Requesting a Practice Privilege.

Ms. Sos indicated that the memo provided under this agenda item (Attachment 5) summarizes, for information purposes, the Task Force actions to date related to the question of when a California license is needed.

VII. Comments from Members of the Public.

Members of the public provided their comments during the course of the meeting. In addition, Mr. Duffey indicated he believed that it was an amazing accomplishment for the practice privilege legislative package, which was only a concept in December 2003, to move through both houses of the Legislature and be signed by the Governor in such a short time frame. He especially acknowledged the leadership and dedication of Task Force chair, Renata Sos.

VIII. Agenda Items for Next Meeting.

The following items were scheduled for discussion at the next meeting: approval of the revised notification form, further discussion of the verification of attest experience, consideration of draft regulations, and consideration of a checklist for processing notifications indicating disqualifying conditions. There being no further business, the meeting was adjourned at 1:40 p.m.

State of California
Department of Consumer Affairs

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

Attachment 1

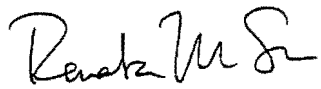
Memorandum

Practice Privilege TF Agenda Item II.
October 5, 2004

To : Practice Privilege Task Force Members

Date : September 28, 2004

Telephone : (916) 561-1718
Facsimile : (916) 263-3674



From : Renata M. Sos, Chair
Practice Privilege Task Force

Subject : Consideration of Whether the Board Should Impose, By Regulation, Additional Requirements for Signers of Attest Reports Under the Practice Privilege

After extensive research, public comment, and deliberation, this Task Force recommended, and the Board unanimously approved, that any out-of-state CPA who wishes to sign an attest report under the practice privilege must meet California's 500-hour attest experience requirement. (See Section 5095 attached.) That policy decision is reflected in Section 5096.5 of the proposed statutes:

> 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.

This requirement is an explicit exception to the overall rule that CPAs who meet their home states' continuing education (CE) and ethics exam requirements are deemed to have met California's ethics exam and CE requirements for purposes of the practice privilege:

> . . . except such individual is deemed, solely for the purposes of this article, to have met the continuing education requirements and ethics examination requirements of this state when such individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate or permit on which the substantial equivalency is based. (Section 5096(e)(2).)

The additional requirement for signers of attest reports – that in the notice to this Board they certify under penalty of perjury that they have a minimum of 500 hours of attest experience – serves at least two purposes: first, it provides added consumer protection in an area of practice where there is potential for significant harm to the public; and second, it avoids imposing a state-specific add-on that could impede notification and frustrate the goal of uniform standards across the states.

The proposed statutes vest with this Board authority to impose by regulation additional CE or other conditions on prospective signers of attest reports under the practice privilege. The question now before this Task Force is whether the Board should do so. I would propose that the discussion of this issue be guided by the following questions:

1. ***Is there any identifiable consumer protection benefit to requiring additional continuing education of those who potentially will sign attest reports?***

Here is some background information pertinent to this question. To be authorized to do attest work, California licensees must, prior to renewal of their licenses (every 2 years), complete 24 hours of audit and attest CE and, beginning in July 2005, an additional 8 hours of CE in fraud detection. What are other states doing? In January 2004, we surveyed other states on their audit and attest requirements. Of the 30 states responding, 10 had experience requirements for licensees wanting to do attest work; of those, 5 states reported requiring the same or greater number of hours as California; 8 mandated audit and attest continuing education; 17 already had or were about to implement specific ethics-related CE requirements; and 24 had instituted or were on the verge of instituting mandatory peer review for firms (including sole proprietors) that perform attest work.

Of 11 states that answered our poll regarding implementation of some form of UAA Section 23, no state requires all applicants to take an ethics exam as a prerequisite to a practice privilege.

2. **What are the costs of imposing additional CE requirements, in particular in terms of creating disincentives to notification and California-specific add-ons to the otherwise uniform practice privilege requirements?**

The answer to this question depends, among other things, on what it is that we require of CPAs who have declared an intent to sign attest reports under a practice privilege. For example, the requirements of additional CE or the passage of an ethics examination would create California-specific add-ons to the practice privilege, which otherwise is adaptable outside of California. The costs would need to be balanced against any consumer protection benefits identified in answer to the first question.

3. ***Is it too early to make this decision – that is, would the Board benefit from first determining, based on data collected once the practice privilege is implemented, the number of CPAs who wish to sign attest reports and their home states, among other factors?***

We do not know how many out-of-state CPAs will submit notices to the Board. Of that unknown number, we can only guess as to the percentage that declare an intention to sign attest reports. Of that percentage, we do not know the number of substantially equivalent CPAs who would come from states that have an audit and attest CE requirement, an ethics examination, mandatory peer review, or any other indicia of the competence and integrity of the CPA practicing under notification. We also do not know what number of practice privilege holders intending to sign attest reports who are employed by firms registered with the PCAOB.

Arguably, this information would be useful in our assessment of whether the Board should impose additional requirements on CPAs from other states who wish to sign attest reports. It is also information that we could obtain fairly easily from the notification form: for example, in addition to checking "yes" or "no" in answer to the question "Do you wish to be able to sign an attest report under the practice privilege?," the CPA would answer "yes" or "no" to the statements "My firm is registered with the PCAOB" and "My firm (including sole proprietorships) is subject to peer review in the state of my principal place of business." Based on such real data, we could assess whether the interest of consumer protection mandates additional CE or other conditions for signers of attest reports under the practice privilege.

4. ***Can we achieve added consumer protection by imposing "other conditions" on those individuals, such as heightened documentation requirements or additional disclosures on the notification form?***

An alternative to imposing additional CE requirements is to require of the CPA who wishes to sign attest reports additional disclosures on the notification form and/or retention of specific documents. Examples include: (1) requiring that the practice privilege holder maintain documentation sufficient to show (a) what attest reports have been signed and when; and (b) that the CPA satisfies the home state's CE and ethics examination requirements and California's experience requirement; and (2) adding questions/statements to the notification form pertaining to the CPA's registration with the PCAOB and/or compliance with mandatory peer review requirements in the home state.

In addition, we should consider whether those who identify themselves as potential signers of attest reports would be routinely or more frequently audited by licensing staff (that is the subject of a separate memo from staff).

This data gathering would not impose any material hurdles to notification and, simultaneously, may provide information that would enhance our efforts to ensure compliance.

I look forward to our discussion on October 5th.

Attachment

Section 5095. Providing Attest Services

(a) To be authorized to sign reports on attest engagements, a licensee shall complete a minimum of 500 hours of experience, satisfactory to the board, in attest services.

(b) To be qualifying under this section, attest 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 and provide attest services, and this experience shall be verified. 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 and perform attest services, and this experience shall be verified. An applicant may be required to present work papers or other evidence substantiating that the applicant has met the requirements of this section and applicable regulations.

(c) An individual who qualified for licensure by meeting the requirements of Section 5083 shall be deemed to have satisfied the requirements of this section.

(d) The board shall adopt regulations to implement this section, including, but not limited to, a procedure for applicants under Section 5092 or Section 5093 to qualify under this section.

State of California
Department of Consumer Affairs

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

Attachment 2

Memorandum

Practice Privilege TF Agenda Item III.
October 5, 2004

To : Practice Privilege Task Force Members

Date : September 29, 2004

Telephone : (916) 561-1740
Facsimile : (916) 263-3676
E-mail : pfranz@cba.ca.gov

From : Patti L. Franz
Licensing Manager

Subject : Consideration of the Process for Auditing Notifications

Under proposed Section 5096(e)(5) (Attachment 1) the Board has the authority to request practice privilege holders to provide documentation verifying compliance with the requirements for a California practice privilege. This authority allows the Board to audit notifications received.

The issues for consideration at this time are:

- What notification selection process should be adopted for audit purposes?
- What audit content should be requested?

Notification Selection Process

It is estimated the Board will receive approximately 1,000 practice privilege notifications annually from out-of-state licensees wanting to practice public accountancy in California while holding licenses, certificates or permits issued by other states or jurisdictions. As part of the legislative process, the Board submitted a fiscal-impact report to the Department of Consumer Affairs identifying the workload and staffing needs for the Practice Privilege Program. As a self-supporting program, with a $100 fee per notification, it was determined that the Practice Privilege Program could support two positions in the Licensing Division. Along with their other implementation and monitoring duties, it was estimated there would be staff resources available to audit a maximum of 25 percent of practice privilege notifications received each year.

Provided below are three alternatives for the Task Force to consider regarding the Notification Selection Process.

Alternative #1 – Identified Categories

For purposes of ensuring out-of-state licensees have met their home states' continuing education and examination requirements, and out-of-state licensees requesting attest authority have met California's attest experience requirement, 25 percent of the notifications will be selected for audit based on the categories identified below in the following priority:

Attest Signers	Licensees identifying themselves as signers of attest reports.
Safe Harbor	Licensees submitting notification within the five-day safe harbor period.
Repeat Notifications	Licensees who have submitted a repeat notification, have not requested attest authority, and have not previously been requested to provide documentation as part of the audit process.
4-of-10	Licensees submitting their notification under the 4-of-10 rule.

Because the audit will be limited to 25 percent, it is possible not all categories identified above will be selected for audit. For example, if at least 25 percent of the notifications received are from individuals requesting attest authority, the three other categories would not be included in the audit. Signers of attest reports were selected as having the first priority for audit because of the potential for California consumer harm.

The Task Force could consider in the Attest Signer category to exempt from the mandatory audit the practice privilege holder who answers "yes" to either of the following statements:

- My firm registered with the PCAOB.
- My firm (including sole proprietors) is subject to peer review in the state of my principal place of business.

Instead, they could be placed in the random audit category. This would allow the Board to ensure the attest signers under practice privilege who are not employees of firms registered with the PCAOB or subject to peer review have a higher probability of being selected for audit for consumer protection.

Alternative #2 – Percentage of Identified Categories

The Task Force could direct staff to select a percentage of each category to ensure a complete sample is captured each year. For instance, 10 percent of the selection could be assigned to attest signers, 7 percent of those who submit notification under safe harbor, 5 percent for those who submit repeat notifications, and 3 percent for those who submit a notification under the 4-of-10 rule.

Alternative #3 – Random/Identified Categories

Another alternative for consideration by the Task Force is to direct staff to designate a percentage on a random basis among all notification forms and the remaining percentage selected among the categories provided above. For example, the Task Force could direct staff to select a 10 percent random audit among all notification forms and the remaining 15 percent among the categories provided above.

Scope of Audit Request

It is envisioned staff will develop a form for the purpose of conducting the notification audit. The form would include all of the items identified by the Task Force and would be mailed by Board staff to the licensee's home jurisdiction for completion. (As part of the verification process licensee's will provide consent on the notification form allowing the Board to request the audit information from the home jurisdiction.) It is anticipated all of the information requested on the Board's form, in most cases, would be available from the home jurisdiction.

However, if an item is not available from the home jurisdiction, such as a certification of attest experience, staff would have to contact the licensee who would then be responsible for providing the missing documentation.

Staff recommend, at a minimum, the following items be included in the audit request to the out-of-state licensees' home jurisdictions:

- Licensee's address of record.
- Certification of license status.
- Certification that the home jurisdiction's continuing education requirements were met for renewal purposes.
- Whether there have been any disciplinary actions and, if so, the nature and outcome.

Outstanding Issue for the Practice Privilege Task Force to Consider

California licensees are subject to a criminal background check prior to licensure, which requires submission of fingerprints with a fee of $56 associated with the Department of Justice/Federal Bureau of Investigation processing of the fingerprints. The following alternatives are provided to the Task Force for consideration:

- Should all practice privilege holders selected for audit be subject to a fingerprinting requirement? Should only a percentage of the audit population be fingerprinted? For example, require fingerprinting of every fifth practice privilege holder selected for audit.
- Should the fingerprint requirement be reserved for specific instances where there is reason for believing that a criminal background check would assist the Board's verification, investigation or disciplinary efforts as to a particular individual - for example, an individual on administrative suspension for misrepresentations on the notification form or an individual whose license has been disciplined but whose home state does not perform a background check?

Audit of Attest Signers

Pursuant to Section 5096.5 of the proposed statutes, practice privilege holders requesting attest authority in California are required to meet the attest requirements of Section 5095 (Attachment 2) of the California Accountancy Act. Therefore, it is envisioned that in addition to the other recommended audit items identified above, the audit request for a practice privilege holder requesting attest authority in California would ask for a certification of attest experience for licensure in the home jurisdiction to ensure California's attest experience requirement was fulfilled.

However, some jurisdictions do not have an experience and/or attest requirement for licensure or their attest experience requirement may differ from Section 5095. Therefore, staff are requesting direction from the Task Force as to what will be an acceptable form of verification if the home jurisdiction cannot provide the requested information. One possibility is to require the individual to have the Board's Certificate of Experience currently required for licensure submitted by a partner, shareholder, or supervising CPA on their behalf. However, a sole proprietor may be unable to have a Certificate of Experience completed on their behalf. Therefore, alternative documentation, such as a client list, could be considered. This alternative is currently utilized for sole proprietors requesting licensure in California who meet the 4-of-10 rule and who are unable to have a Certificate of Experience submitted on their behalf.

Time Allowed for Response

Staff recommends providing the home jurisdictions six to eight weeks to respond to the individual audit requests. If the home jurisdiction is unable to provide all of the required information, the practice privilege holder will be given 30 days to provide any additional information needed.

Failure to respond to the Board's audit request will be an automatic disqualifying condition. Therefore, any future requests for practice privilege would not be granted automatically and would require the licensee to provide the documents not available from the home jurisdiction.

Other Outstanding Issues for the Task Force to Consider

It is likely there will be situations where an out-of-state licensee will be selected for audit and staff determine the requirements for practice privilege in California were not met. For example, an individual may have a license in delinquent status though they maintain they mailed their renewal form timely to the home jurisdiction. Another example is a licensee submits their renewal form and continuing education believing they have met the requirements for renewal. However, the home jurisdiction notifies the licensee at a later date there are CE deficiencies and allows the licensee to satisfy any deficiencies.

- What happens to the practice privilege if staff determines the licensee did not meet the practice privilege requirements, although unintentional? Is the individual's practice privilege administratively suspended until the deficiency is remedied?

I will be at the meeting to answer any questions the Task Force members may have.

Attachments

Attachment 1

Section 5096(e)(5)

(e) An individual who holds a practice privilege under this article:

(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.

Section 5096.5

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.

Section 5095. Providing Attest Services

(a) To be authorized to sign reports on attest engagements, a licensee shall complete a minimum of 500 hours of experience, satisfactory to the board, in attest services.

(b) To be qualifying under this section, attest 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 and provide attest services, and this experience shall be verified. 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 and perform attest services, and this experience shall be verified. An applicant may be required to present work papers or other evidence substantiating that the applicant has met the requirements of this section and applicable regulations.

(c) An individual who qualified for licensure by meeting the requirements of Section 5083 shall be deemed to have satisfied the requirements of this section.

(d) The board shall adopt regulations to implement this section, including, but not limited to, a procedure for applicants under Section 5092 or Section 5093 to qualify under this section.

State of California
Department of Consumer Affairs

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

Attachment 3

Memorandum

Practice Privilege TF Agenda Item IV
October 5, 2004

To : Renata Sos, Chair
Members, Practice Privilege Task Force

Date : September 27, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Consideration of a Process to Address Changes in Reported Information That Occur During the Term of the Practice Privilege

The Task Force has not yet considered any process to address changes in reported information that occur during the term of the practice privilege. These changes could be of two types: 1) the occurrence of a significant event that could potentially be a disqualifying condition, or 2) changes of a less significant nature such as a change of address or phone number.

To address these occurrences, the following process is provided for Task Force consideration:

- Practice Privilege holders would be required to report the occurrence of any change in the information reported on the notification form within 30 days of its occurrence. This is consistent with Item 12 under Qualification Requirements in the Draft Notification Form (Attachment 1). A regulation would be needed to establish this requirement.

- If the reported event constitutes a disqualifying condition, the Board would issue an administrative suspension and then proceed with its evaluation using the process approved by the Task Force at its September 9, 2004, meeting (see Attachment 2).

- If the reported event relates to any other item on the form, Board staff would simply update the information.

- Failure to report would be subject to citation and fine by the Board. (If the Task Force approves this procedure, staff would develop a recommendation regarding the fine amount.) Failure to report a disqualifying condition could also be grounds for discipline. If the Board chooses to adopt this policy, a regulation would be needed.

Attachments

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.dca.ca.gov/cba*

DRAFT

Attachment 1

NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION XXXX:

Name: _____

Prior Names: _____

Firm Name: _____

Address Of Principal Place Of Business: _____

Telephone Number (business hours): _____

Fax Number (business hours): _____

E-Mail: _____
(To facilitate contact in the event of a problem in processing your notice)

Date Of Birth: _____

Social Security Number: _____

In connection with this privilege to practice, I wish to be able to sign a report on an attest engagement. ☐ Yes ☐ No

QUALIFICATION REQUIREMENTS:

1. I am an individual.

2. My principal place of business is not in California and I do not have an office in California other than through a firm that is registered in California and of which I am an employee.

3. I have a valid license to practice public accounting in the state/jurisdiction of my principal place of business.

State/Jurisdiction: _____ License Number: _____ Date Issued: _____

4. ☐ a. The state/jurisdiction identified in item 3 above is deemed substantially equivalent by the California Board of Accountancy (see Appendix 1 for list of substantially equivalent states); **OR**

☐ b. My individual qualifications have been determined by NASBA to be substantially equivalent (NASBA file no. _____); **OR**

☐ c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for 4 of the last 10 years.

5. I understand that I may sign a report on an attest engagement under this privilege to practice only if I meet California's requirements to sign attest reports.

6. I agree to abide by the laws of the State of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at *http://www.dca.ca.gov/cba/acnt_act.htm*) and the regulations thereunder (accessible at *http://www.dca.ca.gov/cba/regs.htm*).

7. I consent to the personal and subject matter jurisdiction of the California Board of Accountancy (CBA) including, but not limited to, the following:
   a. To suspend or revoke, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
   b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
   c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the SEC, PCAOB or other relevant regulatory authorities.

8. I agree to respond fully and completely to all inquiries by the CBA relating to my California practice privilege.

9. I consent to the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
   a. Contacting other states;
   b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
   c. Contacting NASBA.

10. ☐ I am submitting this notice to the CBA at or before the time I begin the practice of public accountancy in California and understand that this practice privilege expires one year from the date of this notice or; **OR**

☐ I am an employee of a firm registered in California and am submitting this notice within [_____] days of beginning the practice of public accountancy in California. I understand that this practice privilege expires [11 months] from the date of this notice.

11. I have met the continuing education requirements and any ethics exam requirements for the state of my principle place of business.

12. In the event that any of the information in this notice changes, I will provide the CBA written notice of any such change within 30 days of its occurrence.

13. I am concurrently submitting the fee of $100.00.

ADDITIONAL INFORMATION:

In addition to the state of my principal place of business, I am also authorized to practice in the following states or jurisdictions.

State/Jurisdiction: _____ License Number: _____ Other Authority: _____

State/Jurisdiction: _____ License Number: _____ Other Authority: _____

Please check any of the items below that apply. *For any checked items in (1)-(4), you must provide additional information as requested in Attachment X and* ***you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.***

☐ 1. I have been convicted of a crime other than a minor traffic violation.

☐ 2. I have had a license, registration, permit or authority to practice surrendered, denied, suspended, revoked, put on probationary status or otherwise limited.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have had a judgment or arbitration award in an amount greater than $30,000 entered against me in a civil action alleging actionable conduct in the practice of public accountancy.

☐ 5. I failed timely to submit the required fee with a notification submitted immediately prior to this one.

I, _____, **understand that any misrepresentation or omission in connection with this notification is cause for termination of any practice privilege in California and that the California Board of Accountancy will act accordingly, including the notification of other state or federal authorities.** I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. If your payment is not received by CBA within 30 days of this notification, you do not hold a valid practice privilege.

Privacy Statement:
The information provided in this form will be used by the California Board of Accountancy to determine whether you qualify for practice privileges in California. Sections 5080 through 5095 of the Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is grounds for rejection of the notification as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, or to another governmental agency as may be necessary to permit the Board, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in Civil Code Section 1798.24. Each individual has the right to review his or her file, except as otherwise provided by the Information Practices Act. The Executive Officer of the California Board of Accountancy is responsible for maintaining the information in this application, and may be contacted via written correspondence at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, or by calling (916) 263-3680, regarding questions about this notice or access to records.

State of California Department of Consumer Affairs

CALIFORNIA BOARD OF ACCOUNTANCY
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SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3675
WEB ADDRESS: *http://www.dca.ca.gov/cba*

ATTACHMENT X

1. If you checked items 1, 2, or 3 under additional information, please provide explanatory details:

_____

_____

_____

2. If you checked item 4 under additional information, please provide:

Date of Judgment/ Arbitration Award: _____ Jurisdiction /Court: _____ Docket No: _____

State of California Department of Consumer Affairs

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Attachment 2

Practice Privilege TF Agenda Item I
October 5, 2004

DRAFT

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Task Force Members:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

Other Participants
Richard Charney, Board Member
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law
Donald Driftmier, Board Member
Michael Duffey, Ernst and Young LLP

After discussion, it was moved by Ms. Hillebrand that the following procedure be recommended to the Board to address the payment issues under discussion: at such time as it is determined that payment is not received, is late, or that the check was dishonored, and that this is not the result of an administrative error, the Board shall issue an administrative suspension and a fine. The administrative suspension would remain in effect until the problem was cured. If it is not cured, the administrative suspension would remain in effect until the expiration of the practice privilege. A dishonored check would be a disqualifying condition and cause the person to not automatically receive a practice privilege the next time. In addition, staff would be directed to develop a recommendation related to fine amounts and conditions with a range of fines for repeat occurrences. Mr. Newington reiterated his concern that establishing a new disqualifying condition would generate additional work for Enforcement Program staff. Ms. Hillebrand amended her motion to remove the proposed disqualifying condition. The amended motion was seconded by Ms. Flowers and unanimously carried.

VII. Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege.

Mr. Newington reported on a recommended procedure for determining how the disqualifying conditions listed in Section 5096(g) should be applied to denial of the practice privilege (see Attachment 3). He recommended that guidelines for disqualifying conditions related primarily to convictions and license discipline should parallel the guidelines currently employed by Licensing Program staff when reviewing applications for licensure.

With regarded to disqualifying conditions related primarily to pending investigations and civil judgments, he recommended that practice privileges should not be granted without a thorough review by Enforcement Program staff. He further recommended that if there is a pending investigation and the outcome of the investigation will not be known for some time, a practice privilege should not be granted and the person should be encouraged to apply for licensure. **It was the consensus of the Task Force to recommend to the Board that staff proceed as outlined in Mr. Newington's memo (Attachment 3).**

VIII. Consideration of What, If Any, Additional Disqualifying Conditions Should be Specified by Regulations.

Mr. Newington reported that review by Enforcement Program staff did not identify any additional disqualifying conditions that should be adopted by the Board in regulations. He noted that there was a proposal that there be a disqualifying condition related to unpaid fees, but the Task Force did not adopt this proposal.

State of California
Department of Consumer Affairs

Attachment 3

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

Memorandum

Practice Privilege TF Agenda Item VII.
September 9, 2004

Board Agenda Item VIII.F.8.
September 10, 2004

To : Practice Privilege Task Force
Board Members

Date : August 24, 2004

Telephone : (916) 561-1731
Facsimile : (916) 561-3673
E-mail : gnewington@cba.ca.gov

From : Gregory P. Newington
Chief, Enforcement Division

Subject : Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege

Proposed Business and Professions Code Section 5096(g) lists disqualifying conditions for the practice privilege (Attachment 1). Proposed Section 5096.2(a) provides relevant criteria (Attachment 2). This memo discusses the disqualifying conditions in Section 5096(g) and the standards and process for evaluating how they may result in denial of the practice privilege. Business and Professions Code Section 480 related to the denial of licenses is included for reference in Attachment 3.

Section 5096(g)(1) precludes practice under a practice privilege if a listed disqualifying condition is present until Board approval is obtained. It should be expected that disqualifying conditions will be encountered on a recurring basis and that prompt review and consistent reasonable evaluation will be necessary by Board staff. For each listed disqualifying condition the following evaluation guidelines are recommended:

Section 5096(g)(2) – Paragraphs (A) and (B)

(g) (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.

Generally the presence of any of the conditions listed in paragraphs (A) or (B) of Section 5096(g) would equate to likely serious violations or unprofessional conduct and should preclude practice in California under the practice privilege model. Exceptions will, however, be experienced. Examples under paragraph (A) could include convictions with no relationship to the practice of public accounting (spousal abuse) or a misdemeanor violation committed several years ago with no

reoccurrence (shoplifting). Examples under paragraph (B) could include revocation of a Texas CPA certificate for failure to renew the license timely.

Evaluation guidelines should be established that will allow licensing staff to identify and pass (allow practice privilege) on convictions having no relationship with the practice of public accountancy, misdemeanor convictions over 10 years old, and license sanctions in other jurisdictions caused by administrative procedural actions versus discipline for unprofessional conduct. The Board's licensing staff currently employ similar guidelines in their evaluation of applicants for licensure and that system is operating smoothly. Situations involving disqualifying conditions that fall outside these guidelines should be referred to the Enforcement Division where a review will be conducted to determine if there is a factual basis to deny practice under a practice privilege, or actual California licensure, pursuant to Business and Professions Code Section 480 (Grounds for Denial).

Section 5096(g)(2) – Paragraphs(C) and (D)

(h) (2) Disqualifying conditions include:

(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.

The presence of any of the conditions listed in paragraphs (C) or (D) of Section 5096(g) will indicate the possibility of serious violations or unprofessional conduct, and practice rights via the practice privilege option should not be granted without thorough review by Enforcement Division personnel. This review may require investigative action or inquiry to obtain an adequate understanding of the facts and issues underlying the disqualifying condition and how those facts would fit into the criteria referenced in Business and Professions Code Section 480. In many cases, particularly those that involve a pending investigation or proceeding before another agency, the facts will not be fully developed or available. If so, practice rights via a practice privilege should not be granted, and the applicant should be required to apply for a California CPA license should he or she desire to practice in California. Practice rights via practice privilege should only be granted if Enforcement Division personnel are able to obtain an understanding of the facts sufficient to conclude there is no factual basis to deny practice under Business and Professions Code Section 480. The Board will need to determine if this is an appropriate use of enforcement resources.

Section 5096(g) – Paragraphs (2)(E)

(h) (2) Disqualifying conditions include:

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

Evaluation guidelines will depend on the specific disqualifying conditions adopted by the Board in regulation.

GPN

Attachments

Proposed Section 5096(g)

(g) (1) No individual may practice under a practice 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.

(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.

ATTACHMENT 1

Proposed Section 5096.2(a)

(a) Practice privileges may be denied 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.

ATTACHMENT 2

Section 480

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

State of California
Department of Consumer Affairs

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

Attachment 4

Memorandum

Practice Privilege TF Agenda Item V
October 5, 2004

To : Renata Sos, Chair
Members, Practice Privilege Task Force

Date : September 27, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Consideration of Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges

This agenda item presents for Task Force discussion and action the question of whether it should be a disqualifying condition to have an unpaid fine related to practice privileges. If the Task Force concludes that it should be a disqualifying condition, it would need to be established as a regulation.

This question came to light based on discussions at the September 9, 2004, meeting. At that meeting, the Task Force discussed issuing fines for failure to comply with practice privilege requirements. The Task Force concluded that fines should be issued related to failure to provide notice within the "safe harbor" period and failure to pay the practice privilege fee timely. As the Task Force continues its discussion, other items may be identified where issuance of a fine is deemed an appropriate penalty. At its September 9, 2004, meeting the Task Force also adopted a motion to clarify that it is a disqualifying condition to have an unresolved administrative suspension. Based on these discussions, the question has been raised whether it should be a disqualifying condition to have an unpaid fine as well.

For background on previous Task Force actions, please see pages 5-10 of the minutes of the September 9, 2004, meeting.

State of California
Department of Consumer Affairs

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

Attachment 5

Memorandum

Practice Privilege TF Agenda Item VI
October 5, 2004

To : Renata Sos, Chair
Members, Practice Privilege Task Force

Date : September 27, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Update on Task Force Actions Related to When an Out-of-State CPA Needs to Apply for a California License Rather than Requesting a Practice Privilege.

This memo provides an update on Task Force and Board actions to date which relate to when an out-of-state CPA needs to apply for a California license rather than requesting a practice privilege.

Currently, three circumstances have been identified in which an out-of-state CPA would need to seek a California license rather than a practice privilege in order to practice in California:

1) The individual wants to establish his or her principal place of business in California [Business and Professions Code Section 5096(a)].

2) The individual wants to provide services from an office in this state and is not an employee of a California-registered firm [Business and Professions Code Section 5096(e)(3).]

3) The individual is the subject of a pending investigation in which the outcome is not likely to be known for some time. This reflects the action of the Practice Privilege Task Force at its meeting of September 9, 2004, based on a recommendation of Gregory Newington, Enforcement Division Chief.

As background for your consideration of this agenda item, Business and Professions Code Section 5096 and excerpts from the September 9, 2004, minutes are provided as Attachments 1 and 2.

Attachments

Article 5.1. Practice Privileges

Section 5096.

(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 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 issued by any state for at least four of the last ten years.
(2) The individual has a license, certificate, or permit from a state which 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 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) An individual who holds a practice 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 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 individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit 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 state that issued 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.

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

(g) (1) No individual may practice under a practice 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.
(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.

State of California Department of Consumer Affairs

CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
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Attachment 2

Practice Privilege TF Agenda Item I
October 5, 2004

DRAFT

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Task Force Members:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

Other Participants
Richard Charney, Board Member
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law
Donald Driftmier, Board Member
Michael Duffey, Ernst and Young LLP

After discussion, it was moved by Ms. Hillebrand that the following procedure be recommended to the Board to address the payment issues under discussion: at such time as it is determined that payment is not received, is late, or that the check was dishonored, and that this is not the result of an administrative error, the Board shall issue an administrative suspension and a fine. The administrative suspension would remain in effect until the problem was cured. If it is not cured, the administrative suspension would remain in effect until the expiration of the practice privilege. A dishonored check would be a disqualifying condition and cause the person to not automatically receive a practice privilege the next time. In addition, staff would be directed to develop a recommendation related to fine amounts and conditions with a range of fines for repeat occurrences. Mr. Newington reiterated his concern that establishing a new disqualifying condition would generate additional work for Enforcement Program staff. Ms. Hillebrand amended her motion to remove the proposed disqualifying condition. The amended motion was seconded by Ms. Flowers and unanimously carried.

VII. Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege.

Mr. Newington reported on a recommended procedure for determining how the disqualifying conditions listed in Section 5096(g) should be applied to denial of the practice privilege (see Attachment 3). He recommended that guidelines for disqualifying conditions related primarily to convictions and license discipline should parallel the guidelines currently employed by Licensing Program staff when reviewing applications for licensure.

With regarded to disqualifying conditions related primarily to pending investigations and civil judgments, he recommended that practice privileges should not be granted without a thorough review by Enforcement Program staff. He further recommended that if there is a pending investigation and the outcome of the investigation will not be known for some time, a practice privilege should not be granted and the person should be encouraged to apply for licensure. **It was the consensus of the Task Force to recommend to the Board that staff proceed as outlined in Mr. Newington's memo (Attachment 3).**

VIII. Consideration of What, If Any, Additional Disqualifying Conditions Should be Specified by Regulations.

Mr. Newington reported that review by Enforcement Program staff did not identify any additional disqualifying conditions that should be adopted by the Board in regulations. He noted that there was a proposal that there be a disqualifying condition related to unpaid fees, but the Task Force did not adopt this proposal.

State of California
Department of Consumer Affairs

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

Memorandum

Board Agenda Item VIII.F.3.a
November 19, 2004

To : Ian Thomas, President
Members, California Board of Accountancy

Date : November 5, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Recommendation Regarding a Process to Address Changes in Reported Information That Occur During the Term of the Practice privilege

At its meeting of October 5, 2004, the Practice Privilege Task Force considered changes in the information reported in the notification that occur during the term of the practice privilege. These changes could be of two types: 1) the occurrence of a significant event that could potentially be a disqualifying condition, or 2) changes of a less significant nature such as a change of address or phone number.

To address these occurrences, the Task Force recommends the Board adopt the following procedure:

- Practice Privilege holders would be required to report the occurrence of any change in the information reported on the notification form within 30 days. This is consistent with Item 12 under Qualification Requirements in the Draft Notification Form (Attachment 1) and with the draft regulations under development.

- If the reported event constitutes a disqualifying condition, the Board would issue an administrative suspension and then proceed with its evaluation using the process approved by the Task Force at its September 9, 2004, meeting (see Attachment 2).

- If the reported event relates to any other item on the form, Board staff would simply update the information.

- Failure to report would be subject to a fine by the Board. Failure to report a disqualifying condition could also be grounds for discipline. (Draft regulations under development are consistent with this procedure.)

Attachments

State of California Department of Cons

DRAFT

CALIFORNIA BOARD OF ACCOUNTANCY
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Attachment 1

Practice Privilege TF Agenda Item IV.
November 18, 2004

Board Agenda Item VIII.F.4.c.
November 19, 2004

NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 5096:

Name: _____ Prior Name(s): _____

Firm Name: _____

Address Of Principal Place Of Business: _____

Telephone Number (business hours): _____ Fax Number (business hours): _____ Business E-mail: _____

Date Of Birth: ____/____/_____ Social Security Number: _____

QUALIFICATION REQUIREMENTS:

1. I am an individual.

2. My principal place of business is not in California and I do not have an office in California other than through a firm that is registered in California and of which I am an employee or I have a pending application for licensure in California under Sections 5087 and 5088.

3. I am qualifying for Practice Privilege based on my valid license to practice public accountancy in the following state:

   State: _____ License Number: _____ Date Issued: _____

4. ☐ a. The state of licensure identified in item 3 is deemed substantially equivalent by the California Board of Accountancy (see Appendix 1 for list of substantially equivalent states); **OR**

   ☐ b. My individual qualifications have been determined by NASBA to be substantially equivalent (NASBA file no. _____); **OR**

   ☐ c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for 4 of the last 10 years.

5. I understand that I may sign a report on an attest engagement under this privilege to practice only if I have at least 500 hours of experience in attest services.

6. I agree to abide by the laws of the State of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at *http://www.dca.ca.gov/cba/acnt_act.htm*) and the regulations thereunder (accessible at *http://www.dca.ca.gov/cba/regs.htm*).

7. I consent to the personal and subject matter jurisdiction of the California Board of Accountancy (CBA) including, but not limited to, the following:
   a. To suspend or revoke, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
   b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
   c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the SEC, PCAOB or other relevant regulatory authorities.

8. I agree to respond fully and completely to all inquiries by the CBA relating to my California practice privilege, including after the expiration of this privilege.

9. I consent to the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
   a. Contacting other states;
   b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
   c. Contacting NASBA.

10. I am submitting this notice to the CBA:

☐ at or before the time I begin the practice of public accountancy in California; **OR**

☐ within five business days of beginning the practice of public accountancy in California on __/__/__. My reason(s) for not providing notice on or before that date:

_____

_____

11. I have met the continuing education requirements and any exam requirements for the state of licensure identified in item 3 above.

12. In the event that any of the information in this notice changes, I will provide the CBA written notice of any such change within 30 days of its occurrence.

13. I am concurrently submitting the fee of $100.00.

DISQUALIFYING CONDITIONS:

Please check any of the items below that apply. *For any checked items in (1)-(6), you must provide additional information as requested in Attachment X and* ***you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.***

☐ 1. I have been convicted of a crime other than a minor traffic violation.

☐ 2. 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:

   (A) an action by a state, federal, or local agency or court of the PCAOB in which the only sanction was a fine of less than $_____ or a requirement that the individual complete specified continuing education courses.
   (B) 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.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have an unresolved administrative suspension or an unpaid fine related to a prior California practice privilege.

☐ 5. I did not respond to a request for information from the Board related to a prior practice privilege.

☐ 6. I have had a judgment or arbitration award against me in an amount of $30,000 or greater that involved allegations relating to my professional conduct.

ADDITIONAL INFORMATION (Required):

In addition to the state of licensure identified in item 3, I am also authorized to practice in the following:

State: _____ License Number: _____ Other Authority: _____

State: _____ License Number: _____ Other Authority: _____

I wish to be able to sign an attest report under this practice privilege and I have at least 500 hours of experience in attest services. ☐ Yes ☐ No

I am an associated person of a firm registered with the PCAOB. ☐ Yes ☐ No

My office where I have my principal place of business undergoes peer review. ☐ Yes ☐ No

The state of licensure identified in item 3 requires continuing education in fraud detection and I have fulfilled this requirement. ☐ Yes ☐ No

_____, understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. Your privilege expires one-year from the date of this notice.

State of California Department of Consumer Affairs

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ATTACHMENT X

1. If you checked any of items 1 - 6 under disqualifying conditions, please provide explanatory details:

_____

_____

_____

2. If you checked item 6 under disqualifying conditions, please also provide:

Date of Judgment/ Arbitration Award: _____ Jurisdiction/Court: _____ Docket No: _____

State of California Department of Consumer Affairs

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Attachment 2

Practice Privilege TF Agenda Item I
October 5, 2004

DRAFT

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Task Force Members:
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Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
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Other Participants
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Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law
Donald Driftmier, Board Member
Michael Duffey, Ernst and Young LLP

After discussion, it was moved by Ms. Hillebrand that the following procedure be recommended to the Board to address the payment issues under discussion: at such time as it is determined that payment is not received, is late, or that the check was dishonored, and that this is not the result of an administrative error, the Board shall issue an administrative suspension and a fine. The administrative suspension would remain in effect until the problem was cured. If it is not cured, the administrative suspension would remain in effect until the expiration of the practice privilege. A dishonored check would be a disqualifying condition and cause the person to not automatically receive a practice privilege the next time. In addition, staff would be directed to develop a recommendation related to fine amounts and conditions with a range of fines for repeat occurrences. Mr. Newington reiterated his concern that establishing a new disqualifying condition would generate additional work for Enforcement Program staff. Ms. Hillebrand amended her motion to remove the proposed disqualifying condition. The amended motion was seconded by Ms. Flowers and unanimously carried.

VII. Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege.

Mr. Newington reported on a recommended procedure for determining how the disqualifying conditions listed in Section 5096(g) should be applied to denial of the practice privilege (see Attachment 3). He recommended that guidelines for disqualifying conditions related primarily to convictions and license discipline should parallel the guidelines currently employed by Licensing Program staff when reviewing applications for licensure.

With regarded to disqualifying conditions related primarily to pending investigations and civil judgments, he recommended that practice privileges should not be granted without a thorough review by Enforcement Program staff. He further recommended that if there is a pending investigation and the outcome of the investigation will not be known for some time, a practice privilege should not be granted and the person should be encouraged to apply for licensure. **It was the consensus of the Task Force to recommend to the Board that staff proceed as outlined in Mr. Newington's memo (Attachment 3).**

VIII. Consideration of What, If Any, Additional Disqualifying Conditions Should be Specified by Regulations.

Mr. Newington reported that review by Enforcement Program staff did not identify any additional disqualifying conditions that should be adopted by the Board in regulations. He noted that there was a proposal that there be a disqualifying condition related to unpaid fees, but the Task Force did not adopt this proposal.

State of California
Department of Consumer Affairs

Attachment 3

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

Memorandum

Practice Privilege TF Agenda Item VII.
September 9, 2004

Board Agenda Item VIII.F.8.
September 10, 2004

To : Practice Privilege Task Force
Board Members

Date : August 24, 2004

Telephone : (916) 561-1731
Facsimile : (916) 561-3673
E-mail : gnewington@cba.ca.gov

From : Gregory P. Newington
Chief, Enforcement Division

Subject : Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege

Proposed Business and Professions Code Section 5096(g) lists disqualifying conditions for the practice privilege (Attachment 1). Proposed Section 5096.2(a) provides relevant criteria (Attachment 2). This memo discusses the disqualifying conditions in Section 5096(g) and the standards and process for evaluating how they may result in denial of the practice privilege. Business and Professions Code Section 480 related to the denial of licenses is included for reference in Attachment 3.

Section 5096(g)(1) precludes practice under a practice privilege if a listed disqualifying condition is present until Board approval is obtained. It should be expected that disqualifying conditions will be encountered on a recurring basis and that prompt review and consistent reasonable evaluation will be necessary by Board staff. For each listed disqualifying condition the following evaluation guidelines are recommended:

Section 5096(g)(2) – Paragraphs (A) and (B)

(g) (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.

Generally the presence of any of the conditions listed in paragraphs (A) or (B) of Section 5096(g) would equate to likely serious violations or unprofessional conduct and should preclude practice in California under the practice privilege model. Exceptions will, however, be experienced. Examples under paragraph (A) could include convictions with no relationship to the practice of public accounting (spousal abuse) or a misdemeanor violation committed several years ago with no

reoccurrence (shoplifting). Examples under paragraph (B) could include revocation of a Texas CPA certificate for failure to renew the license timely.

Evaluation guidelines should be established that will allow licensing staff to identify and pass (allow practice privilege) on convictions having no relationship with the practice of public accountancy, misdemeanor convictions over 10 years old, and license sanctions in other jurisdictions caused by administrative procedural actions versus discipline for unprofessional conduct. The Board's licensing staff currently employ similar guidelines in their evaluation of applicants for licensure and that system is operating smoothly. Situations involving disqualifying conditions that fall outside these guidelines should be referred to the Enforcement Division where a review will be conducted to determine if there is a factual basis to deny practice under a practice privilege, or actual California licensure, pursuant to Business and Professions Code Section 480 (Grounds for Denial).

Section 5096(g)(2) – Paragraphs(C) and (D)

(h) (2) Disqualifying conditions include:

(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.

The presence of any of the conditions listed in paragraphs (C) or (D) of Section 5096(g) will indicate the possibility of serious violations or unprofessional conduct, and practice rights via the practice privilege option should not be granted without thorough review by Enforcement Division personnel. This review may require investigative action or inquiry to obtain an adequate understanding of the facts and issues underlying the disqualifying condition and how those facts would fit into the criteria referenced in Business and Professions Code Section 480. In many cases, particularly those that involve a pending investigation or proceeding before another agency, the facts will not be fully developed or available. If so, practice rights via a practice privilege should not be granted, and the applicant should be required to apply for a California CPA license should he or she desire to practice in California. Practice rights via practice privilege should only be granted if Enforcement Division personnel are able to obtain an understanding of the facts sufficient to conclude there is no factual basis to deny practice under Business and Professions Code Section 480. The Board will need to determine if this is an appropriate use of enforcement resources.

Section 5096(g) – Paragraphs (2)(E)

(h) (2) Disqualifying conditions include:

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

Evaluation guidelines will depend on the specific disqualifying conditions adopted by the Board in regulation.

GPN

Attachments

Proposed Section 5096(g)

(g) (1) No individual may practice under a practice 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.

(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.

ATTACHMENT 1

Proposed Section 5096.2(a)

(a) Practice privileges may be denied 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.

ATTACHMENT 2

Section 480

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

State of California
Department of Consumer Affairs

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

Memorandum

Board Agenda Item VIII.F.3.b
November 19, 2004

To : Ian Thomas, President
Members, California Board of Accountancy

Date : November 5, 2004

Telephone : (916) 561-3788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick - Aronna
Legislation/Regulations Coordinator

Subject : Recommendation Regarding Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges.

The memo provides for Board consideration and action the Practice Privilege Task Force's recommendation related to unpaid fines. The Task Force recommends that, if a practice privilege expires with an unpaid fine still pending, the individual who held the practice privilege needs to obtain Board approval before beginning practice under a new practice privilege.

This issue came to light based on discussions at the September 9, 2004, Practice Privilege Task Force meeting. At that meeting, the Task Force discussed issuing fines for failure to comply with practice privilege requirements. The Task Force concluded that fines should be issued related to failure to provide notice within the "safe harbor" period and failure to pay the practice privilege fee timely. At that meeting the Task Force also adopted a motion to clarify that it is a disqualifying condition to have an unresolved administrative suspension. Based on these discussions, the Task Force considered the matter further at its meeting of October 5, 2004, and unanimously adopted the recommendation noted above.

As background for your consideration of this recommendation, attached are relevant excerpts from the minutes of the September 9 and October 5, 2004, meetings (Attachments A and B) and a copy of the relevant statutory provision, subdivision (g) of newly enacted Business and Professions Code Section 5096 (Attachment C).

Attachments

State of California Department of Consumer Affairs

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Attachment A

Board Agenda Item VIII.F.1
November 19, 2004

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING

FINAL

September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Present:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
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Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
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Other Participants
Richard Charney, Board Member
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Donald Driftmier, Baord Member
Michael Duffey, Ernst and Young LLP

substantially equivalent by CredentialNet. Both decisions will be reflected in regulations.

It was moved by Ms. Flowers and seconded by Mr. Schultz to accept NASBA's determinations in both areas. It was the intent of the motion that this would be the only method through which these determinations would be made. During the discussion Ms. Hillebrand asked if the Board could request that CredentialNet consider ethics requirements in making its determinations. Ms. Sos indicated that the Board could inform CrednetialNet that ethics is a priority and request that CredentialNet's review ensure that the ethics requirement in the CPA's home state has been met. Ms. Sos also indicated that it was her understanding that, consistent with the Board's obligation not to delegate its authority, the Board's acceptance of NASBA's list and credentialing program would be subject to continuous monitoring, and the Board would have the ability to add or subtract states from the list as appropriate. **After the discussion, the motion was unanimously carried.**

IV. Consideration of Whether the Board Should Accept NASBA's Determination of an Individual's Substantial Equivalency or Use Some Other Method for Assessing the Qualifications of CPAs from Non-Substantially Equivalent States.
   A. Presentation by Diane Rubin of NASBA.
   B. Discussion.

See Agenda Item III.

V. Consideration of Whether There Should Be a "Safe Harbor" Period for Providing Notification to the Board.

Ms. Sos introduced this agenda item and Agenda Item VI together. She indicated that they relate to two questions: 1) When is notice due? and 2) What should the Board do when the payment is not received, is lost, or the payment check is dishonored? She noted that the statute authorizes the Board to address both issues in regulations.

With regard to whether there should be a "safe harbor" period, Ms. Sos indicated that the materials for the meeting include two memos (see Attachment ___ and ___) summarizing the arguments for and against establishing a safe harbor period. Ms. Sos indicated she would like to focus the discussion on the following issues: 1) the extent of the problem that would be created if notice were required at or before the practice begins, 2) the potential for consumer harm if practice is permitted for a specified time period before time before notification is required, 3) the risk of snaring people who have done nothing wrong if there is no safe harbor, 4) the impact of various alternatives in terms of providing an incentive for giving notice. Ms. Sos indicated she would appreciate input from the profession on these issues. Also, she encouraged the Task Force to be mindful of its general approach of not proposing regulations to address purely hypothetical situations or situations which would only impact a small percentage of the CPA population.

Ms. Sos added that should the Task Force decide not to require notice at or before the practice privilege begins, there are two ways this could be addressed: one is to indicate that notice is due some specified number of days after practice privileges begins. The other alternative is to have an emergency clause which would indicate that notice is due at or before practice begins. If the means of providing notice is not available at that time, notice is due as soon as possible after the means become available provided a good faith effort is made to acquire the means. The second option would address those situations in which someone is unable to provide notice through no fault of their own.

Mr. Iino commented that he initially voted to require notice on or before the work began, however a situation occurred recently which illustrates some of the issues raised by Ms. Sos. When he was in Japan, an urgent need for more resources at the client's Torrance California plant was identified. Because of time differences, his call requesting resources, placed at noon Tokyo time, was received at 8:00 p.m. Sunday night in California. They were successful in getting the necessary people to the client's Torrance office by 9:30 a.m. the following day. However, it was very challenging, especially since one of the people had been on vacation. Mr. Iino indicated that, based on this incident, he believed consideration should be given to establishing some kind of safe harbor or emergency provision.

Ms. Flowers inquired if it would impede enforcement efforts if the violation occurred during a safe harbor period. Ms. Sos noted that Section 5096.1 was intended to address CPAs who are practicing without a practice privilege. Mr. Granen agreed, but indicated the Board could more effectively communicate its enforcement action to other state boards if the CPA held an actual practice privilege.

Ms. Hillebrand expressed concern that having a safe harbor period would permit people to come in and practice legally for a short time without ever giving notice. She indicated that it appeared to be proper law enforcement to require people to agree to abide by California law and consent to the Board's jurisdiction before they begin work in California.

Mr. Duffey commented that he believed there is a very small universe of people who would abuse the notice requirement in the way Ms. Hillebrand suggested. On the other hand, there would be a number of situations in which people want to comply, but would find it difficult without a reasonable safe harbor period. He expressed the view that a safe harbor period would encourage compliance. For example, if there were a reasonable safe harbor period, firms could establish compliance systems to centralize and oversee compliance by their employees. Otherwise all of the responsibility for compliance rests on the individual. Mr. Schultz agreed that compliance would be encouraged if the Board provided a small opportunity to provide notice after practice begins.

Mr. Robinson added that his clients, the "Big Four" accounting firms, were interested in a safe harbor period from enforcement actions. They want to comply, but have concern that without a safe harbor period they could violate the law inadvertently. He agreed

with Mr. Duffey that a safe harbor period would encourage compliance. He indicated that he was seeking a compromise. He added that he had talked with Senator Figueroa and that, if consensus cannot be reached in this area, the implementation date for practice privileges would be extended for another year.

Ms. D'Angelo Fellmeth indicated that she believed a grace period would discourage compliance because someone could enter the state, do the job, and leave without giving notice. The potential for consumer harm is less when the safe harbor period is shorter. She noted that the one of the primary reasons the concept of practice privileges was developed was to accommodate the very large accounting firms so that they could comply with partner rotation requirements. They are professionals with massive support staff and the practice privilege concept has a great deal of ease and convenience built in, so it is unclear why they need a safe harbor period.

She indicated that she had reviewed the requirements of other licensing agencies, and none allow people from out-of-state to simply self-certify and then come in and practice. The closest example she could find is the process for out-of-state attorneys to appear before California courts. However, this process lacks the ease and convenience associated with practice privileges.

Mr. Iino commented that the large firms, by virtue of their size and the movement of people and transactions are confronted with many complexities that make a safe harbor period important. He then commented on consumer risk and added that for services such as tax, audits and reviews, and consulting, licensees could do little harm in those service lines in five days.

Ms. Flowers indicated that her primary concern was whether a safe harbor provision would negatively impact enforcement. It appeared that it would not, so she had no objection to a brief safe harbor period. She suggested a fine if notice is received after the safe harbor period ends.

Ms. Hillebrand expressed an interest in discussing the emergency clause alternative proposed by Ms. Sos. She noted that if there is a safe harbor period, people might interpret this as indicating the notice is not really due until the end of the period. She suggested that an emergency clause would not create this impression.

After further discussion, Ms. D'Angelo Fellmeth proposed that because the notification requirements are new and it will take time for people to become familiar with them, perhaps the Board could permit a five day (or five business days) safe harbor period which would sunset after two years. This would permit phased-in compliance to give the profession a chance to learn about the program. Mr. Robinson added that the notification form could request information on why the notice is late so that the data would be available.

Ms. Hillebrand indicated that, even though she was not in favor of a safe harbor period, she believed that this was a reasonable proposal to allow for transition. **Mr. Granen**

summarized the proposal as follows: Notice is required on or before beginning practice, but there shall be no penalty if the notice is given within five business days of commencing practice. This provision would remain in effect for two years from the effective date of the regulation and then would sunset. Ms. Sos moved that the Task Force recommend to the Board the proposal outlined by Mr. Granen adding that there will be an item on the form requesting the reason why the notice is late and the date when the practice began. She noted that the purpose of the two year time period is to permit transition. The motion was seconded by Mr. Schultz and carried. (Ms. Hillebrand voted "no.") Ms. Sos requested a recommendation from staff regarding fines and penalties for failure to notify within the safe harbor period.

VI. Consideration of the Procedure if the Individual's Fee is Not Received on Time or the Check is Dishonored.

Ms. Sos indicated that the materials for the meeting included a memo summarizing the recommendations of the sub-Task Force that focused on payment issues. She noted that these recommendations reflect her interpretation of the statute. However, she subsequently reconsidered this interpretation and concluded it was in error. Ms. Sos then indicated that, based on this conclusion, she would like to recommend a different approach to address payment concerns. She explained that the statute states that that the practice privilege begins with proper notification. It also requires that payment must be received within 30 days. She then recommended that if a CPA provides proper notice, but then fails to provide payment timely or if the check is subsequently dishonored, that the CPA's practice privilege be administratively suspended and that the CPA be notified that the administrative suspension remains in effect until the problem is cured. If the CPA cures the problem by providing payment, the administrative suspension would be lifted and practice would be permitted for the remaining term of the practice privilege. It the problem is not cured, failure to cure would become a disqualifying condition preventing the CPA from automatically receiving a practice privilege the next time he or she applies. Ms. Sos commented that she believed this procedure would be straightforward, easy to tract, and consistent with the statute. It would also avoid penalizing people for circumstances beyond their control.

Mr. Duffey inquired if the procedure could include some additional steps to avoid penalizing people for administrative or processing errors. Ms. Hillebrand suggested that prior notification could address this concern. Ms. Crocker indicated that prior notification would be administratively impractical. However, staff would always resolve any situation in which there was an administrative or processing error.

During the discussion Ms. Flowers suggested that there could be a penalty or fine for failure to pay timely. Mr. Newington expressed support for this suggestion and noted that a fine is an additional incentive for timely payment. He also indicated that making failure to pay a disqualifying condition would result in increased workload and that a fine would be a better, less workload intensive alternative.

After discussion, it was moved by Ms. Hillebrand that the following procedure be established to address the payment issues under discussion: at such time as it is determined that payment is not received, is late, or that the check was dishonored, and that this is not the result of an administrative error, the Board shall issue an administrative suspension and a fine. The administrative suspension would remain in effect until the problem is cured. If it is not cured, the administrative suspension would remain in effect until the expiration of the practice privilege. A dishonored check would be a disqualifying condition and cause the person to not automatically receive a practice privilege the next time. In addition, staff would be directed to develop a recommendation related to fine amounts and conditions with a range of fines for repeat occurrences. Mr. Newington reiterated his concern that establishing a new disqualifying condition would generate additional work for Enforcement Program staff. Ms. Hillebrand amended her motion to remove the proposed disqualifying condition. The amended motion was seconded by Ms. Flowers and unanimously carried.

VII. Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege

Mr. Newington reported on a recommended procedure for determining how the disqualifying conditions listed in Section 5096(g) should be applied to denial of the practice privilege (see Attachment __). He recommended that guidelines for disqualifying conditions related primarily to convictions and license discipline should parallel the guidelines currently employed by Licensing Program staff when reviewing applications for licensure.

With regarded to disqualifying conditions related primarily to pending investigations and civil judgments, he recommended that practice privileges should not be granted without a thorough review by Enforcement Program staff. He further recommended that if there is a pending investigation and the outcome of the investigation will not be known for some time, practice privileges should not be granted and the person should be encouraged to apply for licensure. **It was the consensus of the Task Force to recommend to the Board that staff proceed as outlined in Mr. Newington memo (Attachment __).**

VIII. Consideration of What, If Any, Additional Disqualifying Conditions Should be Specified by Regulations

Mr. Newington reported that review by Enforcement Program staff did not identify any additional disqualifying conditions that should be adopted by the Board as a regulation. He noted that there was a proposal that there be a disqualifying condition related to unpaid fees, but the Task Force did not adopt this proposal.

During the discussion, an additional disqualifying condition was identified and it was moved by Ms. Sos, seconded by Ms. Flowers, and unanimously carried to

recommend that the Board adopt a regulation to clarify that it is a "disqualifying condition" to have an unresolved administrative suspension.

IX. Consideration of What Minor Infractions Related to Licensing Should be Exempted From the Disqualifying Conditions.

Mr. Newington recommended an approach to identifying minor infractions that should not be considered disqualifying conditions (Attachment __). He noted that rather than create a "laundry list" of all possible infractions, he was recommending an approach base it on the type of penalty that resulted from the infraction. The recommendation was to exempt violations for which the discipline or sanction is limited to administrative citations resulting in fines of $5,000 or less or continuing professional education. Ms. Hillebrand inquired about the $5,000 fine amount and asked how it relates to what other states are doing. Mr. Newington indicated he was trying to develop the concept and that the amount of the fine was not firm.

With regard to continuing professional education, Ms. Sos indicated that practice privilege holders are required to certify that their continuing education is current. Mr. Newington indicated that sometime, additional continuing education is mandated for continuing competency.

After discussion, it was moved by Ms. Flowers, seconded by Ms. Sos, and unanimously carried to recommend that the Board proceed as outlined in Mr. Newington's memo and exempt violations for which the discipline or sanction is limited to administrative citations resulting in fines of $5,000 or less or continuing professional education. Staff were direct to research whether $5000 is the appropriate amount.

X. Consideration of What Should be the Criteria and Level of Discretion for Administrative Suspension.

Mr. Newington recommended as suggested criteria for administrative suspensions 1) representations made in the notice, 2) The individual's competence or qualifications to practice under the practice privilege in question and 3) the individual's failure to timely respond to a Board inquiry or request for information or documents (see Attachment __). He indicated that he believed administrative suspension was fairly serious and that these three areas involve reasonably significant acts. **It was moved by Ms. Flowers, seconded by Mr. Schultz, and unanimously carried to recommend Mr. Newington's proposal to the Board.**

XI. Comments from Members of the Public.

Members of the public provided comments during the course of the meeting.

XII. Agenda Items for Next Meeting.

State of California Department of Consumer Affairs

CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
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Attachment B

Practice Privilege TF Agenda Item I
November 18, 2004

Board Agenda Item VIII.F.2
November 19, 2004

DRAFT

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
October 5, 2004
California Board of Accountancy
2000 Evergreen Street
Sacramento, CA 95815

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 10:20 a.m. and welcomed the participants. Ms. Sos indicated that Governor Schwarzenegger signed into law SB 1543, the bill containing the practice privilege provisions. She complimented all participants for their successful efforts. She noted that the Task Force's first meeting was on December 19, 2003, and that in less than a year a controversial concept was developed into signed legislation. Ms. Sos extended special recognition to Ms. Granick, Mr. Granen, and Ms. Sigmann for their hard work and contributions to the success of the project. She also thanked the Task Force members and the entire Board staff for their good work.

Task Force Members:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz (Absent)
Ian Thomas

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

respond to the request and many would contact the Board to get more complete guidance. Ms. Franz suggested it would be easier to give them some kind of form such as a modified "Form E" in which they could check the boxes to report their experience. Ms. Sos expressed an interest in reviewing such a modified Form E which would be responsive to the documentation difficulties that might be faced by licensees who have been practicing for many years. Consideration of this form was scheduled for discussion at the next meeting.

The Task Force then considered the time frames for response. It was the consensus of the Task Force that the time frames outlined in the memo were appropriate. Participants noted that failure to respond to inquiry is already a disqualifying condition. Ms. Franz indicated that the licensee would not be penalized if the home jurisdiction failed to respond timely to the Board's request for information.

The next issue considered by the Task Force related to what would happen to the practice privilege if the individual being audited unintentionally failed to meet the practice privilege requirements. It was the consensus of the Task Force that in such a situation, the practice privilege should be administratively suspended until the deficiency is remedied.

IV. Consideration of a Process to Address Changes in Reported Information That Occur During the Term of the Practice Privilege.

Ms. Sos indicated that staff had developed a procedure to address changes in reported information that occur during the term of the practice privilege (Attachment 3). **It was moved by Ms. Flowers, seconded by Mr. Iino, and unanimously carried to recommend Board adoption of the procedure in Attachment 3.**

V. Consideration of Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges.

Ms. Sos called the Task Force's attention to a brief memo prepared by Ms. Granick specific to this agenda item (Attachment 4). **It was moved by Ms. Flowers, seconded by Ms. Sos, and unanimously carried for the Task Force to recommend to the Board that it be a disqualifying condition to have an unpaid fine.**

VI. Update on Task Force Actions Related to When an Out-of-State CPA Needs to Apply for a California License Rather than Requesting a Practice Privilege.

Ms. Sos indicated that the memo provided under this agenda item (Attachment 5) summarizes, for information purposes, the Task Force actions to date related to the question of when a California license is needed.

State of California
Department of Consumer Affairs

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

Attachment 4

Memorandum

Practice Privilege TF Agenda Item V
October 5, 2004

To : Renata Sos, Chair
Members, Practice Privilege Task Force

Date : September 27, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Consideration of Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges

This agenda item presents for Task Force discussion and action the question of whether it should be a disqualifying condition to have an unpaid fine related to practice privileges. If the Task Force concludes that it should be a disqualifying condition, it would need to be established as a regulation.

This question came to light based on discussions at the September 9, 2004, meeting. At that meeting, the Task Force discussed issuing fines for failure to comply with practice privilege requirements. The Task Force concluded that fines should be issued related to failure to provide notice within the "safe harbor" period and failure to pay the practice privilege fee timely. As the Task Force continues its discussion, other items may be identified where issuance of a fine is deemed an appropriate penalty. At its September 9, 2004, meeting the Task Force also adopted a motion to clarify that it is a disqualifying condition to have an unresolved administrative suspension. Based on these discussions, the question has been raised whether it should be a disqualifying condition to have an unpaid fine as well.

For background on previous Task Force actions, please see pages 5-10 of the minutes of the September 9, 2004, meeting.

Senate Bill No. 1543

CHAPTER 921

An act to amend Sections 5000, 5015.6, 5076, 5100, 5109, 5134, and 22253.2 of, to amend, repeal, and add Sections 5050 and 5088 of, to add Sections 5025.2, 5025.3, 5063.3, and 22252.1 to, and to add Article 5.1 (commencing with Section 5096) and Article 6.5 (commencing with Section 5116) to Chapter 1 of Division 3 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1543, Figueroa. California Board of Accountancy: tax preparers.

(1) Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy in the Department of Consumer Affairs. The provisions creating the board, specifying the board's composition, and authorizing the board to appoint an executive officer become inoperative on July 1, 2005, and are repealed on January 1, 2006.

This bill would change these dates to provide that the provisions become inoperative on July 1, 2011, and are repealed on January 1, 2012. The bill would require the Department of Finance, notwithstanding specified provisions in the Budget Act, to authorize up to $2,000,000 dollars in additional expenditures for the board's enforcement and litigation activities. The bill would require funds for these expenditures to be payable from the Accountancy Fund. The bill would authorize funds to be encumbered in any fiscal year in which the board enters into a contract for litigation or enforcement purposes, as specified. The bill would require funds encumbered for these purposes to be continuously appropriated. The bill would enact provisions authorizing 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, to engage in the practice of public accountancy in this state under certain conditions. The bill would also prohibit a licensed accountant from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission with specified exceptions. The bill would authorize the board to assess

for a license is granted or denied, practice public accountancy in this state only under a 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 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.

SEC. 11. Article 5.1 (commencing with Section 5096) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 5.1. Practice Privileges

5096. (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 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 issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which 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 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) An individual who holds a practice 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 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 individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit 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 state that issued 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.

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

(g) (1) No individual may practice under a practice 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.

(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.

5096.1. (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. (a) Practice privileges may be denied 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 practice privileges using either of the following procedures:

State of California
Department of Consumer Affairs

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

Memorandum

Practice Privilege TF Agenda Item II.
November 18, 2004

Board Agenda Item VIII.F.4.a.
November 19, 2004

To : Practice Privilege Task Force Members
Board Members

Date : November 8, 2004

Telephone : (916) 561-1740
Facsimile : (916) 263-3676
E-mail : pfranz@cba.ca.gov

From : Patti L. Franz
Licensing Manager

Subject : Consideration of a Method for Verification of Attest Experience Through Random Audit

At its October 5, 2004, meeting, the Practice Privilege Task Force members requested that staff develop a form to be used during the audit process to verify whether the 500-hour attest experience requirement had been met prior to California practice privilege.

Therefore, attached for consideration by the Task Force is a modification of the *Certificate of Experience* currently used for licensure in California. It is envisioned this form will only be mailed to out-of-state licensees who identify themselves as signers of attest reports on the notification form.

I will be available at the meeting to answer any questions the Task Force members may have.

Attachment

CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3676
WEB ADDRESS: http://www.dca.ca.gov/cba

CERTIFICATION OF ATTEST EXPERIENCE

PRINT OR TYPE

FULL NAME OF LICENSEE: (No Initials) (First) (Middle) (Last)	U.S. SOCIAL SECURITY #

FIRM NAME (IF ANY)	CURRENT TITLE
BUSINESS ADDRESS (Including City, State, and Zip Code)	
BUSINESS TELEPHONE: Area Code ( )	Approximate Number of Years Practicing Public Accountancy

Pursuant to Section 5096.5, you may not sign an attest report unless you have 500 hours of experience in attest services (see Section 5095 of the California Business and Professions Code). For these purposes, experience is that which has enabled you to demonstrate an understanding of the requirements of planning and conducting an audit with minimum supervision which results in opinions on full disclosure financial statements.

		Yes	No
	Have you participated in the planning of an audit, including the selection of the procedures to be performed?		
II.	Have you had experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions included in financial statements?		
III.	Have you had experience in the preparation of working papers in connection with the various elements of I and II above?		
IV.	Have you had experience in the preparation of written explanations and comments on the work performed and its findings?		
V.	Have you participated in the preparation of and reporting on full disclosure financial statements?		

I hereby certify, under penalty of perjury under the laws of the State of California, that I have met California's experience requirement, Section 5095, prior to the submission of the notification of practice privilege, and that all statements and representations on this form are true and correct.

Licensee Signature	Date Signed

	Audit	Review	Compilation	Total
Please estimate your most recent 500-hours of attest experience.				

State of California
Department of Consumer Affairs

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

Memorandum

Practice Privilege TF Agenda Item III
November 18, 2004

Board Agenda Item VIII.F.4.b
November 19, 2004

To : Practice Privilege Task Force Members
Board Members

Date : November 8, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Draft Regulations Related to Practice Privileges

Attached for your consideration are draft regulations related to practice privileges. It is anticipated that after the Task Force discusses this language at its November 18, 2004, meeting, revised language will be provided for Task Force and Board action in January 2005, with a regulation hearing at the May 2005 Board meeting.

Attachment

– DRAFT –

Article 4 – Practice Privileges

Section 24. License or Practice Privilege Needed.

An individual must hold a California license or a practice privilege to engage in any activity defined as the practice of public accountancy by Business and Professions Code Section 5051 for any California resident or business. An individual who does not qualify for a practice privilege pursuant to the Article and Business and Professions Code Section 5096 shall apply for a California license in order to practice public accountancy in California.

Section 25. Qualifications for and Term of the Practice Privilege.

(a) To be eligible for a practice privilege an individual shall, at a minimum, meet one of the following qualifications:

(1) Hold a valid license, certificate, or permit from a state determined by the Board to have education, examination, and experience requirements for licensure substantially equivalent to the requirements in Business and Professions Code Section 5093.

(2) Possess education, examination, and experience qualifications that have been determined by the Board to be substantially equivalent to the qualifications under Business and Professions Code Section 5093. Pursuant to subdivision (b) of Business and Professions Code Section 5096, the Board accepts individual qualification evaluations of substantial equivalency by the National Association of State Boards of Accountancy's (NASBA's) CredentialNet. Prior to seeking a practice privilege under this paragraph, an individual shall apply to NASBA's CredentialNet, pay the required fee, and obtain the required determination. The individual shall disclose the CredentialNet file number in the notification required by Sections 26, 27, 28, and 29 and shall make CredentialNet's determination available to the Board upon request.

(3) Have continually practiced public accountancy as a Certified Public Accountant under a valid license issued by any state for four of the last ten years.

(b) Except as provided in Section 30 for practice commencing on or before December 31, 2007 or in those instances in which prior approval by the Board is required pursuant to Section 32, the practice privilege commences on the date of notification pursuant to Sections 26, 27, 28, and 29. When prior approval by the Board is required pursuant to Section 32, the practice privilege commences on the date the practice privilege is approved by the Board.

(c) A practice privilege, including a practice privilege that is or has been on administrative suspension pursuant to Business and Professions Code Section 5096.4, expires one year from that date of notification and cannot be renewed.

(d) For purposes of this Article and Business and Professions Code Section 5096, the "license upon which the practice privilege is based" or "the license upon which the substantial equivalency is based" is the license under which the individual qualifies for a practice privilege pursuant to paragraph (1) of subsection (a), or the license in the state of the principal place of business for those who qualify for a practice privilege under paragraphs (2) or (3) of subsection (a).

(e) The holder of a California license that is expired but subject to renewal is not eligible for a practice privilege.

Section 26. Notification Requirements - General.

To obtain a practice privilege an individual shall notify the Board and, under penalty of perjury, certify the truthfulness of all information provided in the notification. The notification shall include the individual's name, prior names, firm name (if any), address of principal place of business, date of birth, social security number, telephone number, either a fax number or e-mail address, the date of the notification, the individual's signature, either handwritten or an electronic equivalent, the state where the individual holds the license upon which the practice privilege is based including the license number and license issuance date, and any other states where the individual holds a license or licenses or other authority to practice, including the numbers and issuance dates of those licenses. In addition, this notification shall include all of the statements required by Section 27, all the agreements and consents required by Section 28, and all of the additional information required by Section 29.

Section 27. Notification Requirement – Statements.

The notification required to obtain a practice privilege shall include the following statements made by the individual under penalty of perjury under the laws of the State of California:

(a) The individual has a principal place of business that is not in California, and the individual does not have an office in California other than through a firm registered in California, or the individual is an applicant for licensure under Business and Professions Code Sections 5087 and 5088, whose application is pending.

(b) The individual holds a valid license to practice public accountancy in another state.

(c) The individual meets one of the minimum requirements to be eligible for a practice privilege described in subsection (a) of Section 25.

(d) The individual understands he or she may sign attest reports under the practice privilege only if he or she has at least 500 hours of experience in attest services.

(e) The individual is submitting the notice at or before the time of beginning the practice of public accountancy in California or within five business days of beginning the practice of public accountancy in California. If the notice is submitted within the five business days after practice begins, the individual shall identify the date on which the practice of public accountancy began and explain the reason for the delayed notice.

(f) The individual concurrently is submitting to the Board the required fee.

Section 28. Notification Requirement – Agreements and Consents.

The notification required to obtain a practice privilege shall include the following agreements and consents made under penalty of perjury under the laws of the state of California:

(a) The individual agrees to abide by the laws of the State of California including the California Accountancy Act and the Board's regulations.

(b) The individual consents to the personal and subject matter jurisdiction of the Board including the Board's authority to: (1) administratively suspend the practice privilege pursuant to Business and Professions Code Section 5096.4, without prior notice or hearing and in the sole discretion of the Board; (2) impose discipline pursuant to Business and Professions Code Section 5096.3 for any violations of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and (3) exchange information relating to the practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state, and/or the Securities and Exchange Commission (SEC), Public Company Accounting Oversight Board (PCAOB) or other relevant regulatory authorities.

(c) The individual agrees to respond to a Board inquiry even as to a practice privilege that has expired.

(d) The individual consents to the authority of the Board to verify the accuracy and truthfulness of the information provided in the notification and consents to the release to the Board of all information relevant to the Board's inquiries even after the privilege has expired by (1) contacting other states, (2) contacting the SEC, PCAOB, or any other federal agency before which the individual is authorized to practice, and (3) contacting NASBA.

(e) The individual certifies to having met the continuing education and examination requirements in the state of licensure upon which the practice privilege is based under Section 25(d) of this Article.

(f) The individual agrees to notify the Board in writing within 30 days of any change in the information in the notice which occurs during the term of the practice privilege, including changes that occur while the practice privilege is administratively suspended.

Section 29. Notification Requirement – Additional Information.

The notification required to obtain a practice privilege shall include the following information, the truthfulness of which the individual certifies under penalty of perjury under the laws of the State of California:

(a) The occurrence of any of the events described in subsection (a) of Section 32, each of which may disqualify the individual from a practice privilege, and thus requires Board approval prior to commencement of the practice privilege.

(b) The applicability, or not, of any of the following:

(1) The individual seeks authorization to sign reports on attest engagements, and, if so, has completed 500 hours of attest experience.

(2) The individual is an "associated person of a registered public accounting firm" as used Section 2 of the Sarbanes-Oxley Act of 2002.

(3) The individual's firm has undergone peer review in the state of the firm's principal place of business.

(4) The individual's state of licensure upon which the practice privilege is based under Section 25(d) requires continuing education related to fraud detection, and, if so, the individual has fulfilled this requirement.

30. Safe Harbor – Period of the Notice.

(a) The notification described in Sections 26, 27, 28, and 29 shall be submitted to the Board on or before the individual begins practice in California under a practice privilege. However, during the period January 1, 2006, through December 31, 2007, an individual shall not be deemed to be in violation of this article or Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) solely because he or she begins the practice of public accounting in California prior to giving notification, provided notification is submitted within five business days of the date practice begins. An individual who gives notification to the Board within the five day period provided in this Section shall be deemed to have a practice privilege from the first day of practice in California.

(b) The Board may issue a fine of _____ to _____ for notifying the Board more than five business days after beginning practice in California.

31. Payment of the Fee.

The fee required by Section 70(h) must be received by the Board within 30 days of the date of notification.

(a) An individual is subject to fine of ____ to ____ for the first failure to pay the practice privilege fee within 30 days of the commencement of the practice privilege, including attempting to pay with a check that is subsequently dishonored.

(b) An individual is subject to fine of _____ to _____ for any subsequent occurrence of failure to pay the practice privilege fee within 30 days, including attempting to pay with a check that is subsequently dishonored.

(c) An individual is also subject to an administrative suspension for failure to pay the fee, including attempting to pay with a check that is subsequently dishonored. This administrative suspension shall remain in effect until the Board gives its approval for the individual to resume practice and shall not extend the term of the practice privilege.

32. Board Approval Required Prior to Commencement of the Practice Privilege.

(a) No individual may practice public accountancy in California under a practice privilege without prior approval of the Board if he or she has, or acquires at any time during the term of the practice privilege, any of the following conditions:

(1) The individual is convicted of a crime other than a minor traffic violation.

(2) The individual has had a license or other authority to practice a profession issued by a state, federal, or local agency or court or the Public Company Accounting Oversight Board (PCAOB) revoked, suspended, denied, surrendered, put on probationary status, or otherwise sanctioned or limited, except for the following occurrences:

(A) an action by a state board of accountancy in which the only sanction was a fine of less than $_____ or a requirement that the individual complete specified continuing education courses.

(B) 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.

(3) The individual is the subject of an investigation, inquiry, or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving his or her professional conduct.

(4) The individual has had a judgment or arbitration award in an amount greater than $30,000 entered against him or her in a civil matter alleging actionable conduct in the practice of public accountancy.

(5) The individual held a practice privilege in California that expired while under administrative suspension or with an unpaid fine.

(6) The individual has failed to respond to a request for information from the Board regarding a matter related to a current or prior practice privilege.

(b) The practice privilege is subject to administrative suspension if any of the conditions listed in subsection (a) of this section occur during the term of the practice privilege.

33. Changes to Information on the Notification.

(a) An individual shall report in writing to the Board changes in the information reported on the notification within 30 days of learning of the change.

(b) An individual is subject to a fine of _____ to _____ for failure to comply with the requirements of this section.

34. Response to Board Inquiry.

Failure to comply with the obligation to respond to Board inquiry pursuant to Section 5096(e)(5) could result in one or more of the following:
(a) Issuance of a fine of _____ to _____.
(b) An administrative suspension of a current practice privilege pursuant to Business and Professions Code Section 5096.4.
(c) The requirement to obtain the approval of the Board before commencing to practice under a future practice privilege.

35. Continuing Education Requirement.

An individual practicing under a practice privilege shall meet the continuing education requirements of the state issuing the license upon which the practice privilege is based pursuant to Section 25(d).

Section 70. Fees.

(a) ~~(1) Commencing July 1, 2002, the fees to be charged each California applicant for the paper and pencil certified public accountant examination, including each applicant for re-examination, shall be an application fee of $60 and a fee of $36 for each part of the examination requested by the applicant.~~
~~(2) The fee to be charged each applicant from another state who sits for the paper and pencil certified public accountant examination in California shall be a total of $75.~~

~~(3)~~ Commencing January 23, 2004 the fee to be charged each California applicant for the computer-based Uniform Certified Public Accountant Examination, shall be an application fee of $100 for issuance of the Authorization to Test to first-time applicants and an application fee of $50 for issuance of the Authorization to Test to repeat applicants.

(b) Commencing July 1, 2001, the fee to be charged each applicant for issuance of a certified public accountant certificate shall be $250.

(c) The fee to be charged each applicant for registration, including applicant for registration under a new name as a partnership or as a corporation, shall be $150.

(d) Commencing July 1, 2000, the fee to be charged each applicant for the initial permit to practice as a partnership, a corporation, or a certified public accountant shall be $200.

(e) Commencing July 1, 2000, the fee to be charged each applicant for renewal of a permit to practice as a partnership, a corporation, a public accountant, or a certified public accountant shall be $200.

(f) The fee for the processing and issuance of a duplicate copy of a certificate of licensure or registration shall be $10.

(g) The fee for processing and issuance of a duplicate copy of a registration, or permit or other form evidencing licensure or renewal of licensure shall be $2.

(h) Commencing January 1, 2006, the fee to be charged an individual for a practice privilege pursuant to Business and Professions Code Section 5096 shall be $100 annually.

Note: Authority cited: Section 5010 and 5018, Business and Professions Code. Reference: Sections 122, 163 and 5134 Business and Professions Code.

State of California 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.dca.ca.gov/cba*

DRAFT

Practice Privilege TF Agenda Item IV.
November 18, 2004

Board Agenda Item VIII.F.4.c.
November 19, 2004

NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 5096:

Name: _____ Prior Name(s): _____

Firm Name: _____

Address Of Principal Place Of Business: _____

Telephone Number (business hours): _____ Fax Number (business hours): _____ Business E-mail: _____

Date Of Birth: ____/____/_____ Social Security Number: _____

QUALIFICATION REQUIREMENTS:

1. I am an individual.

2. My principal place of business is not in California and I do not have an office in California other than through a firm that is registered in California and of which I am an employee or I have a pending application for licensure in California under Sections 5087 and 5088.

3. I am qualifying for Practice Privilege based on my valid license to practice public accountancy in the following state:

   State: _____ License Number: _____ Date Issued: _____

4. ☐ a. The state of licensure identified in item 3 is deemed substantially equivalent by the California Board of Accountancy (see Appendix 1 for list of substantially equivalent states); **OR**

   ☐ b. My individual qualifications have been determined by NASBA to be substantially equivalent (NASBA file no. _____); **OR**

   ☐ c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for 4 of the last 10 years.

5. I understand that I may sign a report on an attest engagement under this privilege to practice only if I have at least 500 hours of experience in attest services.

6. I agree to abide by the laws of the State of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at *http://www.dca.ca.gov/cba/acnt_act.htm*) and the regulations thereunder (accessible at *http://www.dca.ca.gov/cba/regs.htm*).

7. I consent to the personal and subject matter jurisdiction of the California Board of Accountancy (CBA) including, but not limited to, the following:
   a. To suspend or revoke, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
   b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
   c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the SEC, PCAOB or other relevant regulatory authorities.

8. I agree to respond fully and completely to all inquiries by the CBA relating to my California practice privilege, including after the expiration of this privilege.

9. I consent to the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
   a. Contacting other states;
   b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
   c. Contacting NASBA.

10. I am submitting this notice to the CBA:

☐ at or before the time I begin the practice of public accountancy in California; **OR**

☐ within five business days of beginning the practice of public accountancy in California on __/__/__. My reason(s) for not providing notice on or before that date:

_____

_____

11. I have met the continuing education requirements and any exam requirements for the state of licensure identified in item 3 above.

12. In the event that any of the information in this notice changes, I will provide the CBA written notice of any such change within 30 days of its occurrence.

13. I am concurrently submitting the fee of $100.00.

DISQUALIFYING CONDITIONS:

Please check any of the items below that apply. *For any checked items in (1)-(6), you must provide additional information as requested in Attachment X and* ***you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.***

☐ 1. I have been convicted of a crime other than a minor traffic violation.

☐ 2. 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:

   (A) an action by a state, federal, or local agency or court of the PCAOB in which the only sanction was a fine of less than $_____ or a requirement that the individual complete specified continuing education courses.
   (B) 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.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have an unresolved administrative suspension or an unpaid fine related to a prior California practice privilege.

☐ 5. I did not respond to a request for information from the Board related to a prior practice privilege.

☐ 6. I have had a judgment or arbitration award against me in an amount of $30,000 or greater that involved allegations relating to my professional conduct.

ADDITIONAL INFORMATION (Required):

In addition to the state of licensure identified in item 3, I am also authorized to practice in the following:

State: _____ License Number: _____ Other Authority: _____

State: _____ License Number: _____ Other Authority: _____

I wish to be able to sign an attest report under this practice privilege and I have at least 500 hours of experience in attest services. ☐ Yes ☐ No

I am an associated person of a firm registered with the PCAOB. ☐ Yes ☐ No

My office where I have my principal place of business undergoes peer review. ☐ Yes ☐ No

The state of licensure identified in item 3 requires continuing education in fraud detection and I have fulfilled this requirement. ☐ Yes ☐ No

_____, understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. Your privilege expires one-year from the date of this notice.

State of California 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.dca.ca.gov/cba*

ATTACHMENT X

1. If you checked any of items 1 - 6 under disqualifying conditions, please provide explanatory details:

_____

_____

_____

2. If you checked item 6 under disqualifying conditions, please also provide:

Date of Judgment/
Arbitration Award: _____ Jurisdiction/Court: _____ Docket No: _____

State of California
Department of Consumer Affairs

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

Memorandum

Practice Privilege TF Agenda Item IV.A.
November 18, 2004

Board Agenda Item VIII.F.4.c.i.
November 19, 2004

To : Practice Privilege Task Force Members
Board Members

Date : November 8, 2004

Telephone : (916) 561-1740
Facsimile : (916) 263-3676
E-mail : pfranz@cba.ca.gov

From : Patti L. Franz
Licensing Manager

Subject : Electronic Signature for Practice Privilege Notification Forms Submitted Via the Web

Because it is envisioned a majority of out-of-state licensees will submit their notification form on-line, the Task Force requested staff to develop language for the on-line signature block for the notification form. Therefore, staff recommend the on-line version of the form include the language provided in Attachment 1.

Attached for review are California Civil Code Sections 1633.1 – 1633.17, the Uniform Electronic Transactions Act (Attachment 2). Section 1633.2(h) states:

> "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

Below are the assumptions regarding the notification process for a California Practice Privilege:

- The *Notification and Agreement to Conditions for the Privilege to Practice Public Accounting in California* will be available on the Board's Web site. The individual will have the option of completing the form on-line or downloading the form from the Web site. The downloaded form would have one signature line (Attachment 3); the on-line form another (Attachment 4).
- The individual will have a five-day safe harbor period for practice privilege notification.
- Practice privilege will commence on the date the notice is submitted, unless the individual answers affirmatively to any of the disqualifying questions.
- The individual must submit a $100 payment to the Board, which needs to be received within 30 days of notification pursuant to Section 5096(d) of the Business and Professions Code.

I will be available at the meeting to answer any questions the Task Force members may have.

Attachments

I understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. By typing my name in the box below and clicking the "I Agree" button I certify under penalty of perjury under the laws of the State of California that the information contained in this notice is true and correct. If I am not prepared to so certify, I understand that I should click the "Cancel" button to discontinue the notification process.

Full Name

I Agree **Cancel**

ATTACHMENT 2

CALIFORNIA CODES
CIVIL CODE
SECTION 1633.1-1633.17

1633.1. This title may be cited as the Uniform Electronic Transactions Act.

1633.2. In this title the following terms have the following definitions:

(a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(c) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this title and other applicable law.

(e) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(f) "Electronic agent" means a computer program or an electronic other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review by an individual.

(g) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(h) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(i) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(j) "Information" means data, text, images, sounds, codes, computer programs, software, data bases, or the like.

(k) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(l) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes

a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(o) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1107 and 1206.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, or Section 3071.5 of, the Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 658, 662, 663, 664, 666, 667.5, 673, 677, 678, 678.1, 786, 10083, 10086, 10087, 10102, 10113.7, 10127.7, 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by

electronic means if the transaction may be conducted by electronic means under any other applicable law.

3.4. This title applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after January 1, 2000.

1633.5. (a) This title does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This title applies only to a transaction between parties each of which has agreed to conduct the transaction by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record. An agreement in such a standard form contract may not be conditioned upon an agreement to conduct transactions by electronic means. An agreement to conduct a transaction by electronic means may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase or warranty. This subdivision may not be varied by agreement.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means.

a seller sells goods or services by both electronic and nelectronic means and a buyer purchases the goods or services by conducting the transaction by electronic means, the buyer may refuse to conduct further transactions regarding the goods or services by electronic means. This subdivision may not be varied by agreement.

(d) Except as otherwise provided in this title, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this title of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

1633.6. This title shall be construed and applied according to all of the following:

(1) To facilitate electronic transactions consistent with other applicable law.

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

(3) To effectuate its general purpose to make uniform the law with respect to the subject of this title among states enacting it.

1633.7. (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

1633.8. (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, that requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this title requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, all of the following rules apply:

(1) The record shall be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in paragraph (2) of subdivision (d), the record shall be sent, communicated, or transmitted by the method specified in the other law.

(3) The record shall contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, except as follows:

(1) To the extent a law other than this title requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subdivision (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement.

(2) A requirement under a law other than this title to send, communicate, or transmit a record by first-class mail may be varied by agreement to the extent permitted by the other law.

1633.9. (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subdivision (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

1633.10. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed

or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an ortunity for the prevention or correction of the error and, at the e the individual learns of the error, all of the following conditions are met:

(i) The individual promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.

(ii) The individual takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record.

(iii) The individual has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

1633.11. (a) If a law requires that a signature be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

(b) In a transaction, if a law requires that a statement be signed nder penalty of perjury, the requirement is satisfied with respect an electronic signature, if an electronic record includes, in addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

1633.12. (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record, if the electronic record reflects accurately the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise, and the electronic record remains accessible for later reference.

(b) A requirement to retain a record in accordance with subdivision (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subdivision (a) by using the services of another person if the requirements of subdivision (a) are satisfied.

(d) If a law requires a record to be retained in its original form, or provides consequences if the record is not retained in its original form, that law is satisfied by an electronic record retained in accordance with subdivision (a).

(e) If a law requires retention of a check, that requirement is tisfied by retention of an electronic record of the information on the front and back of the check in accordance with subdivision (a).

(f) A record retained as an electronic record in accordance with

subdivision (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this title specifically prohibits the use of an electronic record for a specified purpose.

(g) This section does not preclude a governmental agency from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

1633.13. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

1633.14. (a) In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(b) The terms of the contract are determined by the substantive law applicable to it.

1633.15. (a) Unless the sender and the recipient agree to a different method of sending that is reasonable under the circumstances, an electronic record is sent when the information is addressed properly or otherwise directed properly to the recipient and either (1) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender, or (2) enters a region of an information processing system that is under the control of the recipient.

(b) Unless the sender and the recipient agree to a different method of receiving that is reasonable under the circumstances, an electronic record is received when the electronic record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent, in a form capable of being processed by that system, and from which the recipient is able to retrieve the electronic record.

(c) Subdivision (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subdivision (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business or, if the recipient is an individual acting on his or her own behalf, at the recipient's place of residence. For purposes of this subdivision, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subdivision (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subdivision (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subdivision (a), or purportedly received under subdivision (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, this subdivision may not be varied by agreement.

1633.16. If a law other than this title requires that a notice of the right to cancel be provided or sent, an electronic record may not substitute for a writing under that other law unless, in addition to satisfying the requirements of that other law and this title, the notice of cancellation may be returned by electronic means. This section may not be varied by agreement.

1633.17. No state agency, board, or commission may require, prohibit, or regulate the use of an electronic signature in a transaction in which the agency, board, or commission is not a party unless a law other than this title expressly authorizes the requirement, prohibition, or regulation.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have an unresolved administrative suspension or an unpaid fine related to a prior California practice privilege.

☐ 5. I did not respond to a request for information from the Board related to a prior practice privilege.

☐ 6. I have had a judgment or arbitration award against me in an amount of $30,000 or greater that involved allegations relating to my professional conduct.

ADDITIONAL INFORMATION (Required):

In addition to the state of licensure identified in item 3, I am also authorized to practice in the following:

State: _____ License Number: _____ Other Authority: _____

State: _____ License Number: _____ Other Authority: _____

I wish to be able to sign an attest report under this practice privilege and I have at least 500 hours of experience in attest services. ☐ Yes ☐ No

I am an associated person of a firm registered with the PCAOB. ☐ Yes ☐ No

My office where I have my principal place of business undergoes peer review. ☐ Yes ☐ No

The state of licensure identified in item 3 requires continuing education in fraud detection and I have fulfilled this requirement. ☐ Yes ☐ No

I, _____, understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. Your privilege expires one-year from the date of this notice.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have an unresolved administrative suspension or an unpaid fine related to a prior California practice privilege.

☐ 5. I did not respond to a request for information from the Board related to a prior practice privilege.

☐ 6. I have had a judgment or arbitration award against me in an amount of $30,000 or greater that involved allegations relating to my professional conduct.

ADDITIONAL INFORMATION (Required):

In addition to the state of licensure identified in item 3, I am also authorized to practice in the following:

State: _____ License Number: _____ Other Authority: _____

State: _____ License Number: _____ Other Authority: _____

I wish to be able to sign an attest report under this practice privilege and I have at least 500 hours of experience in attest services. ☐ Yes ☐ No

I am an associated person of a firm registered with the PCAOB. ☐ Yes ☐ No

My office where I have my principal place of business undergoes peer review. ☐ Yes ☐ No

The state of licensure identified in item 3 requires continuing education in fraud detection and I have fulfilled this requirement. ☐ Yes ☐ No

I understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. By typing my name in the box below and clicking the "I Agree" button I certify under penalty of perjury under the laws of the State of California that the information contained in this notice is true and correct. If I am not prepared to so certify, I understand that I should click the "Cancel" button to discontinue the notification process.

Full Name _____

I Agree | Cancel

Your privilege to practice commences with the submission of your completed notification and your fee. Your privilege expires one-year from the date of this notice.

State of California
Department of Consumer Affairs

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

Memorandum

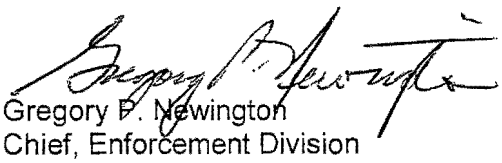
Practice Privilege TF Agenda Item V.
November 18, 2004

Board Agenda Item VIII.F.4.d.
November 19, 2004

To : Practice Privilege Task Force Members
Board Members

Date : November 2, 2004

Telephone : (916) 561-1731
Facsimile : (916) 263-3673
E-mail : gnewington@cba.ca.gov



From : Gregory P. Newington
Chief, Enforcement Division

Subject : Processing of Affirmative Responses to Disqualifying Conditions on the Practice Privilege Notification Form

Business and Professions Code Section 5096(g) (Attachment 1) lists disqualifying conditions related to California Practice Privilege. At the September meeting, I provided the Task Force with the standards and process for evaluating how the disqualifying conditions may result in the denial of the practice privilege.

At the time of notification the out-of-state licensee is required to provide additional information on Attachment X of the Notification Form if they answer affirmatively to any disqualifying condition, including whether they have been convicted of a crime other than a minor traffic violation.

Therefore, Licensing staff should permit practice privilege if the individual reports the following:

- Any misdemeanor clearly not "substantially related" to the practice of public accountancy, such as spousal abuse.
- Any misdemeanor, including those which are "substantially related", which are more than 15-years old.
- Any expunged misdemeanor more than five-years old.
- Any expunged conviction over 10-years old.
- Driving under the influence.
- Possession/use of a controlled substance.

Licensing staff should refer all other convictions to the Enforcement Division for review, as well as:

- Professional license discipline or sanction issues.
- Matters involving investigations or proceedings related to professional conduct.
- Matters involving judgments or arbitration awards related to professional conduct.
- Matters involving an unresolved administrative suspension.

GPN

Attachment

Section 5096(g)

(g) (1) No individual may practice under a practice 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 judgement or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater.

(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.

Article 5.1. Practice Privileges

Section 5096.

(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 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 issued by any state for at least four of the last ten years.
(2) The individual has a license, certificate, or permit from a state which 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 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) An individual who holds a practice 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 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 individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit 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 state that issued 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.

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

(g) (1) No individual may practice under a practice 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.
(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.

State of California 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.dca.ca.gov/cba

Attachment 2

Practice Privilege TF Agenda Item I
October 5, 2004

DRAFT

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Task Force Members:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

Other Participants
Richard Charney, Board Member
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law
Donald Driftmier, Board Member
Michael Duffey, Ernst and Young LLP

After discussion, it was moved by Ms. Hillebrand that the following procedure be recommended to the Board to address the payment issues under discussion: at such time as it is determined that payment is not received, is late, or that the check was dishonored, and that this is not the result of an administrative error, the Board shall issue an administrative suspension and a fine. The administrative suspension would remain in effect until the problem was cured. If it is not cured, the administrative suspension would remain in effect until the expiration of the practice privilege. A dishonored check would be a disqualifying condition and cause the person to not automatically receive a practice privilege the next time. In addition, staff would be directed to develop a recommendation related to fine amounts and conditions with a range of fines for repeat occurrences. Mr. Newington reiterated his concern that establishing a new disqualifying condition would generate additional work for Enforcement Program staff. Ms. Hillebrand amended her motion to remove the proposed disqualifying condition. The amended motion was seconded by Ms. Flowers and unanimously carried.

VII. Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege.

Mr. Newington reported on a recommended procedure for determining how the disqualifying conditions listed in Section 5096(g) should be applied to denial of the practice privilege (see Attachment 3). He recommended that guidelines for disqualifying conditions related primarily to convictions and license discipline should parallel the guidelines currently employed by Licensing Program staff when reviewing applications for licensure.

With regarded to disqualifying conditions related primarily to pending investigations and civil judgments, he recommended that practice privileges should not be granted without a thorough review by Enforcement Program staff. He further recommended that if there is a pending investigation and the outcome of the investigation will not be known for some time, a practice privilege should not be granted and the person should be encouraged to apply for licensure. **It was the consensus of the Task Force to recommend to the Board that staff proceed as outlined in Mr. Newington's memo (Attachment 3).**

VIII. Consideration of What, If Any, Additional Disqualifying Conditions Should be Specified by Regulations.

Mr. Newington reported that review by Enforcement Program staff did not identify any additional disqualifying conditions that should be adopted by the Board in regulations. He noted that there was a proposal that there be a disqualifying condition related to unpaid fees, but the Task Force did not adopt this proposal.

State of California
Department of Consumer Affairs

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

Memorandum

Board Agenda Item VIII.F.3.a
November 19, 2004

To : Ian Thomas, President
Members, California Board of Accountancy

Date : November 5, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Recommendation Regarding a Process to Address Changes in Reported Information That Occur During the Term of the Practice privilege

At its meeting of October 5, 2004, the Practice Privilege Task Force considered changes in the information reported in the notification that occur during the term of the practice privilege. These changes could be of two types: 1) the occurrence of a significant event that could potentially be a disqualifying condition, or 2) changes of a less significant nature such as a change of address or phone number.

To address these occurrences, the Task Force recommends the Board adopt the following procedure:

- Practice Privilege holders would be required to report the occurrence of any change in the information reported on the notification form within 30 days. This is consistent with Item 12 under Qualification Requirements in the Draft Notification Form (Attachment 1) and with the draft regulations under development.

- If the reported event constitutes a disqualifying condition, the Board would issue an administrative suspension and then proceed with its evaluation using the process approved by the Task Force at its September 9, 2004, meeting (see Attachment 2).

- If the reported event relates to any other item on the form, Board staff would simply update the information.

- Failure to report would be subject to a fine by the Board. Failure to report a disqualifying condition could also be grounds for discipline. (Draft regulations under development are consistent with this procedure.)

Attachments

State of California Department of Cons Affairs

CALIFORNIA BOARD OF ACCOUNTANCY
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DRAFT

Attachment 1

Practice Privilege TF Agenda Item IV.
November 18, 2004

Board Agenda Item VIII.F.4.c.
November 19, 2004

NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 5096:

Name: _____ Prior Name(s): _____

Firm Name: _____

Address Of Principal Place Of Business: _____

Telephone Number (business hours): _____ Fax Number (business hours): _____ Business E-mail: _____

Date Of Birth: ____/____/____ Social Security Number: _____

QUALIFICATION REQUIREMENTS:

1. I am an individual.

2. My principal place of business is not in California and I do not have an office in California other than through a firm that is registered in California and of which I am an employee or I have a pending application for licensure in California under Sections 5087 and 5088.

3. I am qualifying for Practice Privilege based on my valid license to practice public accountancy in the following state:

   State: _____ License Number: _____ Date Issued: _____

4. ☐ a. The state of licensure identified in item 3 is deemed substantially equivalent by the California Board of Accountancy (see Appendix 1 for list of substantially equivalent states); **OR**

   ☐ b. My individual qualifications have been determined by NASBA to be substantially equivalent (NASBA file no. _____); **OR**

   ☐ c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for 4 of the last 10 years.

5. I understand that I may sign a report on an attest engagement under this privilege to practice only if I have at least 500 hours of experience in attest services.

6. I agree to abide by the laws of the State of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at *http://www.dca.ca.gov/cba/acnt_act.htm*) and the regulations thereunder (accessible at *http://www.dca.ca.gov/cba/regs.htm*).

7. I consent to the personal and subject matter jurisdiction of the California Board of Accountancy (CBA) including, but not limited to, the following:
   a. To suspend or revoke, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
   b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
   c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the SEC, PCAOB or other relevant regulatory authorities.

8. I agree to respond fully and completely to all inquiries by the CBA relating to my California practice privilege, including after the expiration of this privilege.

9. I consent to the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
   a. Contacting other states;
   b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
   c. Contacting NASBA.

10. I am submitting this notice to the CBA:

☐ at or before the time I begin the practice of public accountancy in California; **OR**

☐ within five business days of beginning the practice of public accountancy in California on __/__/__. My reason(s) for not providing notice on or before that date:

_____

_____

11. I have met the continuing education requirements and any exam requirements for the state of licensure identified in item 3 above.

12. In the event that any of the information in this notice changes, I will provide the CBA written notice of any such change within 30 days of its occurrence.

13. I am concurrently submitting the fee of $100.00.

DISQUALIFYING CONDITIONS:

Please check any of the items below that apply. *For any checked items in (1)-(6), you must provide additional information as requested in Attachment X and* ***you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.***

☐ 1. I have been convicted of a crime other than a minor traffic violation.

☐ 2. 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:

   (A) an action by a state, federal, or local agency or court of the PCAOB in which the only sanction was a fine of less than $_____ or a requirement that the individual complete specified continuing education courses.
   (B) 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.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have an unresolved administrative suspension or an unpaid fine related to a prior California practice privilege.

☐ 5. I did not respond to a request for information from the Board related to a prior practice privilege.

☐ 6. I have had a judgment or arbitration award against me in an amount of $30,000 or greater that involved allegations relating to my professional conduct.

ADDITIONAL INFORMATION (Required):

In addition to the state of licensure identified in item 3, I am also authorized to practice in the following:

State: _____ License Number: _____ Other Authority: _____

State: _____ License Number: _____ Other Authority: _____

I wish to be able to sign an attest report under this practice privilege and I have at least 500 hours of experience in attest services. ☐ Yes ☐ No

I am an associated person of a firm registered with the PCAOB. ☐ Yes ☐ No

My office where I have my principal place of business undergoes peer review. ☐ Yes ☐ No

The state of licensure identified in item 3 requires continuing education in fraud detection and I have fulfilled this requirement. ☐ Yes ☐ No

_____, understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. Your privilege expires one-year from the date of this notice.

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

ATTACHMENT X

1. If you checked any of items 1 - 6 under disqualifying conditions, please provide explanatory details:

_____

_____

_____

2. If you checked item 6 under disqualifying conditions, please also provide:

Date of Judgment/
Arbitration Award: _____ Jurisdiction/Court: _____ Docket No: _____

State of California Department of Consumer Affairs

CALIFORNIA BOARD OF ACCOUNTANCY
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Attachment 2

Practice Privilege TF Agenda Item I
October 5, 2004

DRAFT

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Task Force Members:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

Other Participants
Richard Charney, Board Member
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law
Donald Driftmier, Board Member
Michael Duffey, Ernst and Young LLP

After discussion, it was moved by Ms. Hillebrand that the following procedure be recommended to the Board to address the payment issues under discussion: at such time as it is determined that payment is not received, is late, or that the check was dishonored, and that this is not the result of an administrative error, the Board shall issue an administrative suspension and a fine. The administrative suspension would remain in effect until the problem was cured. If it is not cured, the administrative suspension would remain in effect until the expiration of the practice privilege. A dishonored check would be a disqualifying condition and cause the person to not automatically receive a practice privilege the next time. In addition, staff would be directed to develop a recommendation related to fine amounts and conditions with a range of fines for repeat occurrences. Mr. Newington reiterated his concern that establishing a new disqualifying condition would generate additional work for Enforcement Program staff. Ms. Hillebrand amended her motion to remove the proposed disqualifying condition. The amended motion was seconded by Ms. Flowers and unanimously carried.

VII. Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege.

Mr. Newington reported on a recommended procedure for determining how the disqualifying conditions listed in Section 5096(g) should be applied to denial of the practice privilege (see Attachment 3). He recommended that guidelines for disqualifying conditions related primarily to convictions and license discipline should parallel the guidelines currently employed by Licensing Program staff when reviewing applications for licensure.

With regarded to disqualifying conditions related primarily to pending investigations and civil judgments, he recommended that practice privileges should not be granted without a thorough review by Enforcement Program staff. He further recommended that if there is a pending investigation and the outcome of the investigation will not be known for some time, a practice privilege should not be granted and the person should be encouraged to apply for licensure. **It was the consensus of the Task Force to recommend to the Board that staff proceed as outlined in Mr. Newington's memo (Attachment 3).**

VIII. Consideration of What, If Any, Additional Disqualifying Conditions Should be Specified by Regulations.

Mr. Newington reported that review by Enforcement Program staff did not identify any additional disqualifying conditions that should be adopted by the Board in regulations. He noted that there was a proposal that there be a disqualifying condition related to unpaid fees, but the Task Force did not adopt this proposal.

State of California
Department of Consumer Affairs

Attachment 3

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

Memorandum

Practice Privilege TF Agenda Item VII.
September 9, 2004

Board Agenda Item VIII.F.8.
September 10, 2004

To : Practice Privilege Task Force
Board Members

Date : August 24, 2004

Telephone : (916) 561-1731
Facsimile : (916) 561-3673
E-mail : gnewington@cba.ca.gov

From : Gregory P. Newington
Chief, Enforcement Division

Subject : Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege

Proposed Business and Professions Code Section 5096(g) lists disqualifying conditions for the practice privilege (Attachment 1). Proposed Section 5096.2(a) provides relevant criteria (Attachment 2). This memo discusses the disqualifying conditions in Section 5096(g) and the standards and process for evaluating how they may result in denial of the practice privilege. Business and Professions Code Section 480 related to the denial of licenses is included for reference in Attachment 3.

Section 5096(g)(1) precludes practice under a practice privilege if a listed disqualifying condition is present until Board approval is obtained. It should be expected that disqualifying conditions will be encountered on a recurring basis and that prompt review and consistent reasonable evaluation will be necessary by Board staff. For each listed disqualifying condition the following evaluation guidelines are recommended:

Section 5096(g)(2) – Paragraphs (A) and (B)

(g) (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.

Generally the presence of any of the conditions listed in paragraphs (A) or (B) of Section 5096(g) would equate to likely serious violations or unprofessional conduct and should preclude practice in California under the practice privilege model. Exceptions will, however, be experienced. Examples under paragraph (A) could include convictions with no relationship to the practice of public accounting (spousal abuse) or a misdemeanor violation committed several years ago with no

reoccurrence (shoplifting). Examples under paragraph (B) could include revocation of a Texas CPA certificate for failure to renew the license timely.

Evaluation guidelines should be established that will allow licensing staff to identify and pass (allow practice privilege) on convictions having no relationship with the practice of public accountancy, misdemeanor convictions over 10 years old; and license sanctions in other jurisdictions caused by administrative procedural actions versus discipline for unprofessional conduct. The Board's licensing staff currently employ similar guidelines in their evaluation of applicants for licensure and that system is operating smoothly. Situations involving disqualifying conditions that fall outside these guidelines should be referred to the Enforcement Division where a review will be conducted to determine if there is a factual basis to deny practice under a practice privilege, or actual California licensure, pursuant to Business and Professions Code Section 480 (Grounds for Denial).

<u>Section 5096(g)(2) – Paragraphs(C) and (D)</u>

(h) (2) Disqualifying conditions include:

(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.

The presence of any of the conditions listed in paragraphs (C) or (D) of Section 5096(g) will indicate the possibility of serious violations or unprofessional conduct, and practice rights via the practice privilege option should not be granted without thorough review by Enforcement Division personnel. This review may require investigative action or inquiry to obtain an adequate understanding of the facts and issues underlying the disqualifying condition and how those facts would fit into the criteria referenced in Business and Professions Code Section 480. In many cases, particularly those that involve a pending investigation or proceeding before another agency, the facts will not be fully developed or available. If so, practice rights via a practice privilege should not be granted, and the applicant should be required to apply for a California CPA license should he or she desire to practice in California. Practice rights via practice privilege should only be granted if Enforcement Division personnel are able to obtain an understanding of the facts sufficient to conclude there is no factual basis to deny practice under Business and Professions Code Section 480. The Board will need to determine if this is an appropriate use of enforcement resources.

Section 5096(g) – Paragraphs (2)(E)

(h) (2) Disqualifying conditions include:

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

Evaluation guidelines will depend on the specific disqualifying conditions adopted by the Board in regulation.

GPN

Attachments

Proposed Section 5096(g)

(g) (1) No individual may practice under a practice 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.

(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.

ATTACHMENT 1

Proposed Section 5096.2(a)

(a) Practice privileges may be denied 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.

ATTACHMENT 2

Section 480

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

State of California
Department of Consumer Affairs

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

Memorandum

Board Agenda Item VIII.F.3.b
November 19, 2004

To : Ian Thomas, President
Members, California Board of Accountancy

Date : November 5, 2004

Telephone : (916) 561-3788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick - Aronna
Legislation/Regulations Coordinator

Subject : Recommendation Regarding Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges.

The memo provides for Board consideration and action the Practice Privilege Task Force's recommendation related to unpaid fines. The Task Force recommends that, if a practice privilege expires with an unpaid fine still pending, the individual who held the practice privilege needs to obtain Board approval before beginning practice under a new practice privilege.

This issue came to light based on discussions at the September 9, 2004, Practice Privilege Task Force meeting. At that meeting, the Task Force discussed issuing fines for failure to comply with practice privilege requirements. The Task Force concluded that fines should be issued related to failure to provide notice within the "safe harbor" period and failure to pay the practice privilege fee timely. At that meeting the Task Force also adopted a motion to clarify that it is a disqualifying condition to have an unresolved administrative suspension. Based on these discussions, the Task Force considered the matter further at its meeting of October 5, 2004, and unanimously adopted the recommendation noted above.

As background for your consideration of this recommendation, attached are relevant excerpts from the minutes of the September 9 and October 5, 2004, meetings (Attachments A and B) and a copy of the relevant statutory provision, subdivision (g) of newly enacted Business and Professions Code Section 5096 (Attachment C).

Attachments

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Attachment A

Board Agenda Item VIII.F.1
November 19, 2004

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING

FINAL

September 9, 2004
Hyatt Regency
1209 L Street
Sacramento, CA 95814

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 8:40 a.m. and welcomed the participants. Ms. Sos noted that a quorum of the Board (eight members of the Board) was not present at this meeting.

Present:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz
Ian Thomas (Absent)

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Theresa Siepert, Executive Analyst
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

Other Participants
Richard Charney, Board Member
Tom Chenowith
Julie D'Angelo Fellmeth, Center for Public Interest Law
Donald Driftmier, Baord Member
Michael Duffey, Ernst and Young LLP

substantially equivalent by CredentialNet. Both decisions will be reflected in regulations.

It was moved by Ms. Flowers and seconded by Mr. Schultz to accept NASBA's determinations in both areas. It was the intent of the motion that this would be the only method through which these determinations would be made. During the discussion Ms. Hillebrand asked if the Board could request that CredentialNet consider ethics requirements in making its determinations. Ms. Sos indicated that the Board could inform CrednetialNet that ethics is a priority and request that CredentialNet's review ensure that the ethics requirement in the CPA's home state has been met. Ms. Sos also indicated that it was her understanding that, consistent with the Board's obligation not to delegate its authority, the Board's acceptance of NASBA's list and credentialing program would be subject to continuous monitoring, and the Board would have the ability to add or subtract states from the list as appropriate. **After the discussion, the motion was unanimously carried.**

IV. Consideration of Whether the Board Should Accept NASBA's Determination of an Individual's Substantial Equivalency or Use Some Other Method for Assessing the Qualifications of CPAs from Non-Substantially Equivalent States
   A. Presentation by Diane Rubin of NASBA.
   B. Discussion.

See Agenda Item III.

V. Consideration of Whether There Should Be a "Safe Harbor" Period for Providing Notification to the Board.

Ms. Sos introduced this agenda item and Agenda Item VI together. She indicated that they relate to two questions: 1) When is notice due? and 2) What should the Board do when the payment is not received, is lost, or the payment check is dishonored? She noted that the statute authorizes the Board to address both issues in regulations.

With regard to whether there should be a "safe harbor" period, Ms. Sos indicated that the materials for the meeting include two memos (see Attachment __ and __) summarizing the arguments for and against establishing a safe harbor period. Ms. Sos indicated she would like to focus the discussion on the following issues: 1) the extent of the problem that would be created if notice were required at or before the practice begins, 2) the potential for consumer harm if practice is permitted for a specified time period before time before notification is required, 3) the risk of snaring people who have done nothing wrong if there is no safe harbor, 4) the impact of various alternatives in terms of providing an incentive for giving notice. Ms. Sos indicated she would appreciate input from the profession on these issues. Also, she encouraged the Task Force to be mindful of its general approach of not proposing regulations to address purely hypothetical situations or situations which would only impact a small percentage of the CPA population.

Ms. Sos added that should the Task Force decide not to require notice at or before the practice privilege begins, there are two ways this could be addressed: one is to indicate that notice is due some specified number of days after practice privileges begins. The other alternative is to have an emergency clause which would indicate that notice is due at or before practice begins. If the means of providing notice is not available at that time, notice is due as soon as possible after the means become available provided a good faith effort is made to acquire the means. The second option would address those situations in which someone is unable to provide notice through no fault of their own.

Mr. Iino commented that he initially voted to require notice on or before the work began, however a situation occurred recently which illustrates some of the issues raised by Ms. Sos. When he was in Japan, an urgent need for more resources at the client's Torrance California plant was identified. Because of time differences, his call requesting resources, placed at noon Tokyo time, was received at 8:00 p.m. Sunday night in California. They were successful in getting the necessary people to the client's Torrance office by 9:30 a.m. the following day. However, it was very challenging, especially since one of the people had been on vacation. Mr. Iino indicated that, based on this incident, he believed consideration should be given to establishing some kind of safe harbor or emergency provision.

Ms. Flowers inquired if it would impede enforcement efforts if the violation occurred during a safe harbor period. Ms. Sos noted that Section 5096.1 was intended to address CPAs who are practicing without a practice privilege. Mr. Granen agreed, but indicated the Board could more effectively communicate its enforcement action to other state boards if the CPA held an actual practice privilege.

Ms. Hillebrand expressed concern that having a safe harbor period would permit people to come in and practice legally for a short time without ever giving notice. She indicated that it appeared to be proper law enforcement to require people to agree to abide by California law and consent to the Board's jurisdiction before they begin work in California.

Mr. Duffey commented that he believed there is a very small universe of people who would abuse the notice requirement in the way Ms. Hillebrand suggested. On the other hand, there would be a number of situations in which people want to comply, but would find it difficult without a reasonable safe harbor period. He expressed the view that a safe harbor period would encourage compliance. For example, if there were a reasonable safe harbor period, firms could establish compliance systems to centralize and oversee compliance by their employees. Otherwise all of the responsibility for compliance rests on the individual. Mr. Schultz agreed that compliance would be encouraged if the Board provided a small opportunity to provide notice after practice begins.

Mr. Robinson added that his clients, the "Big Four" accounting firms, were interested in a safe harbor period from enforcement actions. They want to comply, but have concern that without a safe harbor period they could violate the law inadvertently. He agreed

with Mr. Duffey that a safe harbor period would encourage compliance. He indicated that he was seeking a compromise. He added that he had talked with Senator Figueroa and that, if consensus cannot be reached in this area, the implementation date for practice privileges would be extended for another year.

Ms. D'Angelo Fellmeth indicated that she believed a grace period would discourage compliance because someone could enter the state, do the job, and leave without giving notice. The potential for consumer harm is less when the safe harbor period is shorter. She noted that the one of the primary reasons the concept of practice privileges was developed was to accommodate the very large accounting firms so that they could comply with partner rotation requirements. They are professionals with massive support staff and the practice privilege concept has a great deal of ease and convenience built in, so it is unclear why they need a safe harbor period.

She indicated that she had reviewed the requirements of other licensing agencies, and none allow people from out-of-state to simply self-certify and then come in and practice. The closest example she could find is the process for out-of-state attorneys to appear before California courts. However, this process lacks the ease and convenience associated with practice privileges.

Mr. Iino commented that the large firms, by virtue of their size and the movement of people and transactions are confronted with many complexities that make a safe harbor period important. He then commented on consumer risk and added that for services such as tax, audits and reviews, and consulting, licensees could do little harm in those service lines in five days.

Ms. Flowers indicated that her primary concern was whether a safe harbor provision would negatively impact enforcement. It appeared that it would not, so she had no objection to a brief safe harbor period. She suggested a fine if notice is received after the safe harbor period ends.

Ms. Hillebrand expressed an interest in discussing the emergency clause alternative proposed by Ms. Sos. She noted that if there is a safe harbor period, people might interpret this as indicating the notice is not really due until the end of the period. She suggested that an emergency clause would not create this impression.

After further discussion, Ms. D'Angelo Fellmeth proposed that because the notification requirements are new and it will take time for people to become familiar with them, perhaps the Board could permit a five day (or five business days) safe harbor period which would sunset after two years. This would permit phased-in compliance to give the profession a chance to learn about the program. Mr. Robinson added that the notification form could request information on why the notice is late so that the data would be available.

Ms. Hillebrand indicated that, even though she was not in favor of a safe harbor period, she believed that this was a reasonable proposal to allow for transition. **Mr. Granen**

summarized the proposal as follows: Notice is required on or before beginning practice, but there shall be no penalty if the notice is given within five business days of commencing practice. This provision would remain in effect for two years from the effective date of the regulation and then would sunset. Ms. Sos moved that the Task Force recommend to the Board the proposal outlined by Mr. Granen adding that there will be an item on the form requesting the reason why the notice is late and the date when the practice began. She noted that the purpose of the two year time period is to permit transition. The motion was seconded by Mr. Schultz and carried. (Ms. Hillebrand voted "no.") Ms. Sos requested a recommendation from staff regarding fines and penalties for failure to notify within the safe harbor period.

VI. Consideration of the Procedure if the Individual's Fee is Not Received on Time or the Check is Dishonored.

Ms. Sos indicated that the materials for the meeting included a memo summarizing the recommendations of the sub-Task Force that focused on payment issues. She noted that these recommendations reflect her interpretation of the statute. However, she subsequently reconsidered this interpretation and concluded it was in error. Ms. Sos then indicated that, based on this conclusion, she would like to recommend a different approach to address payment concerns. She explained that the statute states that that the practice privilege begins with proper notification. It also requires that payment must be received within 30 days. She then recommended that if a CPA provides proper notice, but then fails to provide payment timely or if the check is subsequently dishonored, that the CPA's practice privilege be administratively suspended and that the CPA be notified that the administrative suspension remains in effect until the problem is cured. If the CPA cures the problem by providing payment, the administrative suspension would be lifted and practice would be permitted for the remaining term of the practice privilege. It the problem is not cured, failure to cure would become a disqualifying condition preventing the CPA from automatically receiving a practice privilege the next time he or she applies. Ms. Sos commented that she believed this procedure would be straightforward, easy to tract, and consistent with the statute. It would also avoid penalizing people for circumstances beyond their control.

Mr. Duffey inquired if the procedure could include some additional steps to avoid penalizing people for administrative or processing errors. Ms. Hillebrand suggested that prior notification could address this concern. Ms. Crocker indicated that prior notification would be administratively impractical. However, staff would always resolve any situation in which there was an administrative or processing error.

During the discussion Ms. Flowers suggested that there could be a penalty or fine for failure to pay timely. Mr. Newington expressed support for this suggestion and noted that a fine is an additional incentive for timely payment. He also indicated that making failure to pay a disqualifying condition would result in increased workload and that a fine would be a better, less workload intensive alternative.

After discussion, it was moved by Ms. Hillebrand that the following procedure be established to address the payment issues under discussion: at such time as it is determined that payment is not received, is late, or that the check was dishonored, and that this is not the result of an administrative error, the Board shall issue an administrative suspension and a fine. The administrative suspension would remain in effect until the problem is cured. If it is not cured, the administrative suspension would remain in effect until the expiration of the practice privilege. A dishonored check would be a disqualifying condition and cause the person to not automatically receive a practice privilege the next time. In addition, staff would be directed to develop a recommendation related to fine amounts and conditions with a range of fines for repeat occurrences. Mr. Newington reiterated his concern that establishing a new disqualifying condition would generate additional work for Enforcement Program staff. Ms. Hillebrand amended her motion to remove the proposed disqualifying condition. The amended motion was seconded by Ms. Flowers and unanimously carried.

VII. Consideration of the Standards and Process for Determining How the "Disqualifying Conditions" May Result in Denial of the Practice Privilege

Mr. Newington reported on a recommended procedure for determining how the disqualifying conditions listed in Section 5096(g) should be applied to denial of the practice privilege (see Attachment __). He recommended that guidelines for disqualifying conditions related primarily to convictions and license discipline should parallel the guidelines currently employed by Licensing Program staff when reviewing applications for licensure.

With regarded to disqualifying conditions related primarily to pending investigations and civil judgments, he recommended that practice privileges should not be granted without a thorough review by Enforcement Program staff. He further recommended that if there is a pending investigation and the outcome of the investigation will not be known for some time, practice privileges should not be granted and the person should be encouraged to apply for licensure. **It was the consensus of the Task Force to recommend to the Board that staff proceed as outlined in Mr. Newington memo (Attachment __).**

VIII. Consideration of What, If Any, Additional Disqualifying Conditions Should be Specified by Regulations.

Mr. Newington reported that review by Enforcement Program staff did not identify any additional disqualifying conditions that should be adopted by the Board as a regulation. He noted that there was a proposal that there be a disqualifying condition related to unpaid fees, but the Task Force did not adopt this proposal.

During the discussion, an additional disqualifying condition was identified and it was moved by Ms. Sos, seconded by Ms. Flowers, and unanimously carried to

recommend that the Board adopt a regulation to clarify that it is a "disqualifying condition" to have an unresolved administrative suspension.

IX. Consideration of What Minor Infractions Related to Licensing Should be Exempted From the Disqualifying Conditions.

Mr. Newington recommended an approach to identifying minor infractions that should not be considered disqualifying conditions (Attachment __). He noted that rather than create a "laundry list" of all possible infractions, he was recommending an approach base it on the type of penalty that resulted from the infraction. The recommendation was to exempt violations for which the discipline or sanction is limited to administrative citations resulting in fines of $5,000 or less or continuing professional education. Ms. Hillebrand inquired about the $5,000 fine amount and asked how it relates to what other states are doing. Mr. Newington indicated he was trying to develop the concept and that the amount of the fine was not firm.

With regard to continuing professional education, Ms. Sos indicated that practice privilege holders are required to certify that their continuing education is current. Mr. Newington indicated that sometime, additional continuing education is mandated for continuing competency.

After discussion, it was moved by Ms. Flowers, seconded by Ms. Sos, and unanimously carried to recommend that the Board proceed as outlined in Mr. Newington's memo and exempt violations for which the discipline or sanction is limited to administrative citations resulting in fines of $5,000 or less or continuing professional education. Staff were direct to research whether $5000 is the appropriate amount.

X. Consideration of What Should be the Criteria and Level of Discretion for Administrative Suspension.

Mr. Newington recommended as suggested criteria for administrative suspensions 1) representations made in the notice, 2) The individual's competence or qualifications to practice under the practice privilege in question and 3) the individual's failure to timely respond to a Board inquiry or request for information or documents (see Attachment __). He indicated that he believed administrative suspension was fairly serious and that these three areas involve reasonably significant acts. **It was moved by Ms. Flowers, seconded by Mr. Schultz, and unanimously carried to recommend Mr. Newington's proposal to the Board.**

XI. Comments from Members of the Public.

Members of the public provided comments during the course of the meeting.

XII. Agenda Items for Next Meeting.

State of California Department of Consumer Affairs

CALIFORNIA BOARD OF ACCOUNTANCY
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Attachment B

Practice Privilege TF Agenda Item I
November 18, 2004

Board Agenda Item VIII.F.2
November 19, 2004

DRAFT

PRACTICE PRIVILEGE TASK FORCE
MINUTES OF THE MEETING
October 5, 2004
California Board of Accountancy
2000 Evergreen Street
Sacramento, CA 95815

CALL TO ORDER

Renata Sos, Chair, called the meeting of the Practice Privilege Task Force to order at 10:20 a.m. and welcomed the participants. Ms. Sos indicated that Governor Schwarzenegger signed into law SB 1543, the bill containing the practice privilege provisions. She complimented all participants for their successful efforts. She noted that the Task Force's first meeting was on December 19, 2003, and that in less than a year a controversial concept was developed into signed legislation. Ms. Sos extended special recognition to Ms. Granick, Mr. Granen, and Ms. Sigmann for their hard work and contributions to the success of the project. She also thanked the Task Force members and the entire Board staff for their good work.

Task Force Members:
Renata Sos, Chair
Sally Flowers
Gail Hillebrand
Thomas Iino
Harold Schultz (Absent)
Ian Thomas

Staff and Legal Counsel
Mary Crocker, Assistant Executive Officer
Patti Franz, Licensing Manager
Michael Granen, Deputy Attorney General
Aronna Granick, Legislation/Regulations Coordinator
Bob Miller, Legal Counsel
Greg Newington, Chief, Enforcement Program
Carol Sigmann, Executive Officer
Liza Walker, RCC Analyst

respond to the request and many would contact the Board to get more complete guidance. Ms. Franz suggested it would be easier to give them some kind of form such as a modified "Form E" in which they could check the boxes to report their experience. Ms. Sos expressed an interest in reviewing such a modified Form E which would be responsive to the documentation difficulties that might be faced by licensees who have been practicing for many years. Consideration of this form was scheduled for discussion at the next meeting.

The Task Force then considered the time frames for response. It was the consensus of the Task Force that the time frames outlined in the memo were appropriate. Participants noted that failure to respond to inquiry is already a disqualifying condition. Ms. Franz indicated that the licensee would not be penalized if the home jurisdiction failed to respond timely to the Board's request for information.

The next issue considered by the Task Force related to what would happen to the practice privilege if the individual being audited unintentionally failed to meet the practice privilege requirements. It was the consensus of the Task Force that in such a situation, the practice privilege should be administratively suspended until the deficiency is remedied.

IV. Consideration of a Process to Address Changes in Reported Information That Occur During the Term of the Practice Privilege.

Ms. Sos indicated that staff had developed a procedure to address changes in reported information that occur during the term of the practice privilege (Attachment 3). **It was moved by Ms. Flowers, seconded by Mr. Iino, and unanimously carried to recommend Board adoption of the procedure in Attachment 3.**

V. Consideration of Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges.

Ms. Sos called the Task Force's attention to a brief memo prepared by Ms. Granick specific to this agenda item (Attachment 4). **It was moved by Ms. Flowers, seconded by Ms. Sos, and unanimously carried for the Task Force to recommend to the Board that it be a disqualifying condition to have an unpaid fine.**

VI. Update on Task Force Actions Related to When an Out-of-State CPA Needs to Apply for a California License Rather than Requesting a Practice Privilege.

Ms. Sos indicated that the memo provided under this agenda item (Attachment 5) summarizes, for information purposes, the Task Force actions to date related to the question of when a California license is needed.

State of California
Department of Consumer Affairs

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

Attachment 4

Memorandum

Practice Privilege TF Agenda Item V
October 5, 2004

To : Renata Sos, Chair
Members, Practice Privilege Task Force

Date : September 27, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Consideration of Whether it Should be a Disqualifying Condition to Have an Unpaid Fine Related to Practice Privileges

This agenda item presents for Task Force discussion and action the question of whether it should be a disqualifying condition to have an unpaid fine related to practice privileges. If the Task Force concludes that it should be a disqualifying condition, it would need to be established as a regulation.

This question came to light based on discussions at the September 9, 2004, meeting. At that meeting, the Task Force discussed issuing fines for failure to comply with practice privilege requirements. The Task Force concluded that fines should be issued related to failure to provide notice within the "safe harbor" period and failure to pay the practice privilege fee timely. As the Task Force continues its discussion, other items may be identified where issuance of a fine is deemed an appropriate penalty. At its September 9, 2004, meeting the Task Force also adopted a motion to clarify that it is a disqualifying condition to have an unresolved administrative suspension. Based on these discussions, the question has been raised whether it should be a disqualifying condition to have an unpaid fine as well.

For background on previous Task Force actions, please see pages 5-10 of the minutes of the September 9, 2004, meeting.

Senate Bill No. 1543

CHAPTER 921

An act to amend Sections 5000, 5015.6, 5076, 5100, 5109, 5134, and 22253.2 of, to amend, repeal, and add Sections 5050 and 5088 of, to add Sections 5025.2, 5025.3, 5063.3, and 22252.1 to, and to add Article 5.1 (commencing with Section 5096) and Article 6.5 (commencing with Section 5116) to Chapter 1 of Division 3 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1543, Figueroa. California Board of Accountancy: tax preparers.

(1) Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy in the Department of Consumer Affairs. The provisions creating the board, specifying the board's composition, and authorizing the board to appoint an executive officer become inoperative on July 1, 2005, and are repealed on January 1, 2006.

This bill would change these dates to provide that the provisions become inoperative on July 1, 2011, and are repealed on January 1, 2012. The bill would require the Department of Finance, notwithstanding specified provisions in the Budget Act, to authorize up to $2,000,000 dollars in additional expenditures for the board's enforcement and litigation activities. The bill would require funds for these expenditures to be payable from the Accountancy Fund. The bill would authorize funds to be encumbered in any fiscal year in which the board enters into a contract for litigation or enforcement purposes, as specified. The bill would require funds encumbered for these purposes to be continuously appropriated. The bill would enact provisions authorizing 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, to engage in the practice of public accountancy in this state under certain conditions. The bill would also prohibit a licensed accountant from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission with specified exceptions. The bill would authorize the board to assess

for a license is granted or denied, practice public accountancy in this state only under a 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 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.

SEC. 11. Article 5.1 (commencing with Section 5096) is added to Chapter 1 of Division 3 of the Business and Professions Code, to read:

Article 5.1. Practice Privileges

5096. (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 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 issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which 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 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) An individual who holds a practice 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 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 individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit 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 state that issued 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.

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

(g) (1) No individual may practice under a practice 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.

(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.

5096.1. (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. (a) Practice privileges may be denied 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 practice privileges using either of the following procedures:

State of California
Department of Consumer Affairs

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

Memorandum

Practice Privilege TF Agenda Item II.
November 18, 2004

Board Agenda Item VIII.F.4.a.
November 19, 2004

To : Practice Privilege Task Force Members
Board Members

Date : November 8, 2004

Telephone : (916) 561-1740
Facsimile : (916) 263-3676
E-mail : pfranz@cba.ca.gov

From : Patti L. Franz
Licensing Manager

Subject : Consideration of a Method for Verification of Attest Experience Through Random Audit

At its October 5, 2004, meeting, the Practice Privilege Task Force members requested that staff develop a form to be used during the audit process to verify whether the 500-hour attest experience requirement had been met prior to California practice privilege.

Therefore, attached for consideration by the Task Force is a modification of the *Certificate of Experience* currently used for licensure in California. It is envisioned this form will only be mailed to out-of-state licensees who identify themselves as signers of attest reports on the notification form.

I will be available at the meeting to answer any questions the Task Force members may have.

Attachment

CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3676
WEB ADDRESS: http://www.dca.ca.gov/cba

CERTIFICATION OF ATTEST EXPERIENCE

PRINT OR TYPE

FULL NAME OF LICENSEE: (No Initials) (First) (Middle) (Last)	U.S. SOCIAL SECURITY #

FIRM NAME (IF ANY)	CURRENT TITLE
BUSINESS ADDRESS (Including City, State, and Zip Code)	
BUSINESS TELEPHONE: Area Code ( )	Approximate Number of Years Practicing Public Accountancy

Pursuant to Section 5096.5, you may not sign an attest report unless you have 500 hours of experience in attest services (see Section 5095 of the California Business and Professions Code). For these purposes, experience is that which has enabled you to demonstrate an understanding of the requirements of planning and conducting an audit with minimum supervision which results in opinions on full disclosure financial statements.

		Yes	No
	Have you participated in the planning of an audit, including the selection of the procedures to be performed?		
II.	Have you had experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions included in financial statements?		
III.	Have you had experience in the preparation of working papers in connection with the various elements of I and II above?		
IV.	Have you had experience in the preparation of written explanations and comments on the work performed and its findings?		
V.	Have you participated in the preparation of and reporting on full disclosure financial statements?		

I hereby certify, under penalty of perjury under the laws of the State of California, that I have met California's experience requirement, Section 5095, prior to the submission of the notification of practice privilege, and that all statements and representations on this form are true and correct.

Licensee Signature	Date Signed

	Audit	Review	Compilation	Total
Please estimate your most recent 500-hours of attest experience.				

State of California
Department of Consumer Affairs

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

Memorandum

Practice Privilege TF Agenda Item III
November 18, 2004

Board Agenda Item VIII.F.4.b
November 19, 2004

To : Practice Privilege Task Force Members
Board Members

Date : November 8, 2004

Telephone : (916) 561-1788
Facsimile : (916) 263-3674
E-mail : agranick@cba.ca.gov

From : Aronna Granick
Legislation/Regulations Coordinator

Subject : Draft Regulations Related to Practice Privileges

Attached for your consideration are draft regulations related to practice privileges. It is anticipated that after the Task Force discusses this language at its November 18, 2004, meeting, revised language will be provided for Task Force and Board action in January 2005, with a regulation hearing at the May 2005 Board meeting.

Attachment

– DRAFT –

Article 4 – Practice Privileges

Section 24. License or Practice Privilege Needed.

An individual must hold a California license or a practice privilege to engage in any activity defined as the practice of public accountancy by Business and Professions Code Section 5051 for any California resident or business. An individual who does not qualify for a practice privilege pursuant to the Article and Business and Professions Code Section 5096 shall apply for a California license in order to practice public accountancy in California.

Section 25. Qualifications for and Term of the Practice Privilege.

(a) To be eligible for a practice privilege an individual shall, at a minimum, meet one of the following qualifications:

(1) Hold a valid license, certificate, or permit from a state determined by the Board to have education, examination, and experience requirements for licensure substantially equivalent to the requirements in Business and Professions Code Section 5093.

(2) Possess education, examination, and experience qualifications that have been determined by the Board to be substantially equivalent to the qualifications under Business and Professions Code Section 5093. Pursuant to subdivision (b) of Business and Professions Code Section 5096, the Board accepts individual qualification evaluations of substantial equivalency by the National Association of State Boards of Accountancy's (NASBA's) CredentialNet. Prior to seeking a practice privilege under this paragraph, an individual shall apply to NASBA's CredentialNet, pay the required fee, and obtain the required determination. The individual shall disclose the CredentialNet file number in the notification required by Sections 26, 27, 28, and 29 and shall make CredentialNet's determination available to the Board upon request.

(3) Have continually practiced public accountancy as a Certified Public Accountant under a valid license issued by any state for four of the last ten years.

(b) Except as provided in Section 30 for practice commencing on or before December 31, 2007 or in those instances in which prior approval by the Board is required pursuant to Section 32, the practice privilege commences on the date of notification pursuant to Sections 26, 27, 28, and 29. When prior approval by the Board is required pursuant to Section 32, the practice privilege commences on the date the practice privilege is approved by the Board.

(c) A practice privilege, including a practice privilege that is or has been on administrative suspension pursuant to Business and Professions Code Section 5096.4, expires one year from that date of notification and cannot be renewed.

(d) For purposes of this Article and Business and Professions Code Section 5096, the "license upon which the practice privilege is based" or "the license upon which the substantial equivalency is based" is the license under which the individual qualifies for a practice privilege pursuant to paragraph (1) of subsection (a), or the license in the state of the principal place of business for those who qualify for a practice privilege under paragraphs (2) or (3) of subsection (a).

(e) The holder of a California license that is expired but subject to renewal is not eligible for a practice privilege.

Section 26. Notification Requirements - General.

To obtain a practice privilege an individual shall notify the Board and, under penalty of perjury, certify the truthfulness of all information provided in the notification. The notification shall include the individual's name, prior names, firm name (if any), address of principal place of business, date of birth, social security number, telephone number, either a fax number or e-mail address, the date of the notification, the individual's signature, either handwritten or an electronic equivalent, the state where the individual holds the license upon which the practice privilege is based including the license number and license issuance date, and any other states where the individual holds a license or licenses or other authority to practice, including the numbers and issuance dates of those licenses. In addition, this notification shall include all of the statements required by Section 27, all the agreements and consents required by Section 28, and all of the additional information required by Section 29.

Section 27. Notification Requirement – Statements.

The notification required to obtain a practice privilege shall include the following statements made by the individual under penalty of perjury under the laws of the State of California:

(a) The individual has a principal place of business that is not in California, and the individual does not have an office in California other than through a firm registered in California, or the individual is an applicant for licensure under Business and Professions Code Sections 5087 and 5088, whose application is pending.

(b) The individual holds a valid license to practice public accountancy in another state.

(c) The individual meets one of the minimum requirements to be eligible for a practice privilege described in subsection (a) of Section 25.

(d) The individual understands he or she may sign attest reports under the practice privilege only if he or she has at least 500 hours of experience in attest services.

(e) The individual is submitting the notice at or before the time of beginning the practice of public accountancy in California or within five business days of beginning the practice of public accountancy in California. If the notice is submitted within the five business days after practice begins, the individual shall identify the date on which the practice of public accountancy began and explain the reason for the delayed notice.

(f) The individual concurrently is submitting to the Board the required fee.

Section 28. Notification Requirement – Agreements and Consents.

The notification required to obtain a practice privilege shall include the following agreements and consents made under penalty of perjury under the laws of the state of California:

(a) The individual agrees to abide by the laws of the State of California including the California Accountancy Act and the Board's regulations.

(b) The individual consents to the personal and subject matter jurisdiction of the Board including the Board's authority to: (1) administratively suspend the practice privilege pursuant to Business and Professions Code Section 5096.4, without prior notice or hearing and in the sole discretion of the Board; (2) impose discipline pursuant to Business and Professions Code Section 5096.3 for any violations of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and (3) exchange information relating to the practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state, and/or the Securities and Exchange Commission (SEC), Public Company Accounting Oversight Board (PCAOB) or other relevant regulatory authorities.

(c) The individual agrees to respond to a Board inquiry even as to a practice privilege that has expired.

(d) The individual consents to the authority of the Board to verify the accuracy and truthfulness of the information provided in the notification and consents to the release to the Board of all information relevant to the Board's inquiries even after the privilege has expired by (1) contacting other states, (2) contacting the SEC, PCAOB, or any other federal agency before which the individual is authorized to practice, and (3) contacting NASBA.

(e) The individual certifies to having met the continuing education and examination requirements in the state of licensure upon which the practice privilege is based under Section 25(d) of this Article.

(f) The individual agrees to notify the Board in writing within 30 days of any change in the information in the notice which occurs during the term of the practice privilege, including changes that occur while the practice privilege is administratively suspended.

Section 29. Notification Requirement – Additional Information.

The notification required to obtain a practice privilege shall include the following information, the truthfulness of which the individual certifies under penalty of perjury under the laws of the State of California:

(a) The occurrence of any of the events described in subsection (a) of Section 32, each of which may disqualify the individual from a practice privilege, and thus requires Board approval prior to commencement of the practice privilege.

(b) The applicability, or not, of any of the following:

(1) The individual seeks authorization to sign reports on attest engagements, and, if so, has completed 500 hours of attest experience.

(2) The individual is an "associated person of a registered public accounting firm" as used Section 2 of the Sarbanes-Oxley Act of 2002.

(3) The individual's firm has undergone peer review in the state of the firm's principal place of business.

(4) The individual's state of licensure upon which the practice privilege is based under Section 25(d) requires continuing education related to fraud detection, and, if so, the individual has fulfilled this requirement.

30. Safe Harbor – Period of the Notice.

(a) The notification described in Sections 26, 27, 28, and 29 shall be submitted to the Board on or before the individual begins practice in California under a practice privilege. However, during the period January 1, 2006, through December 31, 2007, an individual shall not be deemed to be in violation of this article or Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) solely because he or she begins the practice of public accounting in California prior to giving notification, provided notification is submitted within five business days of the date practice begins. An individual who gives notification to the Board within the five day period provided in this Section shall be deemed to have a practice privilege from the first day of practice in California.

(b) The Board may issue a fine of _____ to _____ for notifying the Board more than five business days after beginning practice in California.

31. Payment of the Fee.

The fee required by Section 70(h) must be received by the Board within 30 days of the date of notification.

(a) An individual is subject to fine of ____ to ____ for the first failure to pay the practice privilege fee within 30 days of the commencement of the practice privilege, including attempting to pay with a check that is subsequently dishonored.

(b) An individual is subject to fine of _____ to _____ for any subsequent occurrence of failure to pay the practice privilege fee within 30 days, including attempting to pay with a check that is subsequently dishonored.

(c) An individual is also subject to an administrative suspension for failure to pay the fee, including attempting to pay with a check that is subsequently dishonored. This administrative suspension shall remain in effect until the Board gives its approval for the individual to resume practice and shall not extend the term of the practice privilege.

32. Board Approval Required Prior to Commencement of the Practice Privilege.

(a) No individual may practice public accountancy in California under a practice privilege without prior approval of the Board if he or she has, or acquires at any time during the term of the practice privilege, any of the following conditions:

(1) The individual is convicted of a crime other than a minor traffic violation.

(2) The individual has had a license or other authority to practice a profession issued by a state, federal, or local agency or court or the Public Company Accounting Oversight Board (PCAOB) revoked, suspended, denied, surrendered, put on probationary status, or otherwise sanctioned or limited, except for the following occurrences:

(A) an action by a state board of accountancy in which the only sanction was a fine of less than $_____ or a requirement that the individual complete specified continuing education courses.

(B) 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.

(3) The individual is the subject of an investigation, inquiry, or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving his or her professional conduct.

(4) The individual has had a judgment or arbitration award in an amount greater than $30,000 entered against him or her in a civil matter alleging actionable conduct in the practice of public accountancy.

(5) The individual held a practice privilege in California that expired while under administrative suspension or with an unpaid fine.

(6) The individual has failed to respond to a request for information from the Board regarding a matter related to a current or prior practice privilege.

(b) The practice privilege is subject to administrative suspension if any of the conditions listed in subsection (a) of this section occur during the term of the practice privilege.

33. Changes to Information on the Notification.

(a) An individual shall report in writing to the Board changes in the information reported on the notification within 30 days of learning of the change.

(b) An individual is subject to a fine of _____ to _____ for failure to comply with the requirements of this section.

34. Response to Board Inquiry.

Failure to comply with the obligation to respond to Board inquiry pursuant to Section 5096(e)(5) could result in one or more of the following:
(a) Issuance of a fine of _____ to ____.
(b) An administrative suspension of a current practice privilege pursuant to Business and Professions Code Section 5096.4.
(c) The requirement to obtain the approval of the Board before commencing to practice under a future practice privilege.

35. Continuing Education Requirement.

An individual practicing under a practice privilege shall meet the continuing education requirements of the state issuing the license upon which the practice privilege is based pursuant to Section 25(d).

Section 70. Fees.

(a) ~~(1) Commencing July 1, 2002, the fees to be charged each California applicant for the paper and pencil certified public accountant examination, including each applicant for re-examination, shall be an application fee of $60 and a fee of $36 for each part of the examination requested by the applicant.~~
~~(2) The fee to be charged each applicant from another state who sits for the paper and pencil certified public accountant examination in California shall be a total of $75.~~

~~(3)~~ Commencing January 23, 2004 the fee to be charged each California applicant for the computer-based Uniform Certified Public Accountant Examination, shall be an application fee of $100 for issuance of the Authorization to Test to first-time applicants and an application fee of $50 for issuance of the Authorization to Test to repeat applicants.

(b) Commencing July 1, 2001, the fee to be charged each applicant for issuance of a certified public accountant certificate shall be $250.

(c) The fee to be charged each applicant for registration, including applicant for registration under a new name as a partnership or as a corporation, shall be $150.

(d) Commencing July 1, 2000, the fee to be charged each applicant for the initial permit to practice as a partnership, a corporation, or a certified public accountant shall be $200.

(e) Commencing July 1, 2000, the fee to be charged each applicant for renewal of a permit to practice as a partnership, a corporation, a public accountant, or a certified public accountant shall be $200.

(f) The fee for the processing and issuance of a duplicate copy of a certificate of licensure or registration shall be $10.

(g) The fee for processing and issuance of a duplicate copy of a registration, or permit or other form evidencing licensure or renewal of licensure shall be $2.

(h) Commencing January 1, 2006, the fee to be charged an individual for a practice privilege pursuant to Business and Professions Code Section 5096 shall be $100 annually.

Note: Authority cited: Section 5010 and 5018, Business and Professions Code. Reference: Sections 122, 163 and 5134 Business and Professions Code.

CALIFORNIA BOARD OF ACCOUNTANCY
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Practice Privilege TF Agenda Item IV.
November 18, 2004

Board Agenda Item VIII.F.4.c.
November 19, 2004

NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 5096:

Name: _____ Prior Name(s): _____

Firm Name: _____

Address Of Principal Place Of Business: _____

Telephone Number (business hours): _____ Fax Number (business hours): _____ Business E-mail: _____

Date Of Birth: ____/____/_____ Social Security Number: _____

QUALIFICATION REQUIREMENTS:

1. I am an individual.

2. My principal place of business is not in California and I do not have an office in California other than through a firm that is registered in California and of which I am an employee or I have a pending application for licensure in California under Sections 5087 and 5088.

3. I am qualifying for Practice Privilege based on my valid license to practice public accountancy in the following state:

   State: _____ License Number: _____ Date Issued: _____

4. ☐ a. The state of licensure identified in item 3 is deemed substantially equivalent by the California Board of Accountancy (see Appendix 1 for list of substantially equivalent states); **OR**

   ☐ b. My individual qualifications have been determined by NASBA to be substantially equivalent (NASBA file no. _____); **OR**

   ☐ c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for 4 of the last 10 years.

5. I understand that I may sign a report on an attest engagement under this privilege to practice only if I have at least 500 hours of experience in attest services.

6. I agree to abide by the laws of the State of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at *http://www.dca.ca.gov/cba/acnt_act.htm*) and the regulations thereunder (accessible at *http://www.dca.ca.gov/cba/regs.htm*).

7. I consent to the personal and subject matter jurisdiction of the California Board of Accountancy (CBA) including, but not limited to, the following:
   a. To suspend or revoke, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
   b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
   c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the SEC, PCAOB or other relevant regulatory authorities.

8. I agree to respond fully and completely to all inquiries by the CBA relating to my California practice privilege, including after the expiration of this privilege.

9. I consent to the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
   a. Contacting other states;
   b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
   c. Contacting NASBA.

10. I am submitting this notice to the CBA:

☐ at or before the time I begin the practice of public accountancy in California; **OR**

☐ within five business days of beginning the practice of public accountancy in California on __/__/__. My reason(s) for not providing notice on or before that date:

_____

_____

11. I have met the continuing education requirements and any exam requirements for the state of licensure identified in item 3 above.

12. In the event that any of the information in this notice changes, I will provide the CBA written notice of any such change within 30 days of its occurrence.

13. I am concurrently submitting the fee of $100.00.

DISQUALIFYING CONDITIONS:

Please check any of the items below that apply. *For any checked items in (1)-(6), you must provide additional information as requested in Attachment X and* ***you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.***

☐ 1. I have been convicted of a crime other than a minor traffic violation.

☐ 2. 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:

   (A) an action by a state, federal, or local agency or court of the PCAOB in which the only sanction was a fine of less than $_____ or a requirement that the individual complete specified continuing education courses.

   (B) 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.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have an unresolved administrative suspension or an unpaid fine related to a prior California practice privilege.

☐ 5. I did not respond to a request for information from the Board related to a prior practice privilege.

☐ 6. I have had a judgment or arbitration award against me in an amount of $30,000 or greater that involved allegations relating to my professional conduct.

ADDITIONAL INFORMATION (Required):

In addition to the state of licensure identified in item 3, I am also authorized to practice in the following:

State: _____ License Number: _____ Other Authority: _____

State: _____ License Number: _____ Other Authority: _____

I wish to be able to sign an attest report under this practice privilege and I have at least 500 hours of experience in attest services. ☐ Yes ☐ No

I am an associated person of a firm registered with the PCAOB. ☐ Yes ☐ No

My office where I have my principal place of business undergoes peer review. ☐ Yes ☐ No

The state of licensure identified in item 3 requires continuing education in fraud detection and I have fulfilled this requirement. ☐ Yes ☐ No

_____, understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. Your privilege expires one-year from the date of this notice.

State of California 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.dca.ca.gov/cba*

ATTACHMENT X

1. If you checked any of items 1 - 6 under disqualifying conditions, please provide explanatory details:

_____

_____

_____

2. If you checked item 6 under disqualifying conditions, please also provide:

Date of Judgment/
Arbitration Award: _____ Jurisdiction/Court: _____ Docket No: _____

State of California
Department of Consumer Affairs

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

Memorandum

Practice Privilege TF Agenda Item IV.A.
November 18, 2004

Board Agenda Item VIII.F.4.c.i.
November 19, 2004

To : Practice Privilege Task Force Members
Board Members

Date : November 8, 2004

Telephone : (916) 561-1740
Facsimile : (916) 263-3676
E-mail : pfranz@cba.ca.gov

From : Patti L. Franz
Licensing Manager

Subject : Electronic Signature for Practice Privilege Notification Forms Submitted Via the Web

Because it is envisioned a majority of out-of-state licensees will submit their notification form on-line, the Task Force requested staff to develop language for the on-line signature block for the notification form. Therefore, staff recommend the on-line version of the form include the language provided in Attachment 1.

Attached for review are California Civil Code Sections 1633.1 – 1633.17, the Uniform Electronic Transactions Act (Attachment 2). Section 1633.2(h) states:

> "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

Below are the assumptions regarding the notification process for a California Practice Privilege:

- The *Notification and Agreement to Conditions for the Privilege to Practice Public Accounting in California* will be available on the Board's Web site. The individual will have the option of completing the form on-line or downloading the form from the Web site. The downloaded form would have one signature line (Attachment 3); the on-line form another (Attachment 4).
- The individual will have a five-day safe harbor period for practice privilege notification.
- Practice privilege will commence on the date the notice is submitted, unless the individual answers affirmatively to any of the disqualifying questions.
- The individual must submit a $100 payment to the Board, which needs to be received within 30 days of notification pursuant to Section 5096(d) of the Business and Professions Code.

I will be available at the meeting to answer any questions the Task Force members may have.

Attachments

I understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. By typing my name in the box below and clicking the "I Agree" button I certify under penalty of perjury under the laws of the State of California that the information contained in this notice is true and correct. If I am not prepared to so certify, I understand that I should click the "Cancel" button to discontinue the notification process.

Full Name

I Agree **Cancel**

ATTACHMENT 2

CALIFORNIA CODES
CIVIL CODE
SECTION 1633.1-1633.17

1633.1. This title may be cited as the Uniform Electronic Transactions Act.

1633.2. In this title the following terms have the following definitions:

(a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(c) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this title and other applicable law.

(e) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(f) "Electronic agent" means a computer program or an electronic other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review by an individual.

(g) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(h) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(i) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(j) "Information" means data, text, images, sounds, codes, computer programs, software, data bases, or the like.

(k) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(l) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes

a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(o) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

1633.3. (a) Except as otherwise provided in subdivisions (b) and (c), this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to transactions subject to the following laws:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1107 and 1206.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Sections 1350 to 1376, inclusive, of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, 1789.33, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.5, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, or Section 3071.5 of, the Civil Code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 658, 662, 663, 664, 666, 667.5, 673, 677, 678, 678.1, 786, 10083, 10086, 10087, 10102, 10113.7, 10127.7, 10127.9, 10127.10, 10197, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing in this subdivision shall be construed to prohibit the recordation of any document with a county recorder by electronic means.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subdivision (b) when used for a transaction subject to a law other than those specified in subdivision (b).

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The exclusion of a transaction from the application of this title under subdivision (b) or (c) shall be construed only to exclude the transaction from the application of this title, but shall not be construed to prohibit the transaction from being conducted by

electronic means if the transaction may be conducted by electronic means under any other applicable law.

3.4. This title applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after January 1, 2000.

1633.5. (a) This title does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This title applies only to a transaction between parties each of which has agreed to conduct the transaction by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record. An agreement in such a standard form contract may not be conditioned upon an agreement to conduct transactions by electronic means. An agreement to conduct a transaction by electronic means may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase or warranty. This subdivision may not be varied by agreement.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. a seller sells goods or services by both electronic and nelectronic means and a buyer purchases the goods or services by conducting the transaction by electronic means, the buyer may refuse to conduct further transactions regarding the goods or services by electronic means. This subdivision may not be varied by agreement.

(d) Except as otherwise provided in this title, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this title of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

1633.6. This title shall be construed and applied according to all of the following:

(1) To facilitate electronic transactions consistent with other applicable law.

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

(3) To effectuate its general purpose to make uniform the law with respect to the subject of this title among states enacting it.

1633.7. (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

1633.8. (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, that requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this title requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, all of the following rules apply:

(1) The record shall be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in paragraph (2) of subdivision (d), the record shall be sent, communicated, or transmitted by the method specified in the other law.

(3) The record shall contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, except as follows:

(1) To the extent a law other than this title requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subdivision (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement.

(2) A requirement under a law other than this title to send, communicate, or transmit a record by first-class mail may be varied by agreement to the extent permitted by the other law.

1633.9. (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subdivision (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

1633.10. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed

or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an ortunity for the prevention or correction of the error and, at the e the individual learns of the error, all of the following conditions are met:

(i) The individual promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.

(ii) The individual takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record.

(iii) The individual has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

1633.11. (a) If a law requires that a signature be notarized, the requirement is satisfied with respect to an electronic signature if an electronic record includes, in addition to the electronic signature to be notarized, the electronic signature of a notary public together with all other information required to be included in a notarization by other applicable law.

(b) In a transaction, if a law requires that a statement be signed nder penalty of perjury, the requirement is satisfied with respect an electronic signature, if an electronic record includes, in addition to the electronic signature, all of the information as to which the declaration pertains together with a declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

1633.12. (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record, if the electronic record reflects accurately the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise, and the electronic record remains accessible for later reference.

(b) A requirement to retain a record in accordance with subdivision (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subdivision (a) by using the services of another person if the requirements of subdivision (a) are satisfied.

(d) If a law requires a record to be retained in its original form, or provides consequences if the record is not retained in its original form, that law is satisfied by an electronic record retained in accordance with subdivision (a).

(e) If a law requires retention of a check, that requirement is cisfied by retention of an electronic record of the information on the front and back of the check in accordance with subdivision (a).

(f) A record retained as an electronic record in accordance with

subdivision (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this title specifically prohibits the use of an electronic record for a specified purpose.

(g) This section does not preclude a governmental agency from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

1633.13. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

1633.14. (a) In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(b) The terms of the contract are determined by the substantive law applicable to it.

1633.15. (a) Unless the sender and the recipient agree to a different method of sending that is reasonable under the circumstances, an electronic record is sent when the information is addressed properly or otherwise directed properly to the recipient and either (1) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender, or (2) enters a region of an information processing system that is under the control of the recipient.

(b) Unless the sender and the recipient agree to a different method of receiving that is reasonable under the circumstances, an electronic record is received when the electronic record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent, in a form capable of being processed by that system, and from which the recipient is able to retrieve the electronic record.

(c) Subdivision (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subdivision (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business or, if the recipient is an individual acting on his or her own behalf, at the recipient's place of residence. For purposes of this subdivision, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subdivision (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subdivision (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subdivision (a), or purportedly received under subdivision (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, this subdivision may not be varied by agreement.

1633.16. If a law other than this title requires that a notice of the right to cancel be provided or sent, an electronic record may not substitute for a writing under that other law unless, in addition to satisfying the requirements of that other law and this title, the notice of cancellation may be returned by electronic means. This section may not be varied by agreement.

1633.17. No state agency, board, or commission may require, prohibit, or regulate the use of an electronic signature in a transaction in which the agency, board, or commission is not a party unless a law other than this title expressly authorizes the requirement, prohibition, or regulation.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have an unresolved administrative suspension or an unpaid fine related to a prior California practice privilege.

☐ 5. I did not respond to a request for information from the Board related to a prior practice privilege.

☐ 6. I have had a judgment or arbitration award against me in an amount of $30,000 or greater that involved allegations relating to my professional conduct.

ADDITIONAL INFORMATION (Required):

In addition to the state of licensure identified in item 3, I am also authorized to practice in the following:

State: _____ License Number: _____ Other Authority: _____

State: _____ License Number: _____ Other Authority: _____

I wish to be able to sign an attest report under this practice privilege and I have at least 500 hours of experience in attest services. ☐ Yes ☐ No

I am an associated person of a firm registered with the PCAOB. ☐ Yes ☐ No

My office where I have my principal place of business undergoes peer review. ☐ Yes ☐ No

The state of licensure identified in item 3 requires continuing education in fraud detection and I have fulfilled this requirement. ☐ Yes ☐ No

I, _____, understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Your privilege to practice commences with the submission of your completed notification and your fee. Your privilege expires one-year from the date of this notice.

☐ 3. I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.

☐ 4. I have an unresolved administrative suspension or an unpaid fine related to a prior California practice privilege.

☐ 5. I did not respond to a request for information from the Board related to a prior practice privilege.

☐ 6. I have had a judgment or arbitration award against me in an amount of $30,000 or greater that involved allegations relating to my professional conduct.

ADDITIONAL INFORMATION (Required):

In addition to the state of licensure identified in item 3, I am also authorized to practice in the following:

State: _____ License Number: _____ Other Authority: _____

State: _____ License Number: _____ Other Authority: _____

I wish to be able to sign an attest report under this practice privilege and I have at least 500 hours of experience in attest services. ☐ Yes ☐ No

I am an associated person of a firm registered with the PCAOB. ☐ Yes ☐ No

My office where I have my principal place of business undergoes peer review. ☐ Yes ☐ No

The state of licensure identified in item 3 requires continuing education in fraud detection and I have fulfilled this requirement. ☐ Yes ☐ No

I understand that any misrepresentation or omission in connection with this notification is cause for termination of my practice privilege in California. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. By typing my name in the box below and clicking the "I Agree" button I certify under penalty of perjury under the laws of the State of California that the information contained in this notice is true and correct. If I am not prepared to so certify, I understand that I should click the "Cancel" button to discontinue the notification process.

Full Name _____

I Agree | Cancel

Your privilege to practice commences with the submission of your completed notification and your fee. Your privilege expires one-year from the date of this notice.

State of California
Department of Consumer Affairs

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

Memorandum

Practice Privilege TF Agenda Item V.
November 18, 2004

Board Agenda Item VIII.F.4.d.
November 19, 2004

To : Practice Privilege Task Force Members
Board Members

Date : November 2, 2004

Telephone : (916) 561-1731
Facsimile : (916) 263-3673
E-mail : gnewington@cba.ca.gov

From : Gregory P. Newington
Chief, Enforcement Division

Subject : Processing of Affirmative Responses to Disqualifying Conditions on the Practice Privilege Notification Form

Business and Professions Code Section 5096(g) (Attachment 1) lists disqualifying conditions related to California Practice Privilege. At the September meeting, I provided the Task Force with the standards and process for evaluating how the disqualifying conditions may result in the denial of the practice privilege.

At the time of notification the out-of-state licensee is required to provide additional information on Attachment X of the Notification Form if they answer affirmatively to any disqualifying condition, including whether they have been convicted of a crime other than a minor traffic violation.

Therefore, Licensing staff should permit practice privilege if the individual reports the following:

- Any misdemeanor clearly not "substantially related" to the practice of public accountancy, such as spousal abuse.
- Any misdemeanor, including those which are "substantially related", which are more than 15-years old.
- Any expunged misdemeanor more than five-years old.
- Any expunged conviction over 10-years old.
- Driving under the influence.
- Possession/use of a controlled substance.

Licensing staff should refer all other convictions to the Enforcement Division for review, as well as:

- Professional license discipline or sanction issues.
- Matters involving investigations or proceedings related to professional conduct.
- Matters involving judgments or arbitration awards related to professional conduct.
- Matters involving an unresolved administrative suspension.

GPN

Attachment

Section 5096(g)

(g) (1) No individual may practice under a practice 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 judgement or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars ($30,000) or greater.

(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.