



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



CBA Item III.A.
May 19-20, 2016

Recommendations for Appointment(s)/Reappointment(s) to the Enforcement Advisory Committee

Presented by: Alicia Berhow, Vice-President

Purpose of the Item

The purpose of this agenda item is to recommend that Joseph Rosenbaum, CPA, (**Attachment 1**) be reappointed as a member to the California Board of Accountancy (CBA) Enforcement Advisory Committee (EAC).

Consumer Protection Objectives

This agenda item ensures that the CBA continues its mission of consumer protection by reappointing members that have the skills and knowledge to serve on the EAC.

Action(s) Needed

It is requested that the CBA adopt the recommendation.

Background

The EAC assists the CBA in an advisory capacity with enforcement activities. The committee reviews closed investigation files, offers technical guidance on open investigations, and participates in investigative hearings. The committee also considers, formulates, and proposes policies and procedures related to the CBA Enforcement Program.

Comments

For all appointments to a committee, I work with the current chair to discuss knowledge and skills to ensure that the appointment will contribute to the committee's function and enable it to carry out its mandated activities. A matrix identifying the present members and areas of expertise is included as **Attachment 2**.

I also confer with the CBA Executive Officer to verify that the potential appointee has met the appropriate requirements for license renewal, including continuing education requirements and peer review (if subject). A check is also made to ensure there are no pending enforcement actions.

For current members who are being reappointed, I review prior attendance records, verify completion of mandatory trainings, and review the evaluations that may have

Recommendations for Appointment(s)/Reappointment(s) to the Enforcement Advisory Committee

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been completed by the current Chairperson, Vice-Chairperson, CBA Liaisons, and the Enforcement Chief. The evaluation requests feedback in the areas of interpersonal skills, communication, leadership, preparedness, and participation. Should a member have attendance or performance issues, they may be subject to review and removal from the committee, at any time, by action of the CBA.

Prior to making a decision to recommend Mr. Rosenbaum for reappointment to the EAC, I performed all the steps previously mentioned. I believe Mr. Rosenbaum has exhibited a high level of professionalism during the performance of his term as a member and as Chair of the EAC. Additionally, Mr. Rosenbaum has demonstrated the skills and knowledge to serve on the EAC, which will allow the EAC to assist the CBA with its Enforcement Program.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Based on the information above, I recommend that Joseph Rosenbaum be reappointed for two years to the EAC, effective June 1, 2016.

Attachments

1. Curriculum Vitae of Joseph Rosenbaum, CPA
2. California Board of Accountancy Enforcement Advisory Committee Skill Matrix



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CBA Item III.B.
May 19-20, 2016

Recommendations For Appointment(s)/Reappointment(s) to the Qualifications Committee

Presented by: Alicia Berhow, Vice-President

Purpose of the Item

The purpose of this agenda item is to recommend that Casandra Moore-Hudnall, CPA, (**Attachment 1**) be reappointed as a member to the California Board of Accountancy (CBA) Qualifications Committee (QC).

Consumer Protection Objectives

This agenda item ensures that the CBA continues its mission of consumer protection by reappointing members that have the skills and knowledge to serve on the QC.

Action(s) Needed

It is requested that the CBA adopt the recommendation.

Background

The QC assists the CBA in its licensure activities by reviewing the experience of applicants for licensure and making recommendations to the CBA. This responsibility includes conducting work paper reviews, with the applicant or the employer present, to verify that the responses provided are reflective of the requisite experience for licensure.

Comments

For all appointments to a committee, I work with the current chair to discuss knowledge and skills to ensure that the appointment will contribute to the committee's function and enable it to carry out its mandated activities. A matrix identifying the present members' areas of expertise is included as **Attachment 2**.

I also confer with the CBA Executive Officer to verify that the potential appointee has met the appropriate requirements for license renewal, including continuing education requirements and peer review (if subject). A check is also made to ensure there are no pending enforcement actions.

For current members who are being reappointed, I review prior attendance records, verify completion of mandatory trainings, and review the evaluations that may have

Recommendations For Appointment(s)/Reappointment(s) to the Qualifications Committee

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been completed by the current Chairperson, Vice-Chairperson, CBA Liaisons, and the Licensing Chief. The evaluation requests feedback in the areas of interpersonal skills, communication, leadership, preparedness, and participation. Should a member have attendance or performance issues, they may be subject to review and removal from the committee, at any time, by action of the CBA.

Prior to making a decision to recommend Ms. Moore-Hudnall for reappointment to the QC, I performed all the steps previously mentioned. I believe Ms. Moore-Hudnall has exhibited a high level of professionalism during the performance of her term as a member of the QC. Additionally, Ms. Moore-Hudnall has demonstrated the skills and knowledge to serve on the QC, which will allow the QC to assist the CBA with its Licensure Program.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Based on the information above, and in consultation with Jenny Bolsky, Chairperson of the QC, I recommend that Casandra Moore-Hudnall be reappointed for two years to the QC, effective June 1, 2016.

Attachments

1. Curriculum Vitae of Casandra Moore-Hudnall, CPA
2. California Board of Accountancy Qualifications Committee Skill Matrix



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CBA Item III.B.
May 19-20, 2016

Recommendations For Appointment(s)/Reappointment(s) to the Qualifications Committee

Presented by: Alicia Berhow, Vice-President

Purpose of the Item

The purpose of this agenda item is to recommend that Nasi Raissian, CPA, (**Attachment 1**) be reappointed as a member to the California Board of Accountancy (CBA) Qualifications Committee (QC).

Consumer Protection Objectives

This agenda item ensures that the CBA continues its mission of consumer protection by reappointing members that have the skills and knowledge to serve on the QC.

Action(s) Needed

It is requested that the CBA adopt the recommendation.

Background

The QC assists the CBA in its licensure activities by reviewing the experience of applicants for licensure and making recommendations to the CBA. This responsibility includes conducting work paper reviews, with the applicant or the employer present, to verify that the responses provided are reflective of the requisite experience for licensure.

Comments

For all appointments to a committee, I work with the current chair to discuss knowledge and skills to ensure that the appointment will contribute to the committee's function and enable it to carry out its mandated activities. A matrix identifying the present members' areas of expertise is included as **Attachment 2**.

I also confer with the CBA Executive Officer to verify that the potential appointee has met the appropriate requirements for license renewal, including continuing education requirements and peer review (if subject). A check is also made to ensure there are no pending enforcement actions.

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Recommendations For Appointment(s)/Reappointment(s) to the Qualifications Committee

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Prior to making a decision to recommend Ms. Raissian for reappointment to the QC, I performed all the steps previously mentioned. I believe Ms. Raissian has exhibited a high level of professionalism during the performance of her term as a member of the QC. Additionally, Ms. Raissian has demonstrated the skills and knowledge to serve on the QC, which will allow the QC to assist the CBA with its Licensure Program.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Based on the information above, and in consultation with Jenny Bolsky, Chairperson of the QC, I recommend that Nasi Raissian be reappointed for two years to the QC, effective June 1, 2016.

Attachments

1. Curriculum Vitae of Nasi Raissian, CPA
2. California Board of Accountancy Qualifications Committee Skill Matrix



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CBA Item III.B.
May 19-20, 2016

Recommendations For Appointment(s)/Reappointment(s) to the Qualifications Committee

Presented by: Alicia Berhow, Vice-President

Purpose of the Item

The purpose of this agenda item is to recommend that Kimberly Sugiyama, CPA, (**Attachment 1**) be reappointed as a member to the California Board of Accountancy (CBA) Qualifications Committee (QC).

Consumer Protection Objectives

This agenda item ensures that the CBA continues its mission of consumer protection by reappointing members that have the skills and knowledge to serve on the QC.

Action(s) Needed

It is requested that the CBA adopt the recommendation.

Background

The QC assists the CBA in its licensure activities by reviewing the experience of applicants for licensure and making recommendations to the CBA. This responsibility includes conducting work paper reviews, with the applicant or the employer present, to verify that the responses provided are reflective of the requisite experience for licensure.

Comments

For all appointments to a committee, I work with the current chair to discuss knowledge and skills to ensure that the appointment will contribute to the committee's function and enable it to carry out its mandated activities. A matrix identifying the present members' areas of expertise is included as **Attachment 2**.

I also confer with the CBA Executive Officer to verify that the potential appointee has met the appropriate requirements for license renewal, including continuing education requirements and peer review (if subject). A check is also made to ensure there are no pending enforcement actions.

For current members who are being reappointed, I review prior attendance records, verify completion of mandatory trainings, and review the evaluations that may have

Recommendations For Appointment(s)/Reappointment(s) to the Qualifications Committee

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Prior to making a decision to recommend Ms. Sugiyama for reappointment to the QC, I performed all the steps previously mentioned. I believe Ms. Sugiyama has exhibited a high level of professionalism during the performance of her term as a member of the QC. Additionally, Ms. Sugiyama has demonstrated the skills and knowledge to serve on the QC, which will allow the QC to assist the CBA with its Licensure Program.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Based on the information above, and in consultation with Jenny Bolsky, Chairperson of the QC, I recommend that Kimberly Sugiyama be reappointed for two years to the QC, effective June 1, 2016.

Attachments

1. Curriculum Vitae of Kimberly Sugiyama, CPA
2. California Board of Accountancy Qualifications Committee Skill Matrix

California Board of Accountancy
Report of the Secretary/Treasurer
Michael M. Savoy, CPA

Fiscal Year 2015-16 Third Quarter Financial Statement
(For period of July 1, 2015 through March 31, 2016)

BUDGET

The California Board of Accountancy's (CBA) fiscal year (FY) 2015-16 budget is set at \$14,765,000. The Governor's proposed budget for the CBA for FY 2016-17 is \$14,883,000.

REVENUES/TOTAL RECEIPTS

The CBA collected approximately \$3.9 million in revenues as of March 31, 2016 (**Attachment 1**). Total revenues decreased by approximately ten percent from this same period in FY 2014-15. Revenues will increase significantly in FY 2016-17 as a result of the CBA's two-year fee reduction coming to an end. Revenues for FY 2016-17 are projected to be approximately \$10 million.

EXPENDITURES

Total expenditures through March 31, 2016 are at \$11,030,764 (**Attachments 2 and 3**), which is slightly higher than the same period last year. A portion of this can be attributed to increased costs related to the CBA's upcoming relocation; including the purchase of new modular office equipment and furniture.

Minor Equipment expenditures for FY 2015-16 are elevated due to the purchase of a new phone system also in anticipation of the move. The current phone system is outdated and replacement parts are becoming obsolete. Also included in this category are audio visual equipment for a new hearing room.

As previously reported, other areas that continue to be elevated are: Printing and Postage due to the mailing of the CBA's UPDATE publication, mailings regarding retroactive fingerprinting, outreach mailings to CPA licensure candidates, and the mailings of all license renewal applications, and Training which can be attributed to outside contracts for regulatory investigative techniques training and continuing education courses for Investigative CPAs.

Enforcement expenditures have increased over the prior three fiscal years as demonstrated on **Attachment 4**; there has been a 23% increase from this same period in FY 2014-15.

FUND CONDITION AND GENERAL FUND LOAN REPAYMENT

The CBA ended FY 2014-15 with 5.6 months in the Accountancy Fund Reserve (Reserve). Year-end expenditures exceeded total revenues by approximately \$7.6 million. This decreased the Reserve from approximately \$14.2 million to approximately \$6.8 million. In January 2016, the Department of Finance (DOF) released its Loan Obligation Report, which identifies target dates for repayment of the CBA loans made to the General Fund. Presently, the CBA has approximately \$31 million in loans outstanding. The Loan Obligation

**Fiscal Year 2015-16 Third Quarter Financial Statement
(For period of July 1, 2015 through March 31, 2016)**

Page 2

Report reflects the following repayment schedule:

Fiscal Year 2015-16	\$10,270,000
Fiscal Year 2016-17	\$21,000,000

The CBA will receive the current fiscal year loan repayments in June. The proposed loan repayments for FY 2016-17 will be finalized once the Governor signs the budget. Should the loans be repaid as scheduled and proposed, the CBA's Reserve will increase significantly to approximately 20 months by end of FY 2016-17 (**Attachment 5**).¹

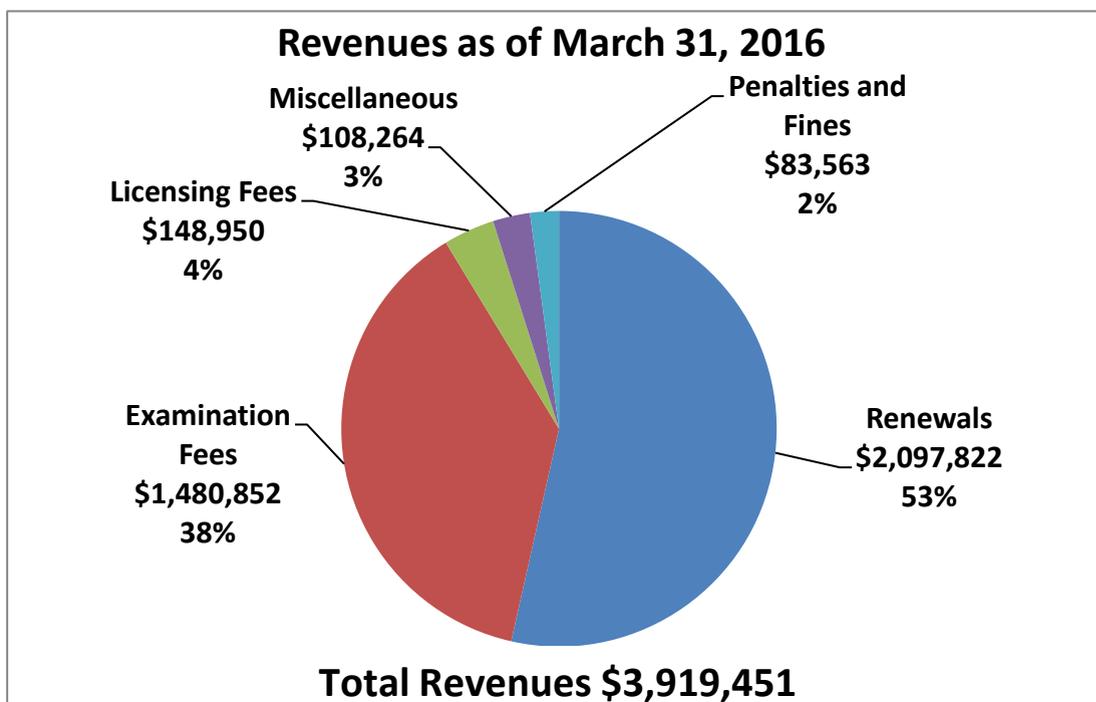
AUTHORIZED POSITIONS

As reflected on **Attachment 6**, the CBA presently has 93.9 authorized positions. This will decrease beginning July 1, 2016 as a result of the following limited-term positions being eliminated:

- two (2) Investigative CPA positions
- two (2) Enforcement Division analytical positions
- one (1) Enforcement Division clerical position.

It's anticipated that the CBA will receive two (2) permanent clerical positions in July 2016 as a result of FY 2016-17 Budget Change Proposal. The requested positions are still under review by the Legislature and must be approved by the Governor as part of the FY 2016-17 budget.

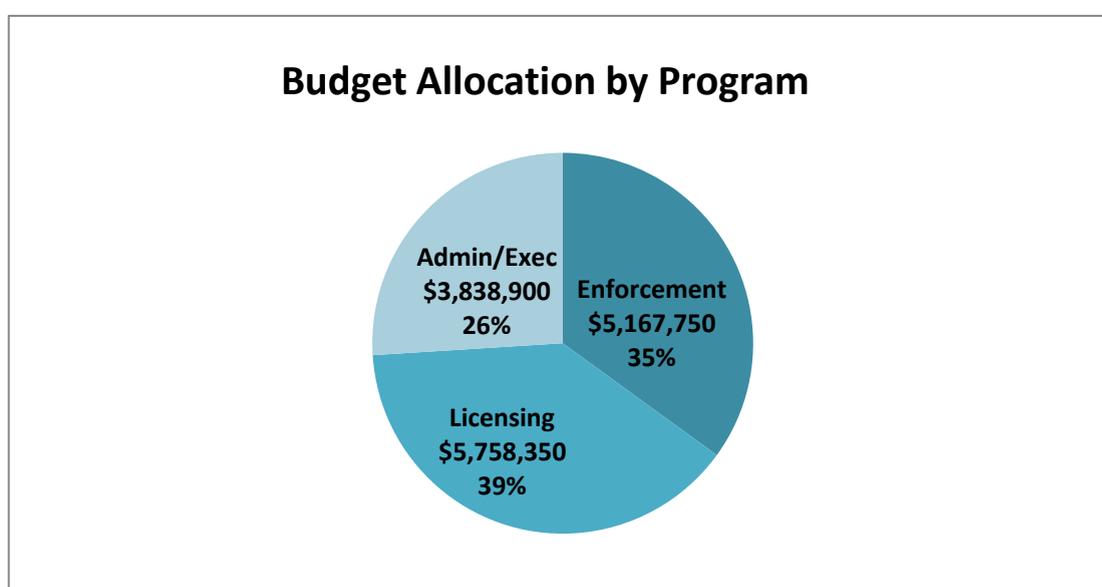
¹ Fund Condition Statement as of 12/31/2015



The CBA is in the second year of a fee reduction. Fees will revert to pre FY 2014-15 levels on July 1, 2016 as described below. Revenues for FY 2016-17 will increase significantly as a result.

<u>Fee Category</u>	<u>Current Fee</u>	<u>Fee on July 1, 2016</u>
License Renewal	\$50	\$120
Initial Licensure	\$50	\$120
Examination Application (First time sitter)	\$50	\$100
Examination Application (Repeat sitter)	\$25	\$50
Application for CPA Licensure	\$50	\$250
Application for Firm Licensure	\$30	\$150

Cost Recovery Monies: In addition to the revenue identified above, the CBA has collected \$981,388 in cost recovery monies since July 1, 2015.



The above allocations represent how the CBA's budget is allocated to the programs.

Attachment 2

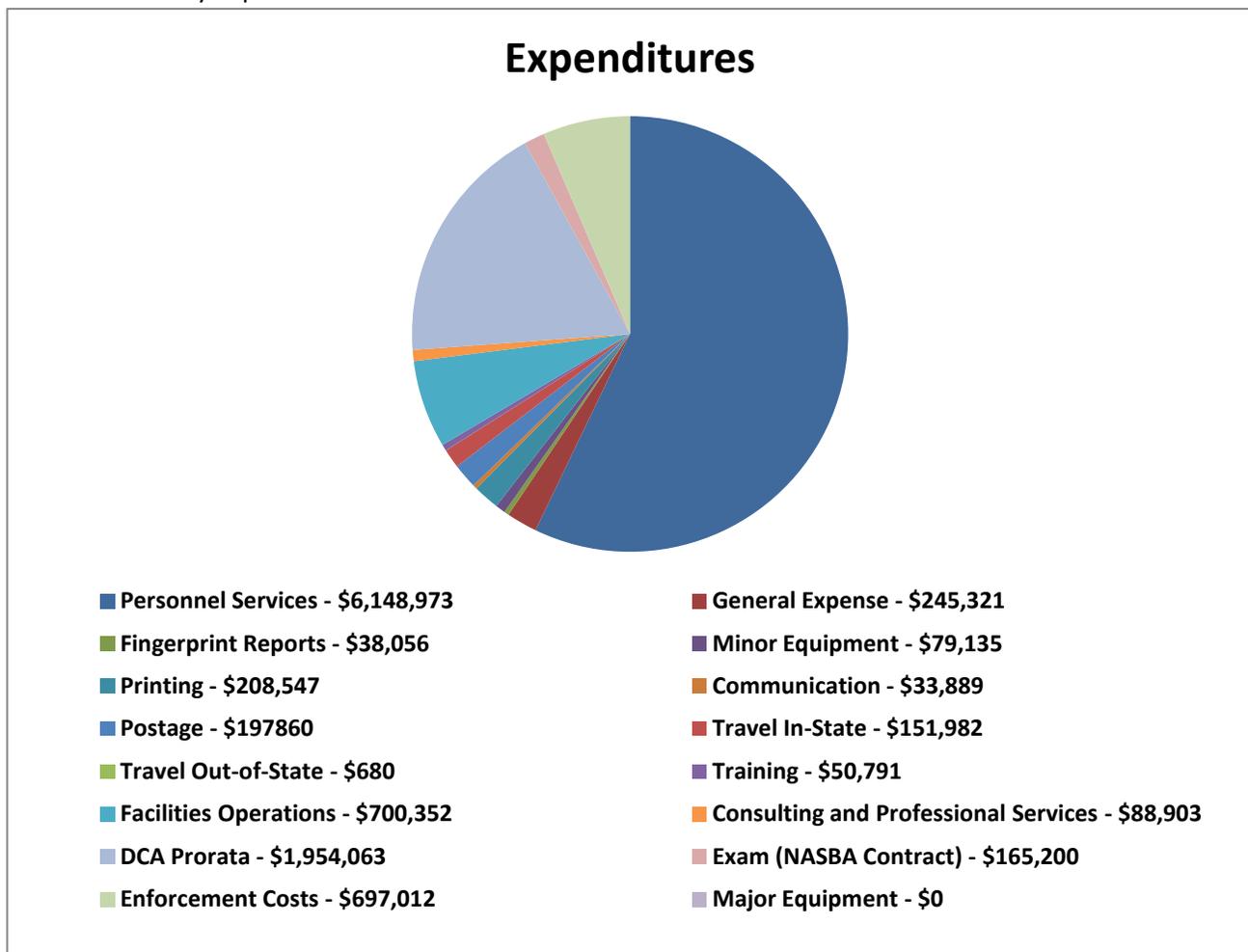
**CALIFORNIA BOARD OF ACCOUNTANCY - 0704
BUDGET REPORT
FY 2015-16 EXPENDITURE PROJECTION
FISCAL MONTH 9**

OBJECT DESCRIPTION	FY 2014-15		FY 2015-16				
	ACTUAL EXPENDITURES	PRIOR YEAR EXPENDITURES	BUDGET STONE	CURRENT YEAR EXPENDITURES	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
	(MONTH 13)	3/31/2015	2015-16	3/31/2016			
PERSONNEL SERVICES							
Salary & Wages (Staff)	4,967,759	3,638,835	5,699,000	3,912,205	69%	5,189,568	509,432
Statutory Exempt (EO)	122,100	89,847	114,000	92,097	81%	122,796	(8,796)
Temp Help Reg (Seasonals)	560,010	469,080	137,000	196,702		312,718	(175,718)
BL 12-03 Blanket				69,931		94,218	(94,218)
Temp Help (Exam Proctors)	885	885				1,000	(1,000)
Board Member Per Diem	14,400	6,000	10,000	9,600	96%	15,000	(5,000)
Committee Members (DEC)	11,100	4,800	11,000	8,800		11,000	0
Overtime	47,233	27,793	42,000	40,986		65,000	(23,000)
Staff Benefits	2,574,671	1,875,580	3,040,000	2,088,652	69%	2,784,869	255,131
TOTALS, PERSONNEL SVC	8,298,158	6,112,820	9,053,000	6,418,973	71%	8,596,169	456,831
OPERATING EXPENSE AND EQUIPMENT							
General Expense	219,371	169,027	215,000	245,321	114%	275,000	(60,000)
Fingerprint Reports	67,102	42,675	123,000	38,056	31%	59,839	63,161
Minor Equipment	269,630	35,881	24,000	79,135	330%	80,000	(56,000)
Printing	211,166	191,174	95,000	208,547	220%	230,356	(135,356)
Communication	37,977	24,754	60,000	33,889	56%	52,000	8,000
Postage	279,624	175,588	142,000	197,860	139%	280,000	(138,000)
Travel In State	220,630	126,551	136,000	151,982	112%	212,000	(76,000)
Travel, Out-of-State	1,448	1,436		680			0
Training	45,327	41,208	28,000	50,791	181%	56,000	(28,000)
Facilities Operations	731,193	709,347	643,000	700,352	109%	512,000	131,000
C & P Services - Interdept.	0		4,000	6,636	166%	6,636	(2,636)
C & P Services - External	53,802	45,222	238,000	82,267	35%	82,267	155,733
DEPARTMENTAL SERVICES:							
OIS Pro Rata	311,885	292,014	508,000	381,002	75%	508,000	0
Administration Pro Rata	923,387	666,321	1,199,000	899,252	75%	1,199,000	0
DOI - ISU Pro Rata	25,050	20,895	32,000	24,001	75%	32,000	0
Communications Division	28,106	20,364	83,000	62,250	75%	83,000	0
PPRD Pro Rata	29,993	22,254	0	0		0	0
INTERAGENCY SERVICES:							
Interagency Services			1,000		0%	0	1,000
IA w/ OER							
Consolidated Data Center	92,741	61,920	41,000	60,811	148%	75,000	(34,000)
DP Maintenance & Supply	26,577	17,744	50,000	101,516	203%	126,000	(76,000)
Central Admin Svc-ProRata	495,398	371,549	567,000	425,231	75%	567,000	0
EXAM EXPENSES:							
C/P Svcs-External Expert Administrative	95,238	151,700		165,200		165,200	(165,200)
C/P Svcs-External Expert Examiners							
C/P Svcs-External Subject Matter							
ENFORCEMENT:							
Attorney General	763,801	502,770	1,046,000	621,011	59%	828,015	217,985
Office Admin. Hearings	40,954	30,809	231,000	56,463	24%	78,559	152,441
Court Reporters	24,384	16,734		19,538		28,470	(28,470)
Evidence/Witness Fees	18,464	18,464	186,000		0%	12,000	174,000
DOI - Investigations						0	0
MISC:							
Major Equipment	5,579	5,579	60,000			60,000	0
Other (Vehicle Operations)	2,702	2,702				0	0
TOTALS, OE&E	5,021,529	3,764,682	5,712,000	4,611,791	81%	5,608,342	103,658
TOTAL EXPENSE	13,319,687	9,877,502	14,765,000	11,030,764	152%	14,204,511	560,489
Sched. Reimb. - External/Private	(2,350)	(1,880)	(19,000)	(2,115)		(19,000)	0
Sched. Reimb. - Fingerprints	(64,778)	(46,599)	(185,000)	(36,211)	20%	(185,000)	0
Sched. Reimb. - Other				(294)			0
Sched Interdepartmental	(134,244)	(134,244)	(92,000)	(33,561)		(92,000)	0
Unsched. Reimb. - Other	(227,341)	(155,487)		(981,388)			0
NET APPROPRIATION	12,890,974	9,539,292	14,469,000	9,977,195	69%	13,908,511	560,489
SURPLUS/(DEFICIT):							3.9%

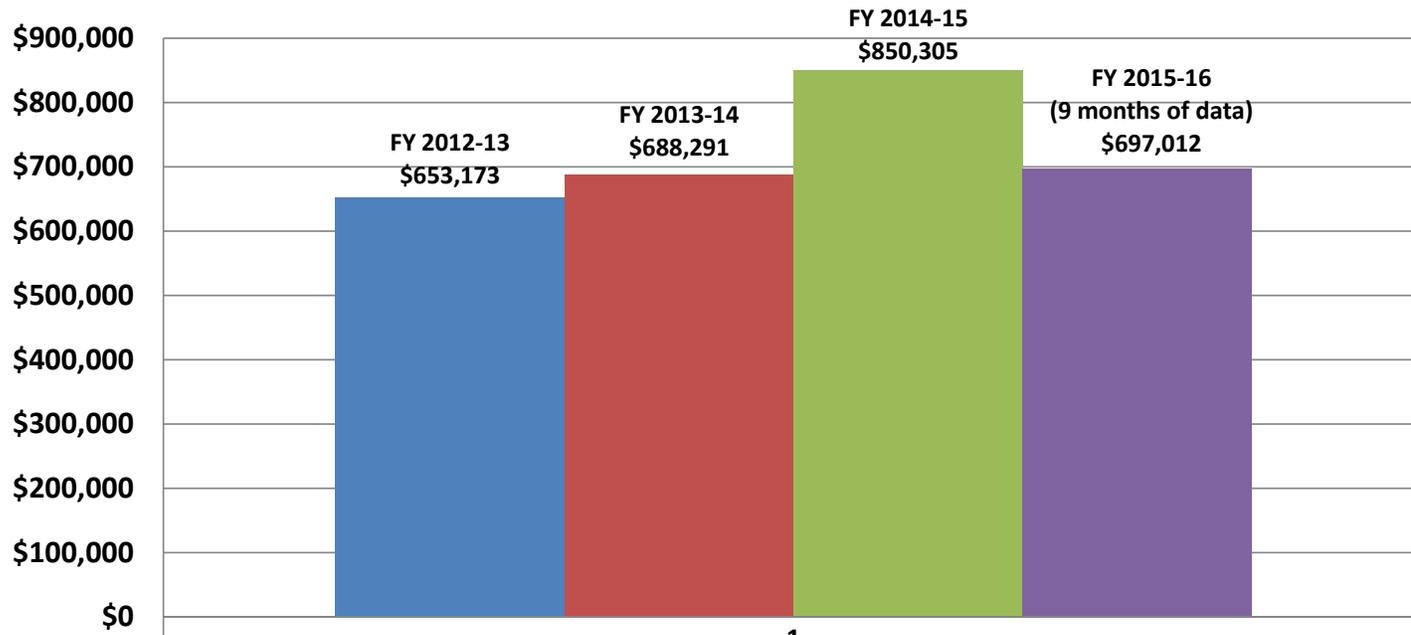
California Board of Accountancy Expenditures through March 31, 2016

Category	Expenditures	Budget Allocation	Percent Spent
Personnel Services	\$6,418,973	\$9,053,000	71%
General Expense	\$245,321	\$215,000	114%
Fingerprint Reports	\$38,056	\$123,000	31%
Minor Equipment	\$79,135	\$24,000	330%
Printing	\$208,547	\$95,000	220%
Communication	\$33,889	\$60,000	56%
Postage	\$197,860	\$142,000	139%
Travel In-State	\$151,982	\$136,000	112%
Travel Out-of-State	\$680	\$0	
Training	\$50,791	\$28,000	181%
Facilities Operations	\$700,352	\$643,000	109%
Consulting and Professional Services	\$88,903	\$242,000	37%
DCA Prorata	\$1,954,063	\$2,481,000	79%
Exam (NASBA Contract)	\$165,200	\$0	N/A ¹
Enforcement Costs	\$697,012	\$1,463,000	48%
Major Equipment	\$0	\$60,000	0%
Total	\$11,030,764	\$14,765,000	75%

¹ The Exam line item reflects \$165,200, for the NASBA contract, which is used to provide assistive services to examination candidates. The amount is fully encumbered at the beginning of the fiscal year, hence reflecting that it has been fully expended.



Enforcement Costs: Fiscal Year 2012-13 to Fiscal Year 2015-16



	1
■ FY 2012-13	\$653,173
■ FY 2013-14	\$688,291
■ FY 2014-15	\$850,305
■ FY 2015-16 (9 months of data)	\$697,012

Enforcement costs consist of the following:

Office of the Attorney General

Office of Administrative Hearings

Court reporting expenses

Evidence and Witness Fees

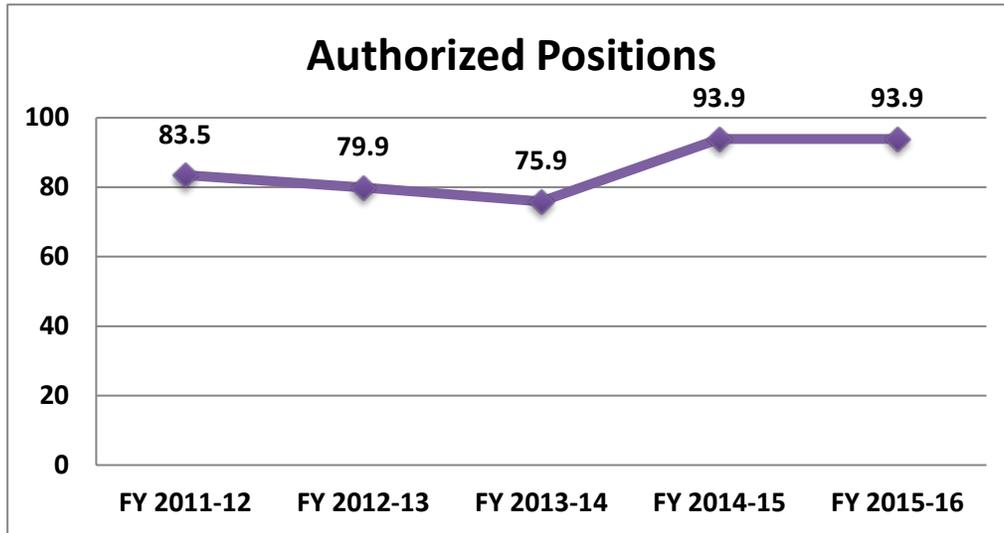
0704 - California Board of Accountancy Analysis of Fund Condition

2016-17 Governor's Budget

NOTE: \$31.270 Million General Fund Repayment Outstanding

	ACTUAL 2014-15	CY 2015-16	Governor's Budget BY 2016-17	BY + 1 2017-18
BEGINNING BALANCE	\$ 14,186	\$ 6,818	\$ 7,925	\$ 24,965
Prior Year Adjustment	\$ 210	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 14,396	\$ 6,818	\$ 7,925	\$ 24,965
REVENUES AND TRANSFERS				
Revenues:				
125600 Other regulatory fees	\$ 158	\$ 168	\$ 166	\$ 166
125700 Other regulatory licenses and permits	\$ 2,465	\$ 2,580	\$ 4,442	\$ 4,442
125800 Renewal fees	\$ 2,480	\$ 2,413	\$ 5,679	\$ 5,679
125900 Delinquent fees	\$ 146	\$ 92	\$ 236	\$ 236
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 25	\$ 37	\$ 33	\$ 62
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 7	\$ 7	\$ 7	\$ 7
161400 Miscellaneous revenues	\$ 42	\$ 32	\$ 32	\$ 32
164300 Penalty Assessments	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 5,323	\$ 5,329	\$ 10,595	\$ 10,624
Transfers from Other Funds				
F00001 GF loan repayment per Item 1120-011-0704, BA of 2002	\$ -	\$ 6,000	\$ -	\$ -
F00001 GF loan repayment per Item 1120-011-0704, BA of 2003	\$ -	\$ 270	\$ -	\$ -
GF loan partial repayment per Item 1110-011-0704,				
F00001 BA of 2010	\$ -	\$ 4,000	\$ 20,000	\$ -
F00001 GF Loan Repaymentper BA of 2011	\$ -	\$ -	\$ 1,000	\$ -
Totals, Revenues and Transfers	\$ 5,323	\$ 15,599	\$ 31,595	\$ 10,624
Totals, Resources	\$ 19,719	\$ 22,417	\$ 39,520	\$ 35,589
EXPENDITURES				
Disbursements:				
0840 State Controller (State Operations)	\$ -	\$ -	\$ -	\$ -
8880 - FISCAL	\$ 10	\$ 23	\$ 18	\$ -
1110 Program Expenditures (State Operations)	\$ 12,891	\$ 14,469	\$ 14,537	\$ 14,828
Total Disbursements	\$ 12,901	\$ 14,492	\$ 14,555	\$ 14,828
FUND BALANCE				
Reserve for economic uncertainties	\$ 6,818	\$ 7,925	\$ 24,965	\$ 20,761
Months in Reserve	5.6	6.5	20.2	16.5

AUTHORIZED POSITIONS AND POSITION ALLOCATION



Position Allocation

Fiscal Year 2015-16 - Authorized Positions: 93.9								
Practice Privilege	Exam	Initial Licensing	Licensing Admin	RCC	Enforcement	Admin	Executive	Board
1.0	6.0	12.0	5.0	11.0	38.5 ¹	16.4	4.0	0.0
Five limited-term positions will expire June 30, 2016 and six limited-term positions will expire June 30, 2017 for the Enforcement Unit.								
¹ This number reflects the return of a position to the Executive Unit that had been previously temporarily directed to the Enforcement Division.								
Fiscal Year 2014-15 - Authorized Positions: 93.9								
Practice Privilege	Exam	Initial Licensing	Licensing Admin	RCC	Enforcement	Admin	Executive	Board
1.0	6.0	12.0	5.0	11.0	39.5	16.4	3.0	0.0
Seventeen Enforcement positions and one Initial Licensing position were added as a result of 3 successful FY 2014-15 BCPs. Eleven of the 17 Enforcement positions are limited term and will expire in two to three years.								
Fiscal Year 2013-14 - Authorized Positions: 75.9								
Practice Privilege	Exam	Initial Licensing	Licensing Admin	RCC	Enforcement	Admin	Executive	Board
1.0	6.0	11.0	4.0	11.0	22.5	17.4	3.0	0.0
Three limited-term positions expired as of June 30, 2013. One permanent Practice Privilege Office Assistant position was eliminated via a negative BCP pursued by the CBA.								
Fiscal Year 2012-13 - Authorized Positions: 79.9								
Practice Privilege	Exam	Initial Licensing	Licensing Admin	RCC	Enforcement	Admin	Executive	Board
2.0	6.0	12.0	5.0	11.0	22.5	18.4	3.0	0.0
The elimination of salary savings required by the Department of Finance in FY 2012-13, required the CBA to eliminate 3.6 authorized positions.								
Fiscal Year 2011-12 - Authorized Positions: 83.5								
Practice Privilege	Exam	Initial Licensing	Licensing Admin	RCC	Enforcement	Admin	Executive	Board
2.0	6.0	12.0	5.0	11.0	22.5	20.0	4.0	0.0



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



CBA Item V.C.
May 19-20, 2016

Discussion Regarding Conducting California Board of Accountancy Meetings at Colleges and Universities

Presented by: Patti Bowers, Executive Officer

Purpose of the Item

The purpose of this agenda item is to provide the California Board of Accountancy (CBA) with information regarding conducting CBA meetings at colleges and universities.

Consumer Protection Objectives

Providing the CBA with an opportunity to discuss holding meetings at colleges and universities may facilitate additional participation by stakeholders.

Action(s) Needed

The CBA is requested to review the information to determine if any of the locations presently being pursued by staff are deemed unacceptable for future CBA meetings.

Background

Recently, various CBA members have requested that staff research options for conducting a CBA meeting at a college or university. In consultation with President Katrina L. Salazar, CPA, staff assembled a list of criteria that each college or university would be required to meet, which included the following:

- A room large enough to set-up the meeting space per the CBA space diagram
- Reliable internet access, as the CBA must webcast the meetings

Additionally, staff assembled a list of items that would be preferred, including:

- Near a major airport
- A hotel nearby that would be able to provide the CBA with a room block at the State rate
- Table skirts or privacy panel tables
- Secured parking near the meeting space
- Water service
- Staff available to assist with any problems that arise during the meeting
- A business center near meeting space

Discussion Regarding Conducting California Board of Accountancy Meetings at Colleges and Universities

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At the request of CBA member, Kathleen Wright, CPA, staff reviewed northern California State colleges, universities, and community colleges. Using information published by the National Association of State Boards of Accountancy, the primary focus was on colleges that had a high number of students sitting for the Uniform Certified Public Accountant Examination and community colleges.

Comments

Staff identified and requested information for the remaining 2016 meeting dates from 21 colleges throughout northern California. At the date of this writing, seven colleges indicated that they have meeting space that will meet the CBA requirements, two colleges were determined to be too far from a major airport, and three colleges did not have a meeting space that could accommodate the CBA. The remaining nine colleges have not responded to staff's request. A full assessment of the 12 colleges that responded to staff's request for information is provided in the **Attachment**.

A brief overview of the seven colleges that have indicated that they can provide meeting space to the CBA is provided below. Staff are continuing to work with the first five colleges to secure meeting space and identify hotels that will provide room blocks at the State rate. At this time, staff are not pursuing meeting space at the remaining two colleges, as staff determined they were not possible options due their proximity to hotels and food.

Should staff be unable to secure a meeting space at a college, an alternative northern California meeting location has been identified for the November CBA meeting and staff are preparing a contract.

1. Golden Gate University (GGU)

GGU has two meeting spaces that would be large enough to accommodate the CBA; however, GGU assigns space to classes before it can be released to other organizations. GGU anticipates being able to provide the CBA with availability in early summer. The estimated cost for holding a meeting at GGU is \$3,400, which does not include any additional administrative fees, as a specific meeting space has not been identified. The administrative fees vary at each college and include items such as, application fees, on-site staffing, custodial, and set-up fees. Staff are working with a hotel that may be able provide a room block at the State rate, should the space become available. The hotel is located in Union Square and it is less than one mile from GGU campus.

2. California State University (CSU), East Bay

CSU, East Bay has meeting space available in the Student Union Multipurpose Room for the November CBA meeting dates; however, priority is given to campus-related activities. Staff have submitted a formal request, which has not been confirmed by the University. The space configuration would need to be altered, as the campus has only five-foot long tables rather than the six-foot long tables used by

Discussion Regarding Conducting California Board of Accountancy Meetings at Colleges and Universities

Page 3 of 4

the CBA for meetings. The estimated cost for holding a meeting at CSU, East Bay is \$4,200. The cost does not include any additional administrative fees as they are identified when confirmation is received from CSU, East Bay. Staff are currently working with a hotel near the campus that can provide a room block at the State rate, should the University confirm the meeting space. The hotel is 12.5 miles from CSU, East Bay.

3. CSU, Sacramento

CSU, Sacramento identified the January 2017 CBA meeting as the next CBA meeting date it has available to host a CBA meeting. The meeting would be held at the Alumni Center, which has its own designated parking lot. The estimated cost for holding a meeting at CSU, Sacramento is \$3,150. Staff are currently searching for hotels that will offer a room block at the State rate; however, due to the location of CSU, Sacramento, hotel options would be located in downtown Sacramento or near the airport, which are approximately 15 to 25 minutes away, without accounting for traffic.

4. CSU San Jose

CSU San Jose did not have availability for the July CBA meeting and has not released meeting space availability the fall session dates. Staff have submitted a formal request for September and November. CSU, San Jose staff could not confirm when it would be able to provide staff with its availability. The estimated cost for holding a meeting at CSU, San Jose is \$2,400, which does not include any additional administrative fees, as a specific meeting space has not been identified. Staff have not been able to identify a hotel near the campus that will provide a room block at the State rate.

5. University California (UC), Davis

UC, Davis has availability for the November CBA meeting. The estimated cost for holding a meeting at UC, Davis is \$7,000 with the additional fees. Staff have submitted a formal request for November. Staff were unable to locate a hotel in Davis that could provide a room block at the State rate; however the CBA currently has a room block in Natomas, which was reserved in anticipation of the relocation of the CBA office. The hotel is 17.76 miles from UC, Davis.

6. Foothill Community College

Foothill Community College has availability for the remaining 2016 CBA meeting dates. The estimated cost is \$2,000, which does not include any additional administrative fees as a specific meeting space has not been identified. The campus is not near food and staff were unable to identify a hotel near the campus that will provide a room block at the State rate.

Discussion Regarding Conducting California Board of Accountancy Meetings at Colleges and Universities

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7. West Valley Community College

West Valley Community College has availability for the remaining 2016 CBA meeting dates. The estimated cost is \$3,200, which includes additional administrative fees. The location is not near food and staff were unable to identify a hotel near the campus that will provide a room block at the State rate.

Fiscal/Economic Impact Considerations

The cost of renting meeting space varies and is dependent on the location and space available. Typically the CBA pays \$1,000-\$2,800 to rent meeting space, for two days, at a hotel.

Recommendation

Staff does not have a recommendation on this agenda item; however, staff are continuing to work with the colleges, as identified in the agenda item, pending additional direction by the CBA.

Attachment

College Comparison Spreadsheet

College Comparison Spreadsheet

Campus	GGU	CSU East Bay	CSU Sacramento	CSU San Jose	UC Davis	Foothill
Cost of Meeting Space	\$3,080	\$4,200	\$3,150	\$1,900	\$4,815	\$1,940
Additional Fees Charged by College	\$300	Unknown	Unknown	\$420	\$2,214	Unknown
Total Cost	\$3,080	Unknown	Unknown	\$2,320	\$7,029	Unknown
Guaranteed Parking Near Meeting Space	Dependent on location	Possibly	Yes	Possibly	No	No
Table Privacy Panels/Tablecloths	No	No	No	No	No	No
Business Center Near Meeting Space	Dependent on location	Yes	No	No	No	No
Internet Access	Yes	Yes	Yes	Yes	Yes	Yes
On-Site/Timely Assistance with A/V Equipment	Yes	Yes	Yes	Yes	Yes	Yes
Provide Room/Table Set Up Per CBA Diagram	Yes	See Comments	Yes	Yes	Yes	Yes
Water Service	No	No	No	No	No	No
Proximity to Airport	13.74 miles	13.18	17.76 miles	5 miles	20.4 miles	16 miles
Proximity to Restaurants	Less than 1 mile	A few miles	A few miles	Less than 1 mile	Less than 1 mile	A few miles
Comments:	Unable to provide availability until early summer. Pricing is dependent on space available	Only had the November CBA meeting date available. Diagram would be altered as they have 5 ft. blue tables	No availability for CBA's 2016 dates, but has January 2017 meeting date available	No availability for July meeting. Unable to provide availability for September and November dates	Only had the November CBA meeting date available.	Has remaining 2016 meeting dates available. Additional charges not identified

Campus	West Valley	Mission	Sonoma State	UC Santa Cruz	Skyline College	San Mateo
Cost of Meeting Space	\$1,650	\$3,300	Not Provided	Not Provided	Not Provided	Not Provided
Additional Fees Charged by College	\$1,643	\$25	N/A	N/A	N/A	N/A
Total Cost	\$3,293	\$3,325	N/A	N/A	N/A	N/A
Guaranteed Parking Near Meeting Space	Possibly	Yes	N/A	N/A	N/A	N/A
Table Privacy Panels/Tablecloths	No	No	N/A	N/A	N/A	N/A
Business Center Near Meeting Space	No	No	N/A	N/A	N/A	N/A
Internet Access	Yes	Yes	N/A	N/A	N/A	N/A
On-Site/Timely Assistance with A/V Equipment	Yes	Yes	N/A	N/A	N/A	N/A
Provide Room/Table Set Up Per CBA Diagram	Yes	Yes	N/A	N/A	N/A	N/A
Water Service	No	No	N/A	N/A	N/A	N/A
Proximity to Airport	14 miles	4.9 miles	65 miles	39.5 miles	7.9 miles	11.6 miles
Proximity to Restaurants	A few miles	1 mile	N/A	N/A	N/A	N/A
Comments:	Has remaining 2016 meeting dates available	Unable to accommodate meeting spacing requirement	Distance to airport too far	Distance to airport too far	Space too small	Space too small



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



CBA Item V.D.
May 19-20, 2016

Discussion Regarding the Option of Changing the July 2016 California Board of Accountancy Meeting to Two Days

Presented by: Patti Bowers, Executive Officer

Purpose of the Item

The purpose of this agenda item is to provide the California Board of Accountancy (CBA) with an opportunity to discuss the possibility of changing the July 2016 CBA meeting from a one-day meeting to a two-day meeting.

Consumer Protection Objectives

To ensure the CBA can conduct business related to the practice of public accountancy and its consumer protection mandate.

Action(s) Needed

Staff recommend delegating the CBA President, Katrina L. Salazar, CPA, with the authority to approve changing the July CBA meeting from a one-day meeting, July 21, 2016, to a two day meeting, July 21-22, 2016, if necessary.

Additionally, to ensure that the CBA will have a quorum, staff are requesting that members notify Alegra Keith, at alegra.keith@cba.ca.gov, by June 3, 2016, if their schedule permits attending the two-day meeting.

Background

At the March 2015 CBA Meeting, the CBA approved the 2016 meeting calendar, which included a one-day July CBA meeting.

Comments

After review of the **Attached** 2016 Planned Meeting Topics, staff estimate that the current meeting topics for the July 2016 CBA meeting will result in a full day of business. However, additional July meeting topics may be added, as a result of discussions at the May CBA meeting, which may significantly increase the time needed for the July CBA meeting.

To ensure the CBA has ample time to discuss the meeting topics, the CBA may wish to add an additional day to the July CBA meeting. Staff have already secured the meeting

Discussion Regarding the Option of Changing the July 2016 California Board of Accountancy Meeting to Two Days

Page 2 of 2

space, should the CBA wish to extend the meeting to two days, which can be cancelled with a 30-day notice.

Fiscal/Economic Impact Considerations

If the July CBA meeting is changed to a two-day meeting, the CBA will incur additional costs associated with the meeting space rental and travel expenses.

Recommendation

As staff are unable to determine if the additional day is needed until after the May CBA meeting, staff recommend that the CBA delegate the CBA President with the authority to approve the additional day.

Attachment

2016 Planned CBA Meeting Topics



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



2016 Planned CBA Meeting Topics *Updated May 3, 2016*

Attachment

Standing Agenda Items for all CBA Meetings

- Report of the President
 - DCA Director's Report
- Report of the Vice-President
 - Appointments and Reappointments to the Qualifications Committee (QC), Peer Review Oversight Committee (PROC), and Enforcement Advisory Committee (EAC)
- Report of the Secretary/Treasurer
 - Budget information including quarterly financial reports
- Executive Officer's (EO)
 - Update on the Relocation of the CBA's Office
 - Update on Staffing
 - Update on the CBA Communications and Outreach Plan
- Enforcement and Licensing Division Reports
- Committee Reports
- Acceptance of Minutes
- Closed Session
- MSG Meeting
 - MSG Decision Matrix and Stakeholder Objectives
 - Discussion Regarding NASBA's Activities and CPAVerify
 - Timeline for Activities Regarding Determination to be Made Pursuant to Business and Profession Code Section 5096.21
 - Discussion Regarding Proposed Agenda Items for the Next MSG Meeting
- Other Business
 - Report on Public Meeting of the AICPA Attended by a CBA Representative
 - Report on Public Meetings of the NASBA Attended by a CBA Representative
- Closing Business
 - Public Comments
 - Agenda Items for Future CBA Meetings

January

- President's Report
 - Announcement of New Committee and Liaison Appointments (Enforcement Program Oversight Committee, Legislative Committee, Committee on Professional Conduct, Strategic Planning Committee Including QC and EAC Liaisons)

- Resolution for Retired CBA Members, Sally Anderson and Louise Kirkbride
- Leadership Roundtable Report
- Report on the Chair/Vice-Chair Training
- Discussion Regarding the Study of California's Attest Experience Requirement
- Exposure Draft Regarding Proposed Revisions to NASBA Uniform Accountancy Act and NASBA Uniform Accountancy Act Rules Regarding Retired Status
- Resolution for Bruce Allen, CalCPA, Director of Government Relations
- Presentation by Senator John Moorlach, CPA
- Department of Labor issue – Presentations by
 - Ian Dingwall, CPA, DOL Chief Accountant
 - NASBA
 - AICPA
- EO Report
 - CBA Guidelines and Procedures Manual Update (Include Bagley Keen Open Meeting Act Refresher)
- CBA Committee Reports
 - Discussion on Proposed Legislation – LC
 - Overview of the Legislative and Regulatory Process and the Legislative Committee's Role – LC
 - Implementation of Tracking Sole Proprietorships – CPC
 - Discussion Regarding Whether Changes are needed to CE Exemption/Extension – CPC
 - NASBA Findings regarding substantial equivalency to the NASBA Guiding Principles of Enforcement– MSG
 - Review of the Draft Annual MSG Report – MSG
- PROC
 - Exposure Draft on Proposed Changes to the AICPA Standards for Performing and Reporting on Peer Reviews

March

- President's Report
 - NASBA/AICPA Committee Interest Form
 - Proposed 2017 CBA Meeting Dates
 - AICPA Omnibus Proposal Exposure Draft
 - Resolution for Retiring QC Member Charles Hester and David Papotta
- Secretary/Treasurer Report
 - FY 2015/2016 Mid-Year Financial Statement
- Executive Officer's Report
 - CBA Website Demo
- Petition Hearings – Jack Sowell, Federico Quinto Jr., & Rom De Guzman
- Regulation Hearing Regarding Foreign Credential Evaluation Services
- CBA Committee Reports
 - Review and Discussion on Newly Introduced Legislation – LC
 - Update on any CBA Sponsored Legislation – LC

- Review and Preliminary Discussion on Updates to the Disciplinary Guidelines – EPOC
- Discussion and Possible Action to Make Technical (“Section 100”) or Regulatory Changes to Amend Title 16, California Code of Regulations Section 36.1 – CPC
- Committee Reports
 - Presentation and Approval of 2015 PROC Report

May

- President’s Report
 - Communication on the release of the next version of the CPA Exam
- Secretary/Treasurer Report
 - FY 2015/2016 Third Quarter Financial Statement
- Petition Hearings
 - Vispi B. Shroff – Petition for Reinstatement
 - Inger A. Sullenger – Petition for Termination of Probation
 - Troy Christiansen – Petition for Reduction of Penalty
- CBA Committee Reports
 - Discussion and Possible Action Regarding Legislation on Which the CBA has Taken a Position – LC
 - Update on any CBA Sponsored Legislation – LC
 - Discussion Regarding Audit Quality for Audits Performed for Employee Benefit Plans Covered Under the Employee Retirement Security Act of 1974 – CPC
 - Review of Disciplinary Guidelines – EPOC
 - Update on Audit activity and staff recommendation of how to proceed with remaining jurisdictions – MSG

July (One day meeting)

- President’s Report
 - Presentation Regarding the CBA’s Cease and Desist Letters
 - Discussion Regarding Concerns of the Lack of Peer Reviewers
 - Update on the CBA’s 2016-18 Strategic Plan
 - Educational Information Regarding Financial Statements
 - Proposed Evolution of Peer Review Administration
- Report of the Enforcement Division
 - Educational Presentation Regarding Enforcement’s Handling of Referrals (DOL, Peer Review, Etc.)
- Regulation Hearing – Preparation Engagements
- CBA Committee Reports
 - Discussion and Possible Action Regarding Legislation on Which the CBA has Taken a Position – LC
 - Update on CBA Sponsored Legislation – LC
 - Implementation of Tracking Sole Proprietorships – CPC
 - Enforcement Performance Measures: Additional Reporting Needs of the CBA and Review of Internal Complaints.
- Petition Hearings

- Masood Ahmed Chotani – Petitioner for Reinstatement of Revoked Certificate
- Minutes of the January 29, 2016, Peer Review Oversight Committee Meeting
- Minutes of the December 10, 2015, Enforcement Advisory Committee Meeting

September

- President's Report
 - Announcement of Annual Officer Elections
 - Announcement of Executive Officer Evaluation
- Secretary/Treasurer Report
 - FY 2015/2016 Year-End Financial Report
- EO Report
 - Presentation of CBA Annual Report for FY 2015/2016
- Committee Reports
 - Approval of the 2017 EAC, PROC, and QC Meeting Dates
- CBA Committee Reports
 - Permanent Practice Restriction – Possibly Include approved language in CBA action to initiate Rulemaking for the Final Disciplinary Guidelines

November

- President's Report
 - CBA Member Committee Interest Survey
 - Officer Elections
 - Annual EO Evaluation
 - AICPA Committee Interest
- Vice-President's Report
 - Recommendation for Appointment(s)/Reappointment(s) to the EAC, QC, and PROC Chair & Vice-Chair
- Secretary/Treasurer Report
 - FY 2016/2017 First Quarter Financial Report
- CBA Committee Report
 - Presentation of proposed legislation for 2017



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



CBA Item V.E.
May 19-20, 2016

Discussion Regarding the American Institute of Certified Public Accountants' Paper Regarding the Proposed Evolution of Peer Review Administration

Presented by: Dominic Franzella, Chief, Enforcement Division

Purpose of the Item

The purpose of this agenda item is to provide the California Board of Accountancy (CBA) the opportunity to review the American Institute of Certified Public Accountants' (AICPA) paper titled *Proposed Evolution of Peer Review Administration* (**Attachment**), and to discuss next steps related to possibly providing a CBA comment.

Consumer Protection Objectives

The CBA Peer Review Program is an important component of its mission to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with applicable professional standards. The CBA Peer Review Program is administered through Board-recognized peer review program providers. The AICPA Peer Review Program is presently the only recognized provider in California, so ensuring its overall effectiveness is crucial to the effectiveness of the CBA Peer Review Program.

Action(s) Needed

The CBA is asked to direct staff to work with a subcommittee of the Peer Review Oversight Committee (PROC) to evaluate the AICPA proposal and report back to the CBA at a future meeting.

Background

In 2009, the CBA sponsored Assembly Bill (AB) 138 (Chapter 312, Statutes of 2009) implementing mandatory peer review. AB 138 was signed by Governor Arnold Schwarzenegger and became effective on January 1, 2010. AB 138 requires all California-licensed firms, including sole proprietorships, providing accounting and auditing services, to undergo a peer review once every three years as a condition of license renewal. Peer review is a study, appraisal, or review conducted in accordance with professional standards of the professional work of a firm, and may include an evaluation of other factors in accordance with the requirements specified by the CBA in regulations.

Discussion Regarding the American Institute of Certified Public Accountants' Paper Regarding the Proposed Evolution of Peer Review Administration

Page 2 of 3

The CBA established in regulations the requirements necessary for the administration of peer review in California, and made a determination that the AICPA Peer Review Program meets these requirements. The regulations authorize the AICPA Peer Review Program to administer peer reviews in California.

To aid the CBA in its oversight of its Peer Review Program, the Legislature established the PROC. The purpose of the PROC is to engender confidence and ensure effectiveness in the peer review process. The PROC provides recommendations to the CBA on any matter upon which it is authorized to act.

In May 2014, the AICPA launched the Enhanced Audit Quality (EAQ) initiative, the goal of which is to align the objectives of all audit-related AICPA efforts to improve audit performance. As part of the EAQ, in May 2015, the AICPA released a six-point plan to improve audits. One of the points included in the plan related to peer review. This point of the plan outlines the efforts to improve peer review by focusing on greater risk areas/industries, more significant remedial actions, and terminating firms from the program after repeat quality issues.

In November 2015, the AICPA released an exposure draft titled *Proposed Changes to AICPA Standards for Performing and Reporting on Peer Reviews, Improving Transparency and Effectiveness of Peer Review*. The CBA reviewed this exposure draft at its January 2016 meeting. The CBA submitted a comment letter supporting the changes.

Comments

In February 2016, the AICPA released a paper titled *Proposed Evolution of Peer Review Administration*. The paper "discusses a proposed plan to increase the quality, consistency, efficiency and effectiveness in the administration of peer review" The feedback period for this paper closes August 1, 2016.

As noted earlier, the AICPA Peer Review Program is the only Board-recognized peer review program provider authorized by the CBA to administer peer reviews in California. Reviewing changes to the AICPA Peer Review Program is crucial and necessary to determine what, if any, impact the changes may have in relation to continued oversight of the AICPA Peer Review Program and the CBA Regulations governing the peer review process.

Staff did a preliminary review of the paper and noticed that one of the primary takeaways is the reduction of administering entities the AICPA uses to administer its program. Presently, there are approximately 40 administering entities and this proposal considers reducing the number to eight to 10. The AICPA has noted that administering entities with a volume of at least 1,000 peer reviews annually operate with greater consistency and achieve administration that is cost effective and efficient.

Discussion Regarding the American Institute of Certified Public Accountants' Paper Regarding the Proposed Evolution of Peer Review Administration

Page 3 of 3

Staff have contacted the AICPA regarding the feedback period associated with this recently released paper. Staff was informed that this is the first of two papers regarding the evolution of peer review administration. The audience for this paper were the various state societies that administer the AICPA Peer Review Program.

The AICPA noted that the paper and the topic of the evolution of peer review administration will be a discussion topic at the National Association of State Boards of Accountancy's June Regional Meetings. Based on feedback received from these meetings, the AICPA will prepare a second paper for focused seeking input from the various boards of accountancy. The AICPA plans to have this paper ready by mid-July, and noted that sufficient time will be provided for state boards of accountancy input, though no specific date was provided.

Given the unknown time periods associated with second release date and feedback period on the AICPA proposal, staff is proposing to work with a PROC subcommittee to evaluate this initial paper and be prepared to bring findings to the CBA at its July 2016 meeting. This will allow the CBA the opportunity to evaluate this proposal and possibly provide a comment by the August 1, 2016 due date. If the CBA receives confirmation that a second paper will be prepared and feedback date is set for later this year, staff will work with the PROC subcommittee and full PROC to evaluate the papers and provide findings to the CBA at a meeting later this year.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Staff recommends that the CBA direct staff to work with a PROC subcommittee to evaluate the AICPA proposal and report back to the CBA at a future meeting.

Attachment

Proposed Evolution of Peer Review Administration

Proposed Evolution of Peer Review Administration

A discussion paper seeking input from state CPA society leaders.

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Introduction

CPAs take pride in their long-standing commitment to excellence. That commitment includes continued vigilance in delivering accounting and auditing services and protecting the public interest.

In the current business environment, the rapid pace of change is driving complexity, and that trend is not likely to abate. Increased complexity presents challenges to practitioners in public accounting as they strive to perform high-quality accounting and auditing engagements for entities not subject to Public Company Accounting Oversight Board (PCAOB) permanent inspection. The public's reliance on these services is based on CPAs' integrity, objectivity and competence. The goal of the AICPA Peer Review Program (Program) is to promote quality in the accounting and auditing services provided by the CPA firms.

With that in mind, in May 2014, the American Institute of CPAs (AICPA) launched its [Enhancing Audit Quality](#) (EAQ) initiative. EAQ is a holistic effort to consider auditing of private entities through multiple touch points, especially where quality issues have emerged. The goal is to align the objectives of all audit-related AICPA efforts to improve audit performance.

EAQ is being implemented through a multi-phased approach. The initial phase involves planned and proposed efforts that will begin to improve quality in the near term. The long-term vision focuses on the transformation of the current peer review program into a near real-time practice monitoring process that marries technology with human oversight.

This paper discusses a proposed plan to increase the quality, consistency, efficiency and effectiveness in the administration of peer reviews, while providing for appropriate cost recovery, as one of the long-term changes under the EAQ initiative. The proposal was developed with direct input from more than a dozen state CPA society leaders and is being shared with executive leadership of all state CPA societies for the purpose of obtaining additional feedback before finalizing a formal plan for execution.

In developing the evolution of peer review administering entities (AEs), the following guiding principles were followed:

- Improve quality of CPA firms' accounting and auditing practices
- Maximize opportunities to support firms in their quality efforts
- Provide appropriate cost recovery for administration
- Enable state societies to provide member value and service to firms, by maintaining involvement in the program
- Position state societies for appropriate interchange with federal and state regulators
- Support EAQ initiatives

Each of the state CPA societies and all peer review administering entities (AEs) have been integral to the success of the peer review function, which is enormous in both scope and size across the country. Their commitment to meeting the needs of practitioner members and regulators has been, and continues to be, tremendous. The

need for an evolution of peer review administration as outlined in this discussion paper is the direct result of how peer review has grown and matured over the past 35 years in the marketplace, in the regulatory environment and in the technological environment, and does not diminish the contributions of any state CPA society or AE.

Executive Summary

The AICPA Peer Review Program (Program) has represented the profession's ongoing commitment to enhancing the quality of accounting and auditing services for more than 35 years. It has served the public interest while simultaneously delivering numerous benefits to thousands of CPA firms. The Program is governed by the AICPA Peer Review Board (PRB), which is comprised of public practitioners, state CPA society chief executive officers and a regulatory representative.

Currently, 41 administering entities (AEs), including the National Peer Review Committee (National PRC), administer the Program for public accounting firms within the 50 states, the District of Columbia and the U.S. territories (see Exhibit 1). The AEs also administer peer reviews for public accounting firms enrolled in a state society peer review program (non-AICPA member firms and non-state society member firms). In total, the AEs administer about 34,000 peer reviews over a three-year period.

Effective and consistent peer review administration is critical to help ensure the quality of the accounting and auditing services performed by CPA firms. The AEs vary in the number of peer reviews that they administer, ranging from approximately 100 to as many as 5,250 peer reviews over a three-year period. As a result, they differ in structure, policies, the composition and involvement of employees, use of contractors, Report Acceptance Body (RAB) criteria, and Peer Review Committee (Committee) criteria.

The PRB, at a national level, performs oversight of the AEs and RABs. Past oversight has frequently identified inconsistencies in the effectiveness of peer review administration. Oversight consists of reviewing the procedures conducted by the AEs and RABs to ensure peer reviews are being performed and accepted in accordance with the AICPA's *Standards for Performing and Reporting on Peer Reviews (Standards)*. Oversight has revealed that a significant level of investment (time, money and volunteer and staff commitments) is necessary to maintain the technical and administrative competence required to administer the Program, and to efficiently and effectively incorporate changes in guidance and technology into AE administrative processes.

Other than through technological advances, the administration of peer reviews has remained largely unchanged since the inception of the Program. To help improve overall accounting and auditing quality, enhancements to and greater consistency in peer review administration are required. Accordingly, an evolution of the structure and criteria for AEs is being proposed for input and discussion.

The proposed criteria would decrease the number of AEs to approximately eight to ten in total, each of which would have the capacity to effectively administer at least 1,000 peer reviews per year. Consolidating AEs will provide greater consistency in the Program's administration.

Each AE would be required to have a Director-level professional with primary responsibility for peer review and at least one full-time staff in each of the following roles:

- Administrator
- Technical Reviewer
- Manager

In addition, each AE would have an appropriately structured Committee and RAB(s). The Committee would meet at least quarterly and include 15-20 members who are team captain qualified from the states administered. RABs would be comprised of approximately five members and would meet every two weeks. RAB members would be assigned to the meetings to obtain a cross section of industry experience, including at least one member with experience in any must-select industry included in a review to be presented. A minimum of three RAB members must accept any review. Most meetings could be conducted using technology, rather than in-person.

Feedback on the proposed criteria and structure is requested by August 1, 2016. Once criteria are established, AEs wishing to continue to administer the program will be asked to communicate to the AICPA no later than January 31, 2017 their commitment to and plans for meeting the criteria. The goal is to have the revised structure in place by December 28, 2018. The AICPA is committed to providing resources to all AEs to help ease the transition to becoming an AE of the future, or to transitioning administration responsibilities to another AE.

Evolution of Administering Entities

As designated by the PRB, the Oversight Task Force (OTF) conducts onsite oversight of AEs every other year. The process includes meetings with administrators, technical reviewers, and RAB members to understand their policies and procedures to ensure compliance with the Program.

OTF members and/or AICPA staff conduct RAB observations three times per year per AE to ensure RABs are performing all of their responsibilities. The observations include a review of materials provided to the RAB from a sample of AICPA peer reviews to consider the risk assessment, scope, peer review report, letter of response, management representation letter, corrective actions, implementation plans and other peer review documents before the RAB meeting. During its meeting, RAB members deliberate each review. If, after the deliberation, there are items the observer noted that were not discussed, the observer brings them to the RAB's attention for discussion. Observers also analyze certain administrative procedures to ensure the AE administered the peer review in accordance with Program *Standards*.

An enhanced oversight program of AE administration and RAB activity began in the fall of 2014 as part of the EAQ initiative. This program engages subject-matter experts (SMEs) to oversee peer reviews, primarily focusing on "must-select" engagements. Must-select engagements¹ are industries and practice areas from which at least one

¹ Must-select engagements currently include engagements performed under *Governmental Auditing Standards (GAS)*, audits of employee benefit plans, audits performed under the Federal Deposit Insurance Corporation Improvement Act (FDICIA), audits of carrying broker-dealers and examinations of Service Organization Control (SOC) 1 and 2 engagements.

engagement must be selected as part of the peer review, if applicable. The enhanced oversight includes a review of the financial statements and engagement working papers to verify that peer reviewers are identifying all issues in must-select engagements, including whether engagements are properly identified as non-conforming. The oversight increases confidence in the peer review process and identifies areas that need improvement, such as peer reviewer training. Engagements are selected on a random basis to establish a statistically valid quality measure, and additional targeted selections focus on specific areas of concern, such as high-volume reviewers.

The oversight process has captured and highlighted areas of concern for the effectiveness, efficiency and consistency of the Program across AEs, regardless of state society size.

Noted inconsistencies from the oversights and RAB observations include (but are not limited to):

- Finding for Further Consideration forms (FFCs) lack all required elements in the firm's response – meaning, the firm's response does not include how it intends to implement changes to prevent future occurrences of the finding, the person responsible for implementation, the timing of implementation and, if applicable, additional procedures to ensure the finding is not repeated in the future
- The peer reviewer failed to identify the systemic causes of quality issues identified in the FFCs and deficiencies/significant deficiencies in the peer review report were not clearly articulated by the reviewer
- The appropriateness of the firms' taken or planned remediation of engagements not performed in accordance with professional standards was not discussed by the RAB – meaning, an incorrect or ineffective remediation plan could have been undertaken by the reviewed firm, and, if the firm's actions were not appropriate, could have resulted in a significant change to a negative report rating (pass with deficiencies or fail)
- Peer review overdue notices were not sent on a timely basis resulting in peer reviews that were not performed timely and noncooperation procedures delayed or not begun on firms – meaning, quality issues could remain undetected and firms could be violating licensing requirements
- SMEs identified a much higher rate of non-conforming engagements (engagements not performed in accordance with professional standards) than peer reviewers. The 2014 statistically-valid sample revealed a 43% deficiency rate versus a 9% rate detected by the peer reviewers. Targeted selections, which were high-volume reviewers, resulted in a 50% versus 0% rate.

While these items support the need to strengthen the qualifications and support of peer reviewers, which have and will continue to be addressed by various EAQ initiatives, they also support the need for technical reviewers to perform more thorough evaluations of peer reviews and AEs to perform more effective (and possibly more frequent) oversights. In addition, peer reviewers and RAB members should more closely consider the details of a review and contemplate the implications of the information provided, including the determination of whether:

- The firm has complied with professional standards
- The firm's planned remediation (for engagements and its system of quality control) is appropriate
- The firm's corrective actions are an appropriate remediation

- The firm is cooperating and if not, terminating the firm's enrollment, which in turn can jeopardize the firm's license to practice public accountancy

To help improve audit quality and consistency across peer review administration, the following criteria (more fully described below) are proposed for AEs to be most effective and to continue to administer the Program. The criteria are based upon discussions with state society leaders, meetings with AEs and the results of AE and RAB oversights:

- Administration of at least 1,000 peer reviews annually
- Effective AE peer review management, employee and consultant structure, qualifications and responsibilities
- Effective performance of Committee and RABs

Administration of at least 1,000 Peer Reviews Annually

While many lower volume AEs excel at Program administration, oversight data and RAB observations indicate large volume AEs generally operate with greater consistency, achieving administration that is cost effective and efficient. Achieving more consistency in peer review administration is key to improving peer review and enhancing audit quality in the profession.

With deeper resources, the AEs that administer a larger volume of reviews typically administer reviews more quickly, more frequently address reviewer performance issues at the appropriate level, when required, conduct highly deliberative RAB meetings, demonstrate thorough reviews in their RAB conclusions, and overall, receive fewer oversight comments. The yearly cost to administer 1,000 peer reviews annually, based on a team of one Director, six Administrators, one Manager and four full-time equivalent Technical Reviewers would be approximately \$1,015,000 (see Exhibit 2 for assumptions and the section immediately following this one for staffing rationale). As occurs today, AEs of the future will charge administrative fees to enrolled firms to recover all costs associated with Program administration. Larger volume AEs also tend to have more flexibility and expertise to incorporate changes in technology and guidance when changes are required. Additionally, the oversight and communications functions between and among the AICPA and the AEs can be enhanced to create more opportunities to provide members and state society value, and minimize inconsistencies.

Accordingly, we propose the administration of at least 1,000 peer reviews annually by each AE.

Effective Administering Entity Peer Review Management, Employee and Consultant Structure, Qualifications and Responsibilities

AEs that administer a large volume of reviews generally have the most effective and consistent administrative processes. Such AEs have similar structures, including dedicated full-time staff. Staffing specifics vary, however each has *at least* one full-time administrator, manager and technical reviewer who were identified as important aspects to the administration of the peer reviews. Further, these AEs have dedicated management focusing exclusively on peer review and sometimes on other audit quality initiatives; examples include ethics enforcement and staffing technical A&A committees. Also, as peer review continues to evolve, dependency on technology for all steps of the

process, including administration, has increased (and will continue to increase). The ability to adapt and work effectively with changing technology has been considered critical in determining the qualifications necessary to perform these roles.

The proposed structure of an AE would consist of a Director-level professional with primary responsibility for peer review and full time staff should include at least one of each of the following:

- Administrator
- Technical Reviewer
- Manager-level employee

The AE should have additional staff of dedicated technical reviewers or consultants to administer at least 1,000 peer reviews annually. Our estimates indicate 1,000 peer reviews will require 9,000 administrator and 7,100 technical reviewer hours (see Exhibit 2), and the AE should be structured accordingly.

Director

The Director would be responsible for overseeing the operations of the Peer Review Program administration and ensuring quality and consistency. The Director would provide assistance to peer review firms and reviewers, including technical assistance in areas such as accounting, auditing and independence. The Director would be accountable for ensuring that the Committee and RABs act in compliance with the Program and the RAB Handbook. The Administrators, Managers and Technical Reviewers would report to the Director, who would have the authority to assign and reprioritize tasks for these positions. A Director's time would not need to be 100% allocated to peer review, but he/she should have sufficient experience and involvement to maintain an efficient and effective Program. See Exhibit 3 for additional responsibilities and recommended qualifications for this position.

Administrator

The Administrator(s) would be responsible for the scheduling aspects of the Program. The Administrator(s) would:

- Confirm that all enrolled firms schedule their reviews in accordance with AICPA *Standards* and state board requirements
- Maintain information for firms enrolled in the program that do not require peer reviews
- Assist firms to resolve any scheduling errors or issues
- Work with peer reviewers to coordinate the submission of peer review documents to the AE
- Process the submitted review documents to ensure that all required documentation is received
- File review work papers received from peer reviewers and reviewed firms so they are accessible for the Technical Reviewers
- Maintain Facilitated State Board Access records in a timely manner
- Ensure the AE Plan of Administration is submitted annually to the AICPA by the stated deadline

Our estimates indicate six full-time equivalent Administrators would be needed to effectively administer 1,000 peer reviews annually based upon an assumption of 9,000 total hours of Administrator time (see Exhibit 2 for further information on assumptions). See Exhibit 4 for additional responsibilities and recommended qualifications for this position.

Manager

The Manager(s) would be responsible for the operation and maintenance of all administrative functions of the Peer Review Program. The Manager(s) would:

- Develop processes and procedures for the scheduling and processing of reviews, maintain information on the status of reviews and monitor compliance with deadlines
- Coordinate the review of working papers with Technical Reviewers, and coordinate and document activities of the RAB

See Exhibit 5 for additional responsibilities and recommended qualifications for this position.

Technical Reviewer

The Technical Reviewer(s) would be responsible for performing the work paper review before the presentation of a peer review to the RAB. The Technical Reviewer(s) should be capable of performing a full work paper review, which includes a review of all of the engagement checklists and the quality control policies and procedures documents. The Technical Reviewer(s) would:

- Work closely with peer reviewers and public accounting firms to identify and resolve questions and issues prior to RAB presentation
- Assist the RAB member responsible for presenting the review by providing additional detailed information as necessary

Our estimates indicate four full-time equivalent Technical Reviewers would be needed to administer effectively full working paper reviews of 1,000 peer reviews annually based upon an assumption of 7,100 total hours of technical reviewer time (see Exhibit 2 for further information on assumptions). See Exhibit 6 for additional responsibilities and recommended qualifications for this position.

Full-time Administrators and Technical Reviewers may serve in a limited capacity in other areas with prior approval and periodic review by the OTF. Any known additional responsibilities should be provided to the AICPA as part of the AE's proposed plan for continuing as an AE (see discussion below under Administering Entities of the Future).

The AICPA will consider exceptions to the required criteria for AEs, by grandfathering Directors, Administrators, Managers and Technical Reviewers currently engaged in the Program and performing at a high level of quality in their area of expertise. An objective of the final plan is to retain experienced and qualified peer review staff members, and Program technology will enable telecommuting where appropriate.

Effective Performance of Peer Review Committee and Report Acceptance Body

Each AE will be responsible for establishing a Committee and RAB(s) having the collective knowledge and expertise key to the Program's success and the profession's self-regulation. Through assigning and following up on corrective actions, Committee and RAB members help improve audit quality and support firms by holding them accountable. Finally, the Committees and RABs ascertain the right information is included in the system to support improvement and changes to professional standards, as appropriate.

The Committee would include:

- 15-20 members who are team captain qualified
- Members from each of the states administered by the AE

Committee members would ordinarily serve five one-year terms that are dependent upon satisfactory performance with the ability to extend beyond five years for one or more additional one-year terms depending upon the Committee's needs.

The full Committee should meet at least quarterly, in whichever format the AE deems effective (in-person, web-based, telephonic), with at least one in-person meeting per year. The Committee is ultimately responsible for the following:

- Discussing AICPA PRB proposals to the Program and comment, as appropriate
- Discussing and executing changes to the Program *Standards*, interpretations and related guidance issued by the AICPA PRB
- Communicating guidance changes to RAB members who are not on the Committee
- Discussing the AE Plan of Administration, including effectiveness of technical reviews and oversights and approval before submission to the PRB
- Resolving concerns raised during RAB meetings
- Resolving disagreements (or where no resolution can be made, referring unresolved issues to the PRB for final determination)
- Monitoring the status of reviews administered (e.g., overdue scheduling forms, length of time since work papers were received, firms undergoing hearings, etc.)
- Evaluating the qualifications and competencies of technical reviewers on an annual basis
- Performing other tasks as discussed in the RAB Handbook

An Executive Committee may be formed and would be responsible for the tasks previously listed, delegating certain tasks to sub-committees or other groups who then report back to the Executive Committee.

RAB meetings would follow these criteria:

- Organized and hosted by AE on a regular cycle, scheduled, at a minimum, every two weeks (meeting may be canceled if there are not six peer reviews (or a reasonable number) to accept)
- Active participation by approximately five members in each meeting

- A minimum of three RAB members must accept any particular review
- A mix of experience of industries with at least one member who has experience in any must-select industry in which such engagements are included in a review to be presented
- Members presenting or voting on system reviews must be team captain qualified
- Members presenting or voting on engagement reviews must be review captain qualified
- Meetings may be separated between system and engagement reviews based upon qualification of the RAB members
- When conducting conference calls, the number and complexity of reviews should be considered so that the calls are expected to last approximately two hours

A Committee member would chair each RAB meeting. This allows for consistency in RAB decisions and the identification of overarching concerns to be brought back to the Committee for discussion and resolution. It would also aid in increasing the effectiveness of the technical review process and oversight. The RAB Chair would also communicate Committee decisions, changes in guidance and other information during RAB meetings, as necessary.

The AE should maintain a RAB pool large enough to rotate members so that each RAB does not consist of the same individuals. The pool should include an estimated 49 members, which considered the following:

- 59 meetings per year,
- Five RAB members involved in each call and
- Six calls per year per RAB member.

Each RAB member would contribute approximately 50 hours per year. (See Exhibit 2 for assumptions). The RAB member pool should consist of individuals from each of the states administered by the AE. The AE should avoid RABs comprised of all individuals from one particular market especially when that market's reviews are being presented. It is possible and acceptable that a RAB may not have a member from all markets being administered.

For each RAB meeting, the reviews being presented would be assigned to RAB members based on their industry experience, RAB members should commit sufficient time prior to the meeting to familiarize themselves with the details of the reviews they are assigned to present and if necessary, discuss the review with the Technical Reviewer. For reviews the RAB member would not be responsible for presenting, they should *at least* have a general understanding of the results and issues prior to the meeting so a robust discussion can occur and the RAB can reach the right conclusion about the review.

For each review, the RAB would consider whether it was performed in accordance with the *Standards*, interpretations and other related guidance. RAB members should also consider whether Matters for Further Consideration (MFCs), FFCs, reports and letters of response are substantive and prepared in accordance with the *Standards*. The RAB should determine whether the firm's remedial actions for non-conforming engagements and systemic issues are appropriate, and whether any corrective actions or implementation plans are necessary. The RAB should follow up on any corrective

actions or implementation plans to ensure that they are completed to the satisfaction of the RAB.

It is critical to the efficacy of the Program that Committee and RAB members exercise the appropriate degree of skepticism in discharging their responsibilities. Our combined and collaborative ability to continue to administer the Program on behalf of stakeholders - and to satisfy the needs of regulators - requires that Committee members, RAB participants, and AE and AICPA staff be willing to execute on the values of the CPA profession, even when faced with difficult or uncomfortable decisions.

National Peer Review Program

National Peer Review Committee

The National PRC currently meets the proposed criteria, except for administering 1,000 reviews per year. Approximately 700 firms have their peer reviews administered by the National PRC either voluntarily or due to meeting any of the following criteria:

- 1) The firm is required to be registered with and subject to permanent inspection by the PCAOB,
- 2) The firm performs any engagement under PCAOB standards or
- 3) The firm is a provider of Quality Control Materials (QCM) (or affiliated with a provider of QCM) that are used by firms that it peer reviews

Due to the unique nature of the firms administered by the National PRC with special requirements and their need for more rigorous oversight, these firms would continue to be administered by the National PRC to ensure that they will be supported effectively.

New National AE

The AICPA would create an additional national AE that would meet this proposal's criteria to administer peer review for firms that do not meet National PRC criteria, and to provide another option for state societies that choose not to administer the program in their state. As with the current Program, firms may request approval for their reviews to be administered by the AE primarily responsible for their home state or by another newly-approved AE, upon approval by that AE after evaluating the reasons for the request.

Administering Entities of the Future

As occurs today, the AICPA will evaluate and approve AEs administering the program in the future. A commitment to meet the criteria by a certain date, as finally determined after input from stakeholders, would be a prerequisite to such approval, but not be the sole deciding factor. The AICPA would work with the approved AEs on transition, including how the AEs can establish best practices regarding cost and quality issues. The AICPA will provide policy communications through state society committees to ease the transition by outlining the ongoing role of the society. Multiple state societies have outsourced their own peer reviews for many years (See Exhibit 1), with effective and efficient results for members.

The AICPA and the PRB will continue to serve in an oversight role for AEs and will not actively participate in the RAB and Committee meetings.

Currently, peer reviews of non-AICPA member firms are administered by the state societies where their home office is located, and they are not officially part of the Program. The AICPA's *Standards* and related Interpretations are expected to be revised so that non-AICPA member firms and non-state society member firms must be enrolled in the AICPA Program to receive a peer review through an AE.

Feedback on the proposed criteria and structure is requested by August 1, 2016. Once criteria are established, AEs wishing to continue to administer the program will be asked to communicate to the AICPA no later than January 31, 2017 their commitment to and plans for meeting the criteria. The goal is to have the revised structure in place by December 28, 2018. The AICPA is committed to providing resources to all AEs to help ease the transition to becoming an AE of the future, or to transitioning administration responsibilities to another AE.

Transitioning out of Administering Entity Role

If a state society does not plan to administer reviews going forward or chooses not to meet the criteria by the end of 2018, all of the reviews administered by that state society must be transitioned to another AE, either:

1. A newly-approved AE or
2. The new national AE established by the AICPA.

As with the current Program, firms may request approval for their reviews to be administered by the AE primarily responsible for their home state or by another newly-approved AE, upon approval by that AE after evaluating the reasons for the request.

Throughout this transition, there will likely be change management issues for members, peer reviewers, firms and AICPA and state society staff. The AICPA is committed to helping ease transition issues, and will work to find ways to retain the skills and knowledge of participants at all levels of the current AE structure, whenever feasible and appropriate.

Stakeholder Feedback Requested by August 1, 2016

Feedback is integral to the progress of evolving peer review administration. All input will be considered, and it will inform and shape how the AICPA and state CPA societies move forward with this proposal.

Please consider the following questions when commenting on this discussion paper.

- Is the proposed timeline feasible?
 - Is January 31, 2017 sufficient time to make decisions regarding the role your state CPA society will play in peer review in the future?
 - Is December 28, 2018 a feasible timeframe for full transition to the new model assuming appropriate technology is in place?

- Are there other qualifications of Administrators, Technical Reviewers, Directors, RAB members or Committee members that should be included in the required criteria?
- Are there procedures that should be standardized at the Committee vs. the RAB level?
- Are there any additional issues for consideration?
- If you disagree with any aspects of the proposed plan, please share alternative suggestions for meeting the quality objectives.

Comments and responses should be sent to Beth Thoresen, Director – Peer Review Operations, AICPA Peer Review Program, AICPA, 220 Leigh Farm Road, Durham, NC 27707-8110 or prsupport@aicpa.org and are requested by August 1, 2016.

Thank you in advance for your thoughtful consideration of the issues facing Peer Review administration, and your commitment to enhancing audit quality throughout the CPA profession.

Exhibit 1 – Administering Entities Approved to Administer the AICPA Peer Review Program

Administering Entity	Licensing Jurisdiction
Alabama Society of CPAs	Alabama
Arkansas Society of CPAs	Arkansas
California Society of CPAs	California, Arizona, Alaska
Colorado Society of CPAs	Colorado
Connecticut Society of CPAs	Connecticut
Florida Institute of CPAs	Florida
Georgia Society of CPAs	Georgia
Hawaii Society of CPAs	Hawaii
Idaho Society of CPAs	Idaho
Illinois CPA Society	Illinois, Iowa
Indiana CPA Society	Indiana
Kansas Society of CPAs	Kansas
Kentucky Society of CPAs	Kentucky
Society of Louisiana CPAs	Louisiana
Maryland Association of CPAs	Maryland
Massachusetts Society of CPAs	Massachusetts
Michigan Association of CPAs	Michigan
Minnesota Society of CPAs	Minnesota
Mississippi Society of CPAs	Mississippi
Missouri Society of CPAs	Missouri
Montana Society of CPAs	Montana
National Peer Review Committee	N/A
Nevada Society of CPAs	Nevada, Wyoming, Nebraska, Utah
New England Peer Review, Inc.	Maine, New Hampshire*, Rhode Island, Vermont
New Jersey Society of CPAs	New Jersey
New Mexico Society of CPAs	New Mexico
New York State Society of CPAs	New York
North Carolina Association of CPAs	North Carolina
North Dakota Society of CPAs	North Dakota
The Ohio Society of CPAs	Ohio
Oklahoma Society of CPAs	Oklahoma, South Dakota
Oregon Society of CPAs	Oregon, Guam, Northern Mariana Islands
Pennsylvania Institute of CPAs	Pennsylvania, Delaware, Virgin Islands
Puerto Rico Society of CPAs	Puerto Rico
South Carolina Association of CPAs	South Carolina
Tennessee Society of CPAs	Tennessee
Texas Society of CPAs	Texas
Virginia Society of CPAs	Virginia, District of Columbia
Washington Society of CPAs	Washington
West Virginia Society of CPAs	West Virginia
Wisconsin Institute of CPAs	Wisconsin

*New Hampshire firms will be administered by the Massachusetts Society of CPAs beginning May 1, 2016.

Exhibit 2 – Assumptions in Calculations

The proposed criteria for the new AEs is based on administering 1,000 peer reviews annually, having effective AE employee structure, qualifications and responsibilities, and having an effective Committee and RAB structure as described on pages 5-9. As occurs today, AEs of the future will charge administrative fees to enrolled firms to recover all costs associated with administration of the Program. Assumptions used in calculating the number of technical reviewers and RAB members include:

- For 2012-2014, there were 14,355 engagement reviews and 12,081 system reviews
- All firms with 100 or more professionals are administered by the National PRC. The calculations excluded firms whose peer review was administered by the National PRC
- All firms with more than 10 professionals have a system review.
- For firms with 10 or fewer professionals, 39% are system reviews and 61% are engagement reviews
- The number of firms with more than 10 professionals are spread evenly across the AEs
- Based upon performing 1,000 technical reviews annually, 427 would be system reviews and 573 would be engagement reviews.
- Estimated hours of technical review time per review
 - System reviews – 8 hours
 - Engagement reviews – 2.5 hours
- Technical reviewers to spend an estimated 190 hours per month (excluding time per reviews) on RAB meetings and preparation, follow-up on corrective actions, on-site and off-site oversights and other trainings
- Technical reviewers are able to accept 30% of the engagement reviews (approximately 172 out of 1,000) without presenting to the RAB.
- Of the reviews presented to the RAB per year, 427 would be system reviews and 401 would be engagement reviews
- Of the reviews that require RAB acceptance, 30% are included on the consent agenda (128 would be system reviews and 120 would be engagement reviews).
- System and engagement reviews discussed by the RAB were divided into easy, moderate and difficult reviews for each type of review with different amounts of time allocated to each to estimate that 118 hours of RAB meeting time would be required per year
- RAB Meetings should not extend longer than 2 hours
- Administrators spend on average 9 hours per review administered, assuming a small increase in efficiency provided by self-service background form
- Full-time employee equivalent calculations for the administrators and technical reviewers are based upon 1,800 hours, which would *exclude* vacation, continuing education, etc.

Exhibit 3 – Proposed Peer Review Director Responsibilities and Qualifications

Responsibilities:

- Oversee the technical and operational aspects of the Peer Review Program
- Maintain the quality and consistency of the Peer Review Program
- Ensure the Committee and the RAB(s) act in compliance with the Peer Review Program Manual and RAB Handbook
- Assign and reprioritize tasks for Manager, Administrator and Technical Reviewer
- Provide assistance (technical and general) to firms, peer reviewers and staff
- Assist in the review of CPE materials, monitor CPE courses and, as necessary, write CPE materials for courses
- Ensure the Peer Review Program website is up to date and accurate
- Approve and ensure peer review communications are accurate

Qualifications:

- Bachelor's degree in accounting, finance or related field
- CPA designation and active license
- Minimum of eight years of professional experience in accounting or auditing
- Strong knowledge of accounting, auditing and quality control standards
- Ability to multi-task in a time-sensitive environment
- Excellent verbal and written communication skills
- Strong interpersonal skills with ability to work well with CPAs
- Strong knowledge of the state peer review regulatory requirements in the states it administers and a familiarity with the peer review requirements of other state boards

Exhibit 4 – Proposed Peer Review Administrator Responsibilities and Qualifications

Responsibilities:

- Manage the scheduling aspects of the Peer Review Program ensuring that all enrolled firms schedule their reviews in accordance with standards
- Provide assistance to CPA firms in the preparation and scheduling of their review, the scheduling of the review in the AICPA computer system, the selection and approval of reviewers
- Assist firms to resolve any scheduling errors or issues
- Coordinate with peer reviewers the submission of peer review documents to the AE
- Process submitted documents to ensure completeness of information provided before review by a Technical Reviewer
- Coordinate with Technical Reviewers to provide peer review documents for review
- Assist firms and reviewers by answering questions and providing information about the Peer Review Program
- Help individuals understand the licensing requirements of peer review and enroll firms that are not already enrolled in the Peer Review Program
- Evaluate and process firm change requests through research and discussion with members
- Maintain current knowledge of the Peer Review Program standards and guidance and Administrative Handbook

Qualifications:

- Bachelor's degree in a related field
- Two to three years of work experience in the administration of a compliance or regulatory program
- Ability to support web based applications or other software support technology
- Ability to multi-task in a time-sensitive environment
- Proficiency in Microsoft Word, PowerPoint and Excel
- Ability to work independently and with minimal supervision
- Ability to work non-traditional hours on a flexible basis
- Proficiency in time management, organization and problem solving skills
- Strong interpersonal skills with ability to work well with CPAs
- Knowledge of state board peer review requirements related to the scheduling, completion and state board document submission

Exhibit 5 – Proposed Peer Review Manager Responsibilities and Qualifications

Responsibilities:

- Maintain the day to day operations of the Peer Review Program
- Develop processes and procedures for the scheduling and processing of reviews
- Maintain information on the status of reviews in progress to ensure timely completion
- Document and follow-up on the receipt of review materials, letters of response and remedial action documentation
- Monitor compliance with deadlines for scheduling information, completed reviews, and follow-up information
- Ensure the timely mailing of communications (i.e. request for scheduling, acceptance/deferral letters, follow-up letters, etc.)
- Assist in planning the budget for the Peer Review Program
- Coordinate the performance of technical reviews
- Assist the Report Acceptance Body by preparing meeting materials and answering questions
- Coordinate and document the decisions of the Report Acceptance Body
- Develop and disseminate Peer Review Program information
- Respond to inquiries regarding billing charges incurred during the review process
- Maintain current knowledge of the Peer Review Program standards and guidance and Administrative Handbook
- Assist in the preparation of the Annual Plan of Administration
- Actively participate in conference calls scheduled by the AICPA to receive training and other information

Qualifications:

- Bachelor's degree in related field
- Minimum of three years of experience in the administration of a compliance or regulatory program, or equivalent experience
- Ability to support web-based applications or other software support technology
- Proficiency in Microsoft Word, PowerPoint, and Excel
- Ability to work independently and with minimal supervision
- Ability to multi-task in a time-sensitive environment
- Ability to work non-traditional hours on a flexible basis
- Proficiency in time management, organization, and problem-solving skills
- Excellent written and verbal communication skills
- Strong interpersonal skills with ability to work well with CPAs

Exhibit 6 – Proposed Technical Reviewer Responsibilities and Qualifications

Responsibilities:

- Perform a full working paper review (includes all engagement checklists and quality control policies and procedures documents) before presentation to the Report Acceptance Body
- Work closely with peer reviewer and firms to identify any questions or issues before presenting a review to the Report Acceptance Body
- Provide assistance to the Report Acceptance Body member responsible for presenting the review and provide any additional information as necessary
- Participate in at least one peer review each year, which may include participation in an on-site oversight of a system review
- Maintain current knowledge of Peer Review Program standards and guidance
- Obtain appropriate CPE annually to maintain an appropriate level of accounting and auditing knowledge including necessary CPE needed to review must-select engagements
- Acquire and maintain an in-depth knowledge of the technical aspects of the Peer Review Program

Qualifications:

- Bachelor's degree in accounting, finance or related field
- CPA designation and active license
- Minimum of five years of current public accounting experience, including preferred experience with Government and/or ERISA engagements
- Strong knowledge of accounting, auditing and quality control standards
- Ability to multi-task in a time-sensitive environment
- Proficiency in Microsoft Word, PowerPoint, and Excel
- Ability to work independently and with minimal supervision
- Ability to work non-traditional hours on a flexible basis
- Proficiency in time management, organization and problem-solving skills
- Strong interpersonal skills with ability to work well with CPAs



Peer Review Program

**California Board of Accountancy
Enforcement Activity Report**
Report as of March 31, 2016

CBA Item VII.A.
May 19-20, 2016

Complaints

Complaints/Records of Convictions	FY 2013/14	FY 2014/15	FY 2015/16 9 months of data
Received	3,255	2,702	2,028
<i>Internal</i>	2,861	2,248	1,662
<i>Internal – Peer Review¹</i>	1,892	449	419
<i>Internal – All Other</i>	969	1,799	1,243
<i>External</i>	394	454	366
Assigned for Investigation	2,969	2,007	1,464
Closed – No Action	289	713	566
Average Days from Intake to Closure or Assignment for Investigation	4	4	3
Pending	0	0	2
Average Age of Pending Complaints (days)	0	0	0

¹ Peer Review internal complaints typically include investigation of failed peer review reports, failure to comply with peer review citations, filing an incorrect PR-1, or renewing a license without undergoing a peer review when a peer review is required. For FY 2013/14, these complaints included failures to respond during the initial peer review phase-in period (July 1, 2011 to July 1, 2013).

- The California Board of Accountancy (CBA) has opened 2,028 complaints since the beginning of the new fiscal year, with 82 percent of these complaints being internal referrals.
- The top external complaint is regarding non-CPAs practicing public accounting.

California Board of Accountancy Enforcement Activity Report

Report as of March 31, 2016

Investigations

Investigations	FY 2013/14	FY 2014/15	FY 2015/16 9 months of data
Assigned	2,969	1,953	1,464
<i>Internal</i>	2,628	1,579	1,114
<i>Internal – Peer Review¹</i>	1,888	439	406
<i>Internal – All Other</i>	740	1,140	708
<i>External</i>	341	374	350
Closed	2,669	1,773	1,627
Average Days to Close	74	167	181
Total Investigations Pending	825	1,081	984
<i>0-6 Months</i>	472	639	421
<i>6-12 Months</i>	191	211	248
<i>12-18 Months</i>	111	120	175
<i>18-21 Months</i>	18	39	37
<i>21-24 Months</i>	22	33	30
<i>> 24 Months</i>	11	39	73
Average Age of Open Cases (days)	202	222	276
Median Age of Open Cases (days)	153	126	220

¹ For FY 2013/14, these investigations included failures to respond to multiple CBA requests to file the required PR-1 as part of the initial peer review phase-in period that occurred between July 1, 2011 and July 1, 2013.

Chart A on Page 7 illustrates the percentage of open investigations by length of time.

- The CBA has closed 1,627 assigned investigations since the beginning of the fiscal year.
- The total investigations pending is 984, a 13 percent reduction from the last report.
- Presently, there are 73 investigations over 24 months, which includes 17 new cases. These cases are the most complex investigations requiring additional time to resolve. Of the 73 investigations, staff has completed or are near completion on 32 of the cases, as follows:
 - 17 cases have had investigation reports completed and are pending supervisor review
 - One case has had the investigation report reviewed and approved and is being prepared for referral to the Attorney General’s Office

California Board of Accountancy Enforcement Activity Report

Report as of March 31, 2016

- Two cases are being prepared for citations and fines
 - 12 cases will be closed as of the next report
- As previously communicated, management has been working diligently with staff to complete the investigations pending over 24 months and have successfully closed 86 of these cases during Fiscal Year (FY) 2015/16, including 30 since the last report.

Discipline

Attorney General Referrals	FY 2013/14	FY 2014/15	FY 2015/16 9 months of data
Referrals	74	97	88
Accusations Filed	34	47	58
Statements of Issues Filed	8	9	1
Petitions for Revocation of Probation Filed	2	2	5
Closed	31	63	56
<i>Via Stipulated Settlement</i>	21	55	38
<i>Via Proposed Decision</i>	4	2	3
<i>Via Default Decision</i>	6	6	15
Discipline Pending	95	119	139
<i>0-6 Months</i>	50	42	65
<i>6-12 Months</i>	15	40	34
<i>12-18 Months</i>	16	28	19
<i>18-21 Month</i>	7	4	10
<i>21-24 Months</i>	4	0	6
<i>> 24 Months</i>	3	5	5

Chart B on Page 7 illustrates the percentage of cases pending at the AG's Office by length of time.

- There are five cases pending at the Attorney General's Office for more than 24 months. The current status of the cases are as follows:
 - A writ was filed with the California Superior Court in August 2012 following adoption of a proposed decision and denial of a Petition for Reconsideration in July 2012. A decision was issued on August 28, 2014 denying the writ of mandate. The stay previously issued was dissolved and the CBA's decision revoking the Petitioner's license became effective. The Petitioner immediately filed a Notice of Appeal with the Appellate Court seeking a stay of the decision. The motion requesting a trial was denied at a hearing on December 12, 2014. A ruling from the Court of Appeals is pending

California Board of Accountancy Enforcement Activity Report

Report as of March 31, 2016

- One case was adopted by the CBA at its March 2016 meeting and will be removed from the next report
- Three cases have hearing dates scheduled in May, August, and December of 2016

Citations and Fines

Citations	FY 2013/14	FY 2014/15	FY 2015/16 9 months of data
Total Citations Issued	1,522 ¹	348	218
Total Fines Assessed	\$399,020	\$119,387	\$82,750
Fines Average	\$702	\$343	\$380
Average number of days from receipt of a complaint to issuance of a citation	33	142	150
Top 3 Violations Resulting in Citation			
1:	Response to CBA Inquiry (Reg 52)	CE Basic Requirements (Reg 87)	CE Basic Requirements (Reg 87)
2:	CE Basic Requirements (Reg 87)	Response to CBA Inquiry (Reg 52)	Response to CBA Inquiry (Reg 52)
3:	Name of Firm (BPC 5060)	Name of Firm (BPC 5060)	Fingerprinting & Disclosure (Reg 37.5)

¹ For FY 2013/14, 1,481 citations were issued for failure to respond to multiple CBA requests to file the required PR-1 as part of the initial peer review phase-in period that occurred between July 1, 2011 and July 1, 2013.

- As noted in previous reports, the Average number of days from receipt of a complaint to issuance of a citation has increased from the FY 2013/14. This is due to the high volume of Peer Review (Failure to Respond) citations that were issued and the quick turn-around time that was initiated.
- The fine amount assessed varies from \$100 to \$5,000 and is determined on a case-by-case basis. Factors that may increase or decrease the fine amount include aggravating or mitigating circumstances, and length of time the violation existed.
- Violation of the continuing education basic requirements is currently the most common reason for issuance of a citation.

California Board of Accountancy Enforcement Activity Report

Report as of March 31, 2016

Probation Monitoring

Monitoring Activities	FY 2015/16 9 months of data
Number of Licensees on Probation as of Last Report	102
New Probationers	7
Total Number of Probationers	102
Out-of-State Probationers	7
Probation Orientations Held since Last Report	0

- Currently 13 probation orientations are scheduled for the May 5, 2016 Enforcement Advisory Committee Meeting.

Criminal Offender Record Information (CORI)

CORI Fingerprints ¹	FY 2014/15	FY 2015/16 9 months of data
Notification Letters Sent	19,715	4,723
CORI Compliances Received	11,971	5,715
Non-Compliance Notifications Sent (Audit)	742	403

CORI Enforcement Cases	FY 2014/15	FY 2015/16 9 months of data
Received	624	376
Assigned for Investigation	185	236
Closed – No Action	439	134
Non-Compliance Citations and Fines Issued	45	54
Referred to the Attorney General's Office	14	21

¹ CORI-related activities that occurred in FY 2013/14 were previously reflected on the Licensing Activity Report.

- Effective January 1, 2014, all licensees renewing in active status are required to have fingerprints on file for the purpose of conducting a state and federal criminal offender record information background check.
- For FY 2015/16 a total of 4,723 fingerprint notification letters were sent. December 31, 2015 concludes the fingerprint notification letter procedure.
- On March 15, 2016, all active licensees without fingerprint clearance on record who received the initial fingerprint notifications were sent Final Notices of Fingerprint Non-Compliance (Audit_[CBA1]). Going forward, a retroactive audit is performed monthly for licensees in an active status without fingerprint clearances on record.

California Board of Accountancy Enforcement Activity Report

Report as of March 31, 2016

Mobility

Enforcement Aspects of Mobility	FY 2014/15	FY 2015/16 9 months of data
Pre-Notification Forms Received	2	1
Cessation Event Forms Received	0	0
SEC Discipline Identified	27	29
PCAOB Discipline Identified	21	10
Out-of-State Accounting Firm Registrants That Reported Other Discipline	14	8
Complaints Against Practice Privilege Holders	11	3

Effective July 1, 2013, the CBA implemented a no notice, no fee practice privilege model in California. This table depicts the enforcement aspects of mobility, including the receipt and investigation of Practice Privilege Pre-Notification Forms and Notification of Cessation Event Forms.

- The complaints against practice privilege holders include practice without permit, discipline by other states/governmental agencies, and practice complaints.
- Staff sends letters to all CPAs who were disciplined by either the Securities and Exchange Commission or the Public Company Accounting Oversight Board to inform them that they must seek CBA authorization prior to practicing in California.

Division Highlights and Future Considerations

The Enforcement Division has the following vacancies:

- Two Staff Services Managers
- One Associate Governmental Program Analyst
- Two Investigative Certified Public Accountants (ICPA) Limited-Term and one ICPA Retired Annuitant
- One Office Technician
- Two Student Assistants
- Eight CORI positions are scheduled to expire on June 30, 2016 and June 30, 2017

**California Board of Accountancy
Enforcement Activity Report**
Report as of March 31, 2016

Chart A – Open Investigations as of March 31, 2016

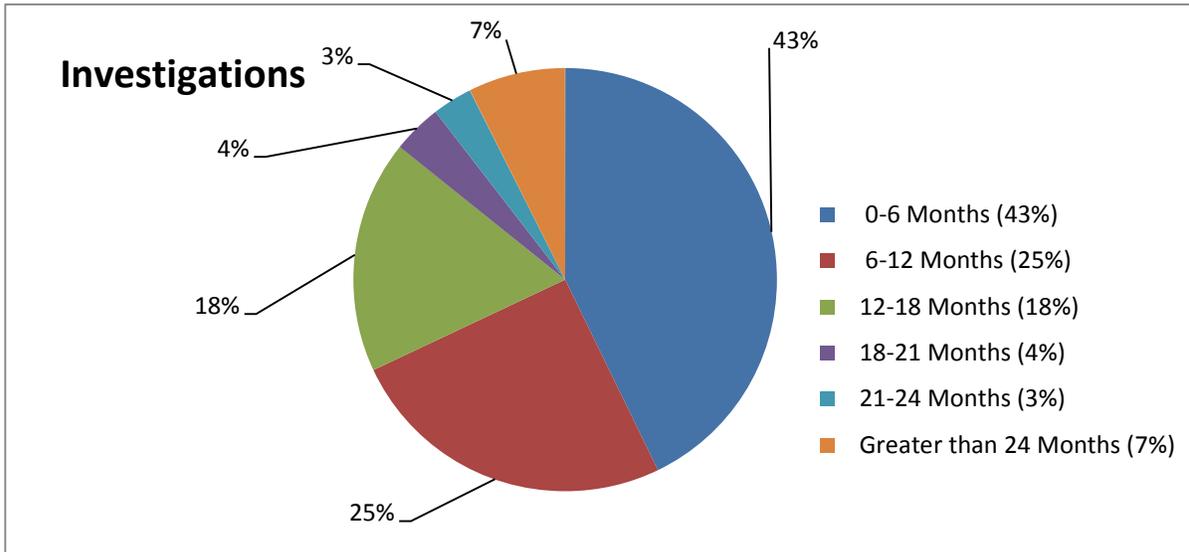
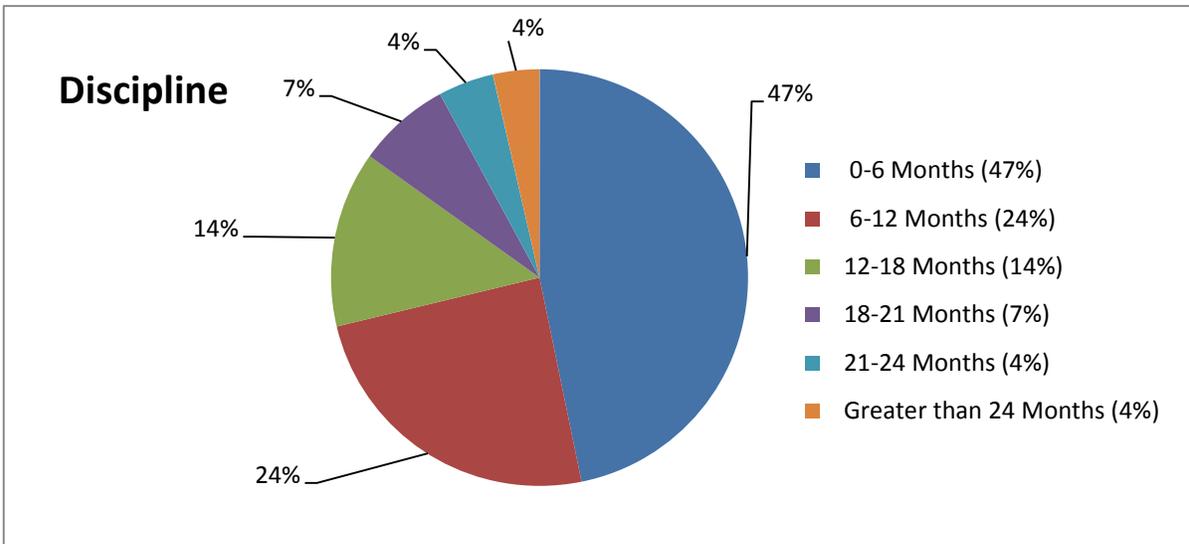


Chart B – Discipline Pending at the Attorney General Office as of March 31, 2016



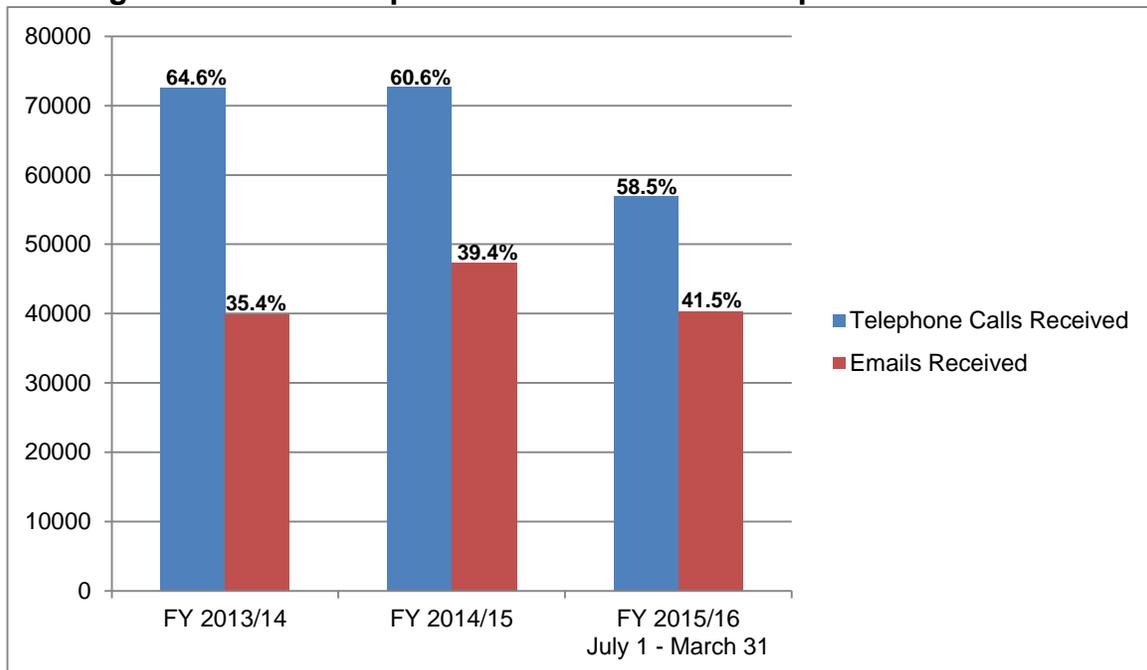
**California Board of Accountancy
Licensing Activity Report
As of March 31, 2016**

Contact with CBA Stakeholders

Telephone Calls Received	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Examination Unit	18,815	22,809	17,217
Initial Licensing Unit	27,889	22,993	20,297
License Renewal and Continuing Competency Unit	25,172	26,449	19,061
Practice Privilege Unit	663	468	340

Emails Received	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Examination Unit	10,867	13,121	10,734
Initial Licensing Unit	14,098	14,588	14,066
License Renewal and Continuing Competency Unit	14,488	19,258	15,125
Practice Privilege Unit	381	397	392

Percentage of Division Telephone Calls Received Compared to Emails Received



**California Board of Accountancy
Licensing Activity Report
As of March 31, 2016**

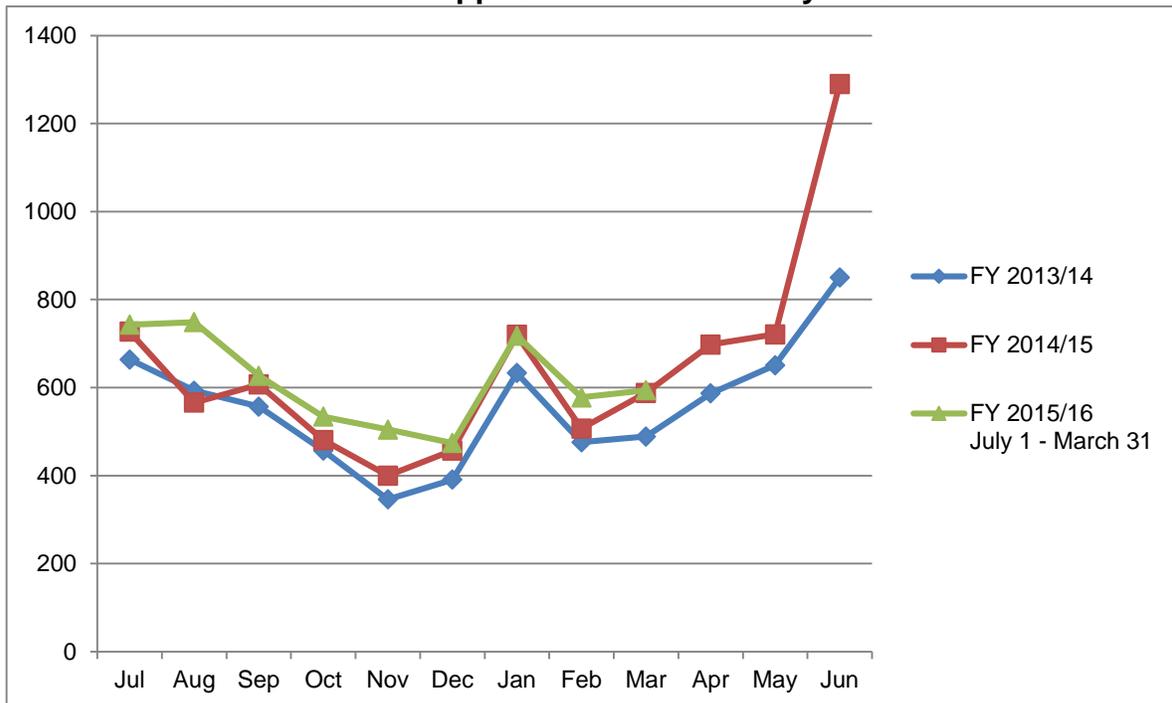
Examination and Initial Licensing Unit

- In accordance with the Fiscal Year (FY) 2014/15 Governor's Budget, the CBA submitted licensing performance targets for the 2016/17 Governor's Budget. The Licensing Division will be reporting actual data from FY 2015/16 for the 2017/18 Governor's Budget. The statistics are based on applications for examination and licensure and are measured by the time the application is received at the CBA to the time it is approved. The reporting will be separated by application type and whether it was complete or incomplete upon initial review. The CBA is expecting to bring the statistical report to the September CBA meeting.
- Included in this report is the NASBA consolidated reports of candidate performance on the Uniform CPA Examination (CPA Exam) for the first testing window of 2016. There are two parts to this quarterly report: 1) a jurisdiction specific report and 2) an overall performance overview.
- April Outreach Events attended by Examination and Initial Licensing Staff:
 - On April 1, 2016, staff attended an outreach engagement at the University of Southern California to provide information and answer questions regarding the CPA Exam and licensure requirements.
 - On April 21-22, 2016, staff attended an outreach engagement at the California State University, Fullerton where they presented examination and licensure requirements to students and faculty.

California Board of Accountancy Licensing Activity Report As of March 31, 2016

CPA Examination Applications	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
First-Time Sitter			
Total Received	6,661	7,762	5,552
Total Approved	6,720	6,451	5,653
Average Days to Process	20	29	31
Repeat Sitter			
Total Received	17,044	17,802	13,613
Total Approved	17,455	15,791	14,255
Average Days to Process	6	9	8

First-Time Sitter Applications Received by Fiscal Year



**California Board of Accountancy
Licensing Activity Report
As of March 31, 2016**

CPA Examination Special Requests	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Conditional Credit and Notice to Schedule Extensions			
Total Received	173	181	110
Total Completed	176	167	120
Average Days to Process	18	30	30
Educational Qualification Appeals			
Total Received	50	29	18
Total Completed	52	27	19
Average Days to Process	22	21	24
Special Accommodation Requests			
Total Received	172	194	169
Total Completed	178	182	169
Average Days to Process	12	18	17

Individual License Applications	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Certified Public Accountant			
Total Received	4,600	3,158	2,881
Total Approved	4,906	2,682	2,735
Average Days to Process	24	24	24

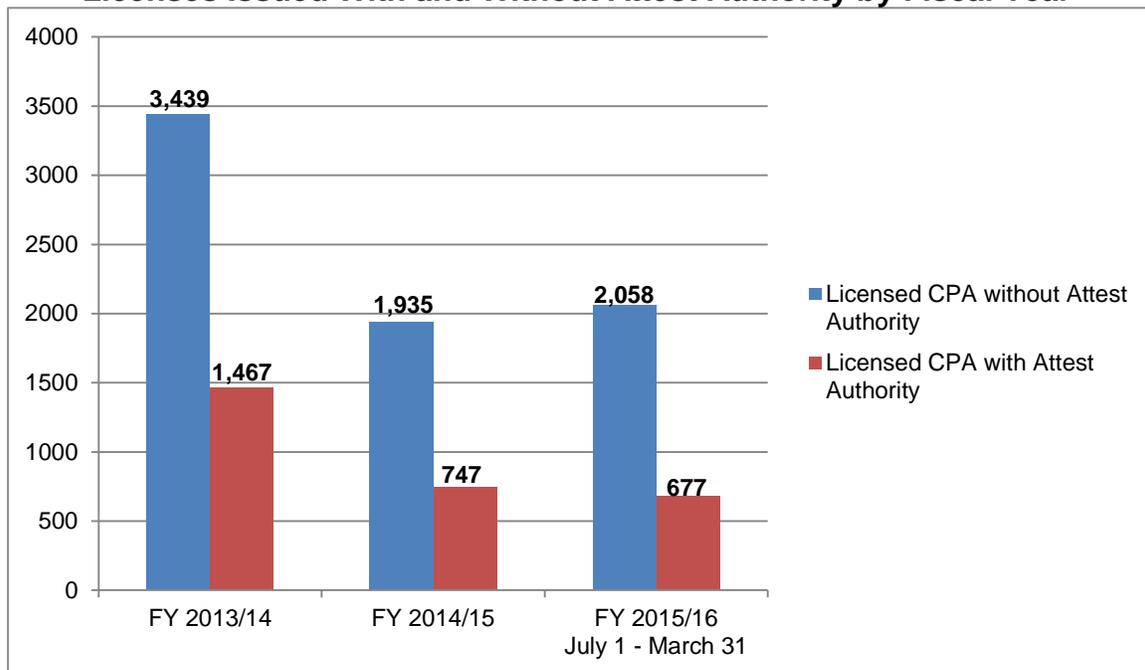
California Board of Accountancy Licensing Activity Report As of March 31, 2016

Method of Licensure*	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
150 Hour Requirement – attest**	17	245	369
150 Hour Requirement – general**	55	742	1,160
Pathway 1 – attest	522	182	97
Pathway 1 – general	824	272	295
Pathway 2 – attest	928	320	211
Pathway 2 – general	2,560	921	603

*Total Method of Licensure represents those applicants who were issued a license; refer to Total Approved.

** Effective January 1, 2016, all licensure applicants must meet the 150 semester unit requirement.

Licenses Issued With and Without Attest Authority by Fiscal Year



Certification Requests	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Total Received	1,039	1,051	760
Total Processed	972	1,042	622
Average Days to Process	22	20	22

**California Board of Accountancy
Licensing Activity Report
As of March 31, 2016**

Firm License Applications	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Corporation			
Total Received	210	272	213
Total Approved	200	208	171
Average Days to Process	17	16	24
Partnership			
Total Received	91	92	73
Total Approved	92	76	64
Average Days to Process	17	16	27
Fictitious Name Permit			
Total Received	183	120	116
Total Approved	139	87	102
Average Days to Process	17	16	24

Practice Privilege	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Out-of-State Accounting Firm Registrations			
Approved	209	135	83
Pending Review	0	0	0
Pending Correction of Deficiencies	5	0	0
Enforcement Referrals	11	15	9

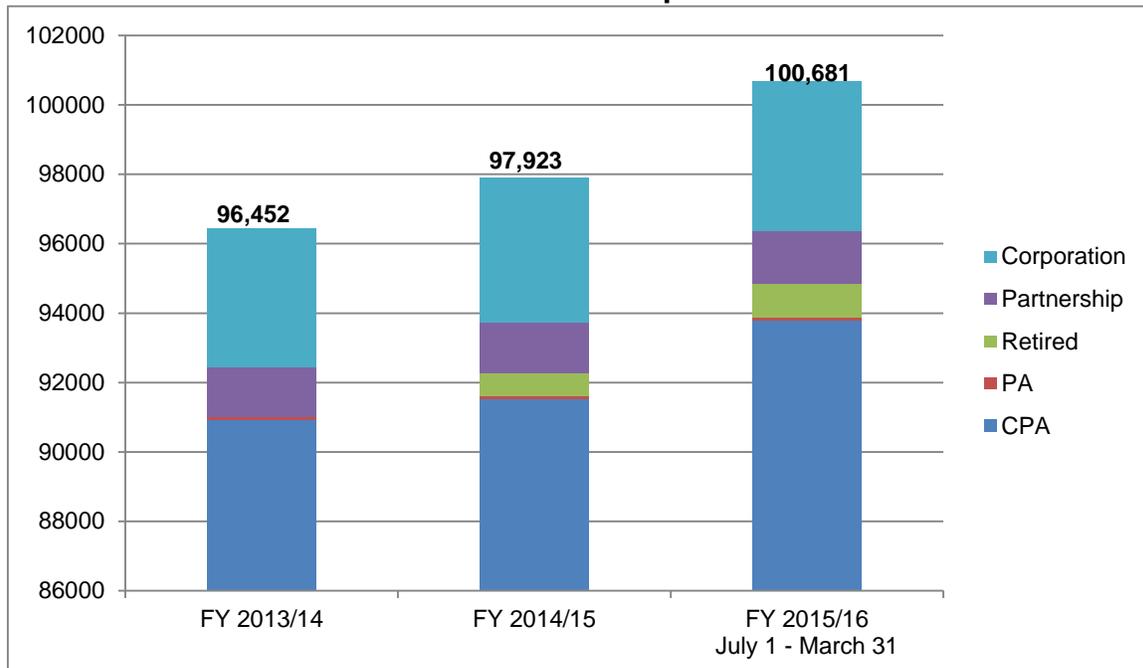
California Board of Accountancy Licensing Activity Report As of March 31, 2016

License Renewal and Continuing Competency Unit

- In preparation of the July 1, 2016, renewal fee increase, the License Renewal and Continuing Competency (RCC) Unit is presently updating the License Renewal Handbook and CBA website information.
- The RCC Unit continues to research and evaluate internal processes for tracking sole proprietorships and anticipates bringing an agenda item on this topic to the July CBA meeting.
- The RCC Unit is recruiting to fill a Seasonal Clerk position.

Licensee Population by License Type	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
CPA	90,912	91,530	93,795
PA	85	64	61
Retired	-	660	999
Partnership	1,460	1,490	1,511
Corporation	3,995	4,179	4,315

Total Licensee Population



**California Board of Accountancy
Licensing Activity Report
As of March 31, 2016**

License Renewal	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Total Licenses Renewed			
Certified Public Accountant	39,164	40,122	31,194
Public Accountant	12	14	4
Corporation	1,526	1,500	1,296
Partnership	572	525	515
License Renewal Verification			
CPA/PA Applications Reviewed	39,605	34,199	34,870
Deficient Applications Identified	5,659	9,725	8,515
Compliance Responses Received	4,128	8,821	6,767
Outstanding Deficiencies	1,510	1,848	2,037
Top Three Renewal Deficiencies			
1:	Peer Review Form ¹	Peer Review Form ¹	Peer Review Form ¹
2:	Renewal Application ²	Renewal Application ²	Renewal Application ²
3:	Ethics CE ³	Ethics CE ³	Ethics CE ³

1 – Failure to submit/incomplete/filed on behalf of firm – peer review reporting form.

2 – Failure to submit/incomplete license renewal application.

3 – Failure to complete four hours of ethics continuing education.

License Renewal Related Activities	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
CE Audits			
Licensees Selected for Audit	855	900	675
Outstanding Audits	508	95	148
Compliance Letters Sent	347	1,297	619
Enforcement Referrals*			
	582	998	602

* Enforcement Referrals include license renewal-related deficiencies such as CE, fingerprints, and peer review.

**California Board of Accountancy
Licensing Activity Report
As of March 31, 2016**

Retired Status*	FY 2013/14	FY 2014/15	FY 2015/16 9 Months of Data
Applications Received	--	671	352
Applications Failing to Meet Minimum Qualifications	--	11	4
Applications Approved	--	660	339

* Effective July 1, 2014 licensees may apply for retired status.

CPA Exam Performance Summary: 2016 Q-1

California

Overall Performance

Unique Candidates	6,117
New Candidates	1,697
Total Sections	7,588
Passing 4th Section	777
Sections/Candidate	1.24
Pass Rate	45.7%
Average Score	70.4

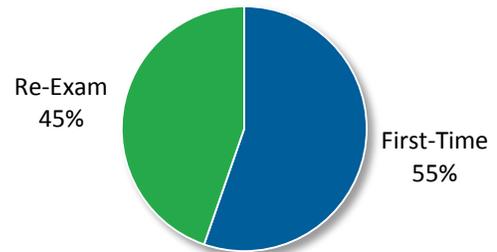
Section Performance

	Sections	Score	% Pass
First-Time	4,197	70.4	49.4%
Re-Exam	3,391	70.4	41.1%
AUD	2,115	70.4	41.6%
BEC	1,765	72.5	51.8%
FAR	1,924	68.4	42.7%
REG	1,784	70.3	47.7%

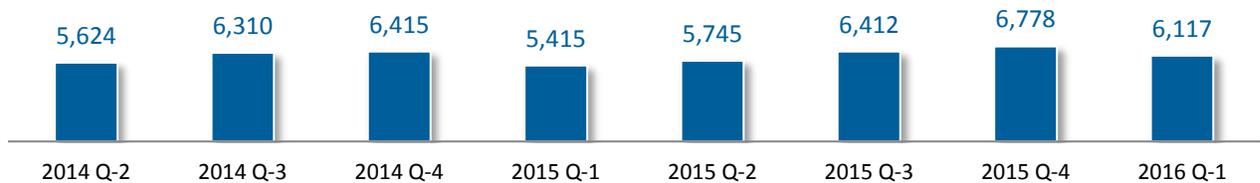
Jurisdiction Rankings (1 to 53)

Candidates	Sections
1	1
33	33
Pass Rate	Avg Score

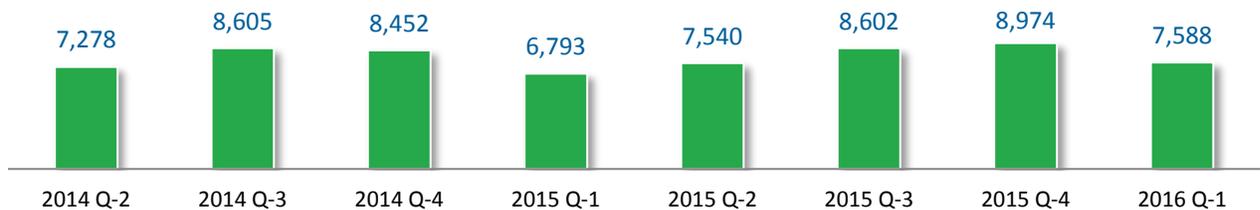
Exam Type by Percent



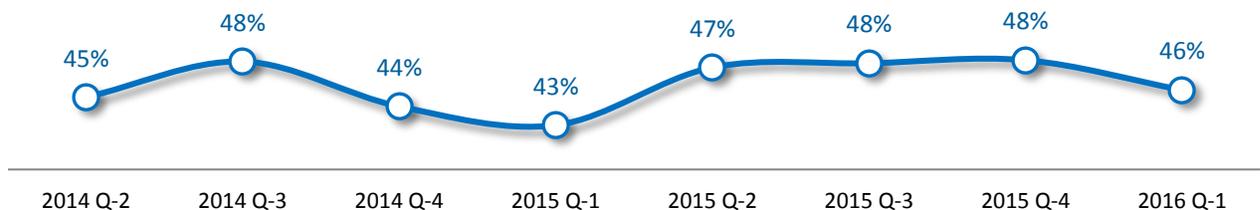
Candidates



Sections

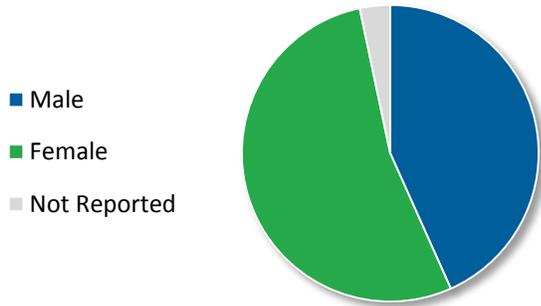


% Pass



CPA Exam Performance Summary: 2016 Q-1

Demographics



Male Candidates	2,649	43.3%
Female Candidates	3,266	53.4%
Not Reported	202	3.3%

Average Age **29.9**

Age Rank **34**

Residency

Candidate Count

In-State Address	5,180
Out-of-State Address	667
Foreign Address	270

% of Candidates

In-State Address	84.7%
Out-of-State Address	10.9%
Foreign Address	4.4%

Degree Type

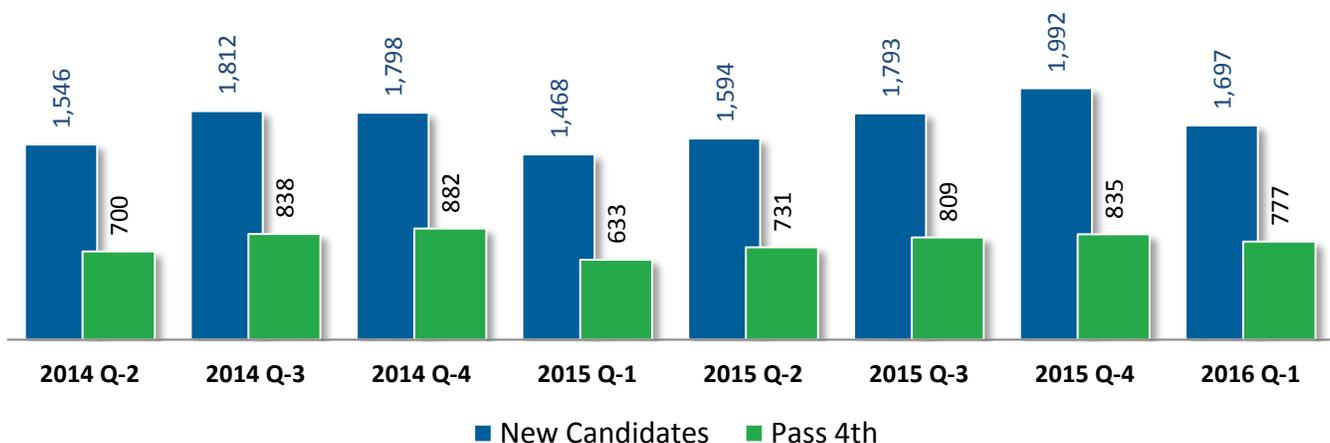
Candidate Count

Bachelor's Degree	4,386
Advanced Degree	1,289
Enrolled/Other	442

% of Candidates

Bachelor's Degree	71.7%
Advanced Degree	21.1%
Enrolled/Other	7.2%

New Candidates vs Candidates Passing 4th Section



Notes about the Data

1. The data used to develop this report was pulled from NASBA's Gateway System, which houses the Uniform CPA Examination's Application and Performance information for all 55 Jurisdictions.
2. The demographic data related to Age, Gender and Degree Type is provided by the individual candidates and may not be 100% accurate.

California

CPA Exam Performance: *All Jurisdictions*

2016 Q-1

Overall Performance

Unique Candidates	43,584
New Candidates	11,961
Total Sections	53,542
Passing 4th Section	5,444
Sections/Candidate	1.23
Pass Rate	47.9%
Average Score	71.2

Section Performance

	Sections	Score	% Pass
First-Time	29,659	71.7	53.1%
Re-Exam	23,883	70.6	41.4%
AUD	14,820	71.8	44.9%
BEC	12,381	73.4	55.4%
FAR	13,678	69.1	44.7%
REG	12,663	70.6	47.4%

Top 3 Jurisdictions

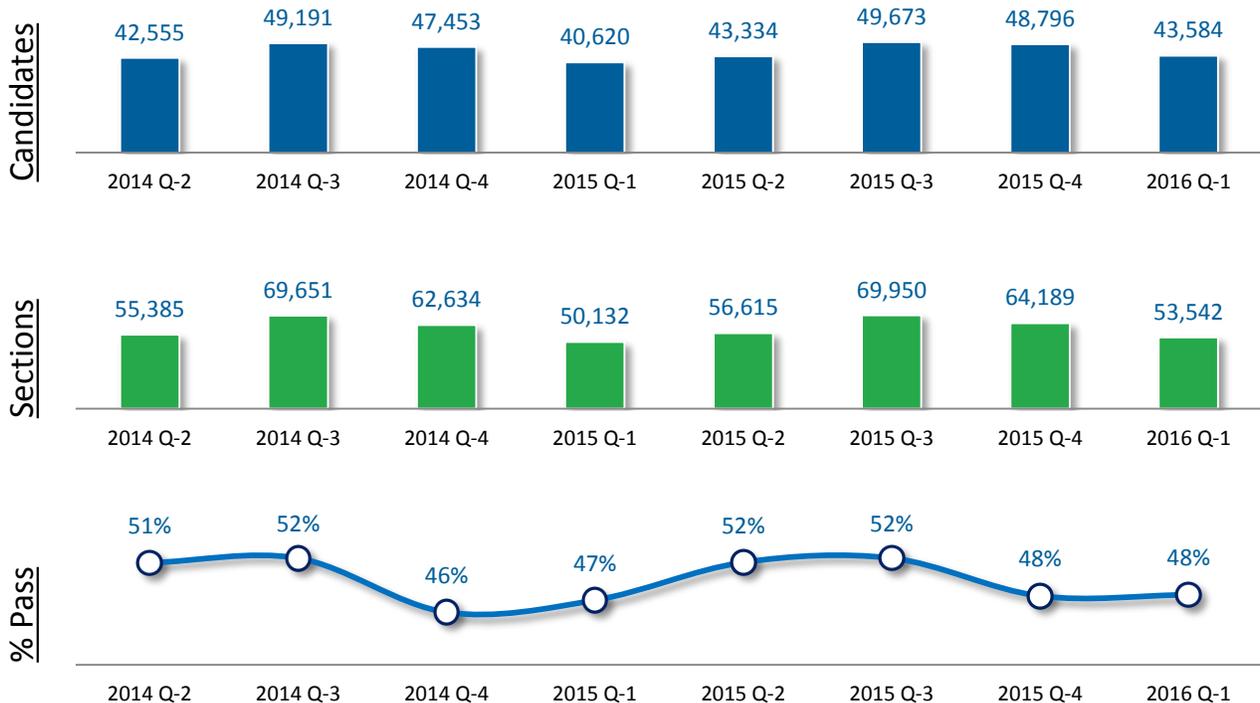
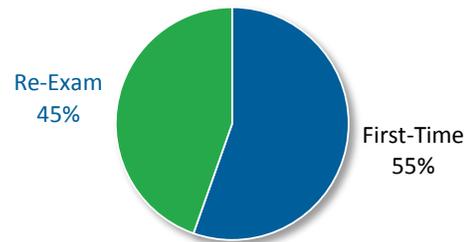
Most Candidates

1. California	6,117
2. New York	5,675
3. Texas	2,940

Highest Pass Rate

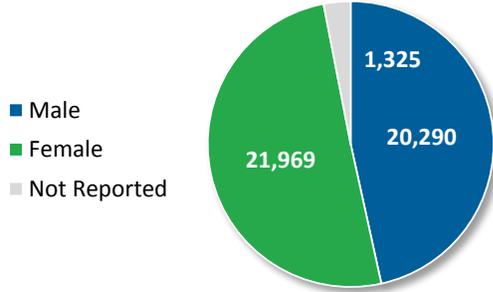
1. Utah	64.7%
2. Wisconsin	57.4%
3. Georgia	54.2%

Exam Type by Percent



CPA Exam Performance: *All Jurisdictions*

Demographics



Residency

Candidate Count	
In-State Address	33,242
Out-of-State Address	6,610
Foreign Address	3,732
% of Candidates	
In-State Address	76.3%
Out-of-State Address	15.2%
Foreign Address	8.6%

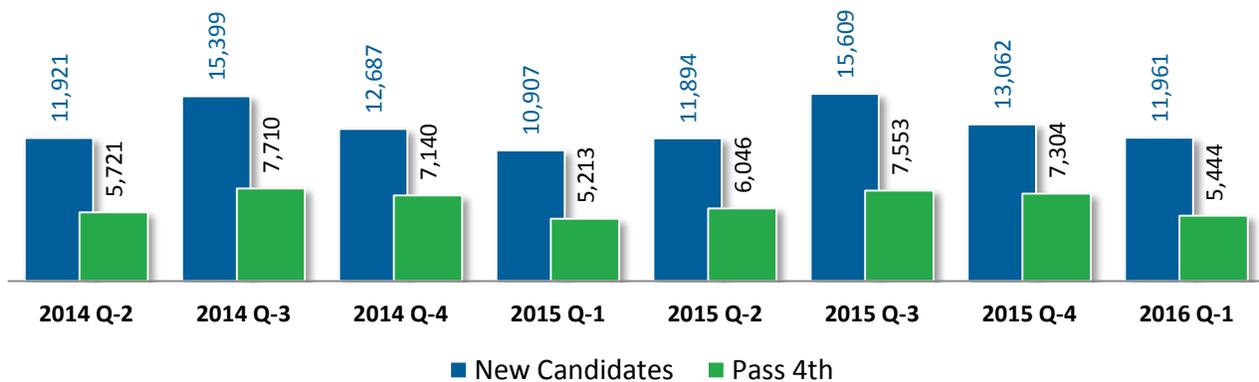
Average Age



Degree Type

Candidate Count	
Bachelor's Degree	26,811
Advanced Degree	7,627
Enrolled/Other	9,146
% of Candidates	
Bachelor's Degree	61.5%
Advanced Degree	17.5%
Enrolled/Other	21.0%

New Candidates vs Candidates Passing 4th Section



Notes about the Data

- The data used to develop this report was pulled from NASBA's Gateway System, which houses the Uniform CPA Examination's Application and Performance information for all 55 jurisdictions.
- The demographic data related to Age, Gender and Degree Type is provided by the individual candidates and may not be 100% accurate.

2016 Q-1

Overall Statistics for Testing Window 2016 Q-1

Jurisdiction	Count Candidates	Count Sections	FT Sections	RE Sections	Average Pass Rate	Average Score	Average Age
Alabama	186	221	132	89	46.6%	71.3	32.1
Alaska	1,042	1,451	910	541	44.5%	69.8	30.2
Arizona	409	529	350	179	51.6%	69.8	30.8
Arkansas	199	231	115	116	42.4%	69.9	30.0
California	6,117	7,588	4,197	3,391	45.7%	70.4	29.9
Colorado	711	864	430	434	51.0%	72.3	30.5
Connecticut	561	665	340	325	49.0%	71.4	28.1
Delaware	193	244	129	115	42.6%	68.8	31.7
District of Columbia	92	115	70	45	43.5%	69.7	30.4
Florida	1,451	1,727	1,004	723	49.4%	72.3	30.8
Georgia	1,565	1,932	1,185	747	54.2%	73.0	28.7
Guam	433	638	388	250	45.6%	69.8	31.8
Hawaii	150	183	96	87	47.5%	71.2	29.8
Idaho	129	151	76	75	44.4%	70.0	32.4
Illinois	2,114	2,529	1,406	1,123	49.4%	72.1	28.3
Indiana	565	671	333	338	42.3%	70.0	29.3
Iowa	318	412	276	136	53.6%	72.5	26.5
Kansas	132	158	82	76	42.4%	70.5	29.6
Kentucky	400	503	295	208	49.5%	71.8	28.1
Louisiana	408	489	246	243	46.4%	70.1	29.3
Maine	550	808	481	327	49.1%	71.0	30.4
Maryland	794	961	452	509	43.5%	69.7	29.8
Massachusetts	1,292	1,520	852	668	52.8%	72.8	27.4
Michigan	934	1,087	606	481	53.5%	72.9	28.3
Minnesota	633	771	404	367	50.7%	71.9	27.7
Mississippi	163	198	92	106	40.4%	67.5	29.2
Missouri	452	561	303	258	51.9%	72.6	28.5
Montana	356	570	287	283	42.5%	69.4	28.3

Jurisdiction	Count Candidates	Count Sections	FT Sections	RE Sections	Average Pass Rate	Average Score	Average Age
Nebraska	129	152	77	75	41.5%	68.8	28.3
Nevada	180	216	126	90	50.5%	70.8	30.3
New Hampshire	886	1,126	447	679	41.6%	69.4	31.7
New Jersey	1,351	1,623	807	816	37.0%	67.4	29.1
New Mexico	180	215	119	96	46.1%	70.4	33.1
New York	5,675	6,774	3,785	2,989	46.9%	70.8	27.5
North Carolina	881	1,042	605	437	51.7%	72.6	28.7
North Dakota	127	158	97	61	48.1%	71.6	29.6
Ohio	1,037	1,263	648	615	49.1%	71.4	28.8
Oklahoma	322	397	207	190	40.6%	69.6	32.5
Oregon	381	484	317	167	52.3%	72.5	31.4
Pennsylvania	1,546	1,785	905	880	46.7%	70.8	27.6
Puerto Rico	417	478	240	238	29.9%	64.6	27.9
Rhode Island	81	94	50	44	44.7%	72.2	28.7
South Carolina	275	311	180	131	50.5%	72.7	29.0
South Dakota	69	76	44	32	52.6%	74.0	29.5
Tennessee	736	900	543	357	49.8%	72.3	29.1
Texas	2,940	3,715	2,097	1,618	52.6%	73.2	29.8
Utah	282	331	232	99	64.7%	76.1	30.6
Vermont	181	303	168	135	43.9%	68.0	28.5
Virginia	1,445	1,722	882	840	49.2%	72.4	29.8
Washington	1,334	1,684	960	724	47.4%	71.3	31.6
West Virginia	95	113	51	62	44.3%	70.1	29.3
Wisconsin	651	760	507	253	57.4%	74.1	27.7
Wyoming	32	41	28	13	51.2%	70.9	30.6



California Board of Accountancy
2000 Evergreen Street, Suite 250 Sacramento, CA 95815-3832
P (916) 263-3680 F (916) 263-3675 | www.cba.ca.gov



MEMORANDUM

DATE	May 17, 2016
TO	California Board of Accountancy Members
FROM	Matthew Stanley Information and Planning Officer
SUBJECT	CBA Agenda Item IX.A.2.

During the California Board of Accountancy's (CBA) January 2016 meeting, it heard a presentation from Mr. Jim Brackens of the American Institute of Certified Public Accountants (AICPA) regarding what the AICPA was doing to improve audit quality. Mr. Brackens presented information regarding the AICPA's Six-Point Plan to Improve Audits.

In preparation for this agenda item, staff contacted the AICPA to request an update on the progress towards the AICPA's Six-Point Plan. The attached document was provided by the AICPA in response to this request.

Point 1: Pre-licensure. Beginning April 2017, the next CPA exam will place greater emphasis on assessing higher-order cognitive skills, demonstrating critical thinking, problem-solving, analytical ability and professional skepticism.

Point 2: Standards and Ethics. New tools, resources and courses have been developed to support practitioners as they implement Statements on Quality Control Standards (SQCS); these efforts continue with the development of a self-study course on quality control along with industry-specific resources to address specialized areas such as employee benefit plans. The Assurance Research Advisory Group (ARAG) has been formed to drive practice-oriented assurance research.

Point 3: CPA Learning and Support. Two certificate programs were developed to provide a way for proficient practitioners to demonstrate their competencies in employee benefit plan (EBP) and single audit engagements and to distinguish themselves in the marketplace. The newly launched AICPA | CIMA Competency and Learning Website (competency.aicpa.org) provides a way for auditors to assess their knowledge in various areas, including EBP and single audit. These efforts underscore the AICPA's commitment to professional competency development with transitioning CPAs from a compliance- to competency-based professional development model. AICPA Audit Quality Centers and the Center for Plain English Accounting have continued to make major contributions driving quality improvement.

Point 4: Peer Review. The AICPA has instituted reforms directed at enhancing the accountability of peer reviewers and firms enrolled in peer review. The enhanced oversight program, which was piloted in 2015 was a very effective initiative. The information gleaned from the program allowed the AICPA to understand better the future direction of the peer review program regarding issue detection and remediation. In 2016, the number of engagements subject to enhanced oversight will be doubled and a root-cause analysis added. New guidance effective December 2015 has resulted in expedited remediation and removal of poorly performing reviewers. A new data matching program begun in 2016 is expected to confirm that the peer review program includes all firms that should be subject to peer review.

Point 5: Practice Monitoring of the Future. Response to the purposely provocative concept paper on transforming peer review into a near real-time practice monitoring process was robust, with responses from more than seventy firms received before the comment period ended June 15, 2015. Together with the pilot of a self-monitoring tool for firms' use, responses, which recognized that peer review needs to evolve and expressed concern about what that evolution may entail, will help inform next steps for the initiative.

Point 6: Enforcement. The AICPA Professional Ethics Division is collaborating with the National Association of State Boards of Accountancy (NASBA) on an initiative that allows the AICPA Ethics Team and U.S. Department of Labor to share investigative files with state boards of accountancy. The Ethics Division is also actively mining publicly available databases to identify opportunities for outreach to firms and new cases for investigation.



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



CPC Item II.
May 19, 2016

CBA Item IX.A.2.
May 19-20, 2016

Discussion and Possible Action to Consider California Board of Accountancy Policy Objectives Resulting from the United States Department of Labor's Review of Audits Performed for Employee Benefit Plans Covered Under the Employee Retirement Security Act of 1974

Presented by: Matthew Stanley, Information and Planning Officer

Purpose of the Item

The purpose of this agenda item is to provide an opportunity for the California Board of Accountancy (CBA) to discuss the quality of employee benefit plan audits in California in light of the United States Department of Labor's (DOL) assessment of employee benefit plan audits.

Consumer Protection Objectives

The CBA's mission to protect consumers will be the goal while assessing the quality of employee benefit plan audits as presented by DOL and ensuring qualified Certified Public Accountants conduct such audits.

Action(s) Needed

The CBA will be asked to discuss various options for how it may wish to proceed to ensure that employee benefit plan audits are being conducted in accordance with professional standards.

Background

In May 2015, the DOL Employee Benefit Security Administration published a report titled "Assessing the Quality of Employee Benefit Plan Audits." In the report, the DOL found that 39 percent of these audits contained major deficiencies with respect to one or more relevant generally accepted auditing standards requirements. The DOL recommendations (**Attachment**) addressing the deficiencies identified in this report have been extracted from the full report for quick reference.

Copies of this report were provided at the CBA's January and March 2016 meetings. Two inspection copies will be available at the CBA's May 2016 meeting. If a CBA member would like a hard copy, please contact staff.

At the CBA's September 2015 meeting, immediate past President Campos assigned this topic to the Committee on Professional Conduct (CPC) to further study and

Discussion and Possible Action to Consider California Board of Accountancy Policy Objectives Resulting from the United States Department of Labor's Review of Audits Performed for Employee Benefit Plans Covered Under the Employee Retirement Security Act of 1974

Page 2 of 3

examine options that could include changes to the CBA's laws, regulations, continuing education (CE) requirements, enhanced enforcement strategies, increased outreach, or other changes that might improve the quality of employee benefit plan audits in California to protect consumers relying on those benefits.

At the CBA's January and March 2016 meetings, the CBA heard presentations regarding this topic from:

- Jim Brackens, Vice-President of Ethics and Practice Quality, American Institute of Certified Public Accountants
- Maria Caldwell, Chief Legal Officer and Director of Compliance Services, National Association of State Boards of Accountancy
- Ian Dingwall, Chief Accountant, DOL.

Comments

The DOL recommendations shown in the **Attachment** focused on enforcement, regulation/legislation, and outreach. While these recommendations apply to DOL, AICPA and NASBA, staff are presenting the following as possible options the CBA may wish to discuss and pursue:

1. Outreach – Increase communication to licensees regarding the results of the audit study and the need to ensure that only qualified CPAs are performing benefit plan audits.
2. Continuing Education – The CBA may wish to explore changes to the CE requirements for licensees who perform employee benefit plan audits.
3. Licensing – The CBA may wish to explore whether changes to the licensing process may be necessary to ensure licensees are qualified to perform employee benefit plan audits.
4. Peer Review – The CBA may wish to explore whether changes to the peer review process may be necessary to ensure that employee benefit plan audits are being properly reviewed.

Staff are seeking direction from the CBA regarding which of these, or other, options it would like to explore at a future meeting.

Currently, when the CBA receives a referral from the DOL, the Enforcement Division assigns it to an Investigative Certified Public Accountant (ICPA). The ICPA reviews the licensee's peer review information to ensure that their DOL Employee Retirement Income Security Act (ERISA) engagements were selected for peer review and review the deficiencies noted by the DOL to determine violations of professional standards.

Discussion and Possible Action to Consider California Board of Accountancy Policy Objectives Resulting from the United States Department of Labor’s Review of Audits Performed for Employee Benefit Plans Covered Under the Employee Retirement Security Act of 1974

Page 3 of 3

An Investigative Hearing (IH) may be conducted by the Enforcement Advisory Committee. If the licensee has violated the Accountancy Act, CBA Regulations, or professional standards, a report is prepared by the ICPA and forwarded to the Attorney General’s office for preparation of an accusation. If violations are not found, the investigation is closed. The DOL is notified of any formal discipline or closure.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Staff does not have a recommendation on this agenda item.

Attachment

Recommendations from the DOL “Assessing the Quality of Employee Benefit Plan Audits” report

Recommendations

To address the deficiencies identified in this report, EBSA makes the following eleven recommendations.

Enforcement

1. Revise case targeting to focus on:
 - a. CPA firms with smaller employee benefit plan audit practices that audit plans with large amounts of plan assets, and
 - b. CPA firms in the 25-99 plan audit stratum given their high deficiency rates and the amount of plan assets (\$317.1 billion) and plan participants (9.3 million) at risk from deficient audits.
2. Work with the National Association of State Boards of Accountancy (NASBA) and the AICPA to improve the investigation and sanctioning process for those CPAs who perform significantly deficient audit work. Work with NASBA to get state boards of accountancy to accept the results of investigations performed by EBSA and the AICPA's Professional Ethics Division, in order to use those results in disciplining CPAs (at the state licensing board level).
3. Amend ERISA to make sure the annual reporting civil penalties focus on the responsible party. Under this proposal, the Secretary of Labor would be authorized to assess all or part of the current annual reporting civil penalty of up to \$1,100 per day against the accountant engaged to do an ERISA plan audit if the plan's annual report is rejected due to a deficient audit or because the accountant failed to meet the standards for being qualified to perform an ERISA plan audit.
4. Work with the AICPA's Peer Review staff:
 - a. to streamline the peer review process and make it more effective at improving employee benefit plan audit quality.
 - b. to ensure that CPAs who are required to undergo a peer review have in fact had an acceptable peer review.
 - c. to identify those CPAs who have not received an acceptable peer review and refer those practitioners to the applicable state licensing boards of accountancy.

Regulatory/Legislative

5. Amend the ERISA definition of "qualified public accountant" to include additional requirements and qualifications necessary to ensure the quality of plan audits. Under this proposal, the Secretary of Labor would be authorized to issue regulations concerning the qualification requirements.
6. Amend ERISA to repeal the limited-scope audit exemption. This exemption prevents accountants from rendering an opinion on the plans' financial statements for assets held in

regulated entities such as financial institutions. An alternative to the repeal of the limited-scope audit would be to provide the Secretary with the authority to define when a limited-scope audit would be an acceptable substitute for a full audit. When auditors have to issue a formal and unqualified opinion, they have a powerful incentive to rigorously adhere to professional standards ensuring that their opinion can withstand scrutiny. The limited scope audit exemption undermines this incentive by removing auditors' obligations to stand behind the plans' financial statements.

7. Amend ERISA to give the Secretary of Labor authority to establish accounting principles and audit standards that would protect the integrity of employee benefit plans and the benefit security of participants and beneficiaries. Under this approach, the Secretary of Labor would be authorized to establish standards that address financial reporting issues that are either unique to or have substantial impact upon employee benefit plans.

Outreach

8. Work with the NASBA to encourage state boards of accountancy to require specific licensing requirements for CPAs who perform employee benefit plan audits. This would include specific training and experience in the audits of employee benefit plans.
9. Expand EBSA's outreach activities to include:
 - a. plan administrator organizations (e.g. ASPPA), to explain to plan administrators and those with responsibility for hiring plan auditors, the importance of hiring competent CPAs.
 - b. Using information contained in the EFAST2 database, send targeted correspondence to:
 - i. plan administrators in the 1-2 and 3-5 plan strata highlighting the high deficiency rate among plan auditors and providing information about how to select a qualified plan auditor.
 - ii. CPA firms in the 25-99 stratum discussing the audit deficiencies found in EBSA's audit study and working with the firms to ensure that plan audits comply with professional standards.
10. Communicate with each of the state boards of accountancy (licensing boards) regarding the results of the audit study and the need to ensure that only competent CPAs are performing employee benefit plan audits.
11. Expand EBSA's outreach with individual state societies of CPAs who have a large number of plan audits performed by CPA firms in the 1-5 plan audit stratum. For those states that do not already do so, encourage them to create employee benefit plan audit training programs.



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



EPOC Item II.
May 19, 2016

CBA Item IX.B.2.
May 19-20, 2016

Revision Schedule for the Disciplinary Guidelines and Model Orders

Presented by: Written Report Only

Purpose of the Item

The California Board of Accountancy (CBA) has a fiduciary responsibility to protect consumers, and does so by ensuring only qualified licensees practice public accountancy in accordance with established professional standards. A vital function performed by the CBA in the accomplishment of this responsibility is receiving complaints, performing investigations, and taking enforcement action, when appropriate, against licensees that fail to adhere to California's statutes and regulations, including performing work in accordance with professional standards.

Consumer Protection Objectives

The CBA *Disciplinary Guidelines and Model Orders, 9th Edition, 2013* (Guidelines) set forth recommended discipline for violations of the current statutes and regulations. Ensuring that the Guidelines is regularly updated, both regarding the recommended minimum and maximum penalties and the current statutes and regulations, is paramount to ensuring that the CBA meets its mission of consumer protection.

Action(s) Needed

No action is necessary.

Background

The Guidelines are revised on a tri-annual basis. The current edition of the Guidelines was adopted by the CBA on September 26, 2013. Once the revisions are completed and the revised Guidelines are adopted by the CBA, the rulemaking process is initiated. The revised Guidelines become effective once the rulemaking process is complete.

Comments

The following revision schedule for the Guidelines was adopted at the March 2016 CBA meeting:

March 2016

- Expose plan for proceeding to revise the Guidelines
- Review proposed language for inclusion of a Model Order related to a Permanent Restricted Practice Order (**CBA Item X.B.3.**)

Revision Schedule for the Disciplinary Guidelines and Model Orders

Page 2 of 2

May 2016

- Determine if any changes are necessary to mitigation, aggravation, or rehabilitation language
- Present any new law changes for inclusion
- Evaluate if changes are necessary to any existing violations
- Evaluate if changes are necessary to terms and conditions

September 2016

- Present final version of the Guidelines, seek EPOC and CBA approval to move forward with initiating rulemaking

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Staff does not have a recommendation on this agenda item.

Attachment

None.



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



EPOC Item III.
May 19, 2016

CBA Item IX.B.3.
May 19-20, 2016

Discussion and Possible Action Regarding Proposed Changes to the Disciplinary Guidelines and Model Orders

Presented by: Dominic Franzella, Chief, Enforcement Division

Purpose of the Item

The purpose of this agenda item is to present proposed modifications to the California Board of Accountancy (CBA) Disciplinary Guidelines and Model Orders (Guidelines) for CBA consideration.

Consumer Protection Objectives

Ensuring that the Guidelines is regularly updated, both regarding the recommended minimum and maximum penalties and the current statutes and regulations, is paramount to ensuring that the CBA meets its mission of consumer protection during the enforcement process.

Action(s) Needed

Staff are requesting the CBA approve the proposed revisions to the Guidelines for a future rulemaking, including any edits or additions as needed (**Attachment**).

Background

On a tri-annual basis, the Guidelines are revised by the Enforcement Program Oversight Committee (EPOC), and adopted by the CBA. At the March 2016 meeting, the CBA approved a timeline and conceptual changes for revising the Guidelines. Additionally, at this meeting, the CBA adopted proposed revisions to the Guidelines for the purpose of developing a model order related to Permanent Restricted Practice. The changes associated with the Permanent Restricted Practice are noted in strike through and underline on the following pages: 59 (#5), 63 (#25), and 64 (#29).

Comments

As part of the revisions process in 2013, the Guidelines underwent a substantial overhaul, especially related to modifications of the minimum and maximum penalties and the inclusion of new practice privilege provisions. Additionally, the CBA included new model orders.

Discussion and Possible Action Regarding Proposed Changes to the Disciplinary Guidelines and Model Orders

Page 2 of 4

As part of this review, staff performed the following:

- A review of recent law changes, both statutory and regulatory.
- A review of the mitigation, aggravation, and rehabilitation factors.
- A review of the standard and optional terms and conditions for probation.

To assist the CBA in its review, staff have highlighted the various pages where staff are proposing revisions to the Guidelines, including a rationale for the changes.

Page 7: Staff are proposing additions to the CBA Rehabilitation criteria. These changes are specific to including information related to fitness for duty. These criteria would further emphasize the CBA's mission to ensure that individuals practicing public accountancy are fit to perform the services sufficient to professional standards. Additionally, language has been added to emphasize that when considering matters related to the denial of a license or petitions for reinstatement or reduction of penalty, the burden of proof lies with the individual. This language was drawn heavily from existing criteria for Administrative Penalties listed in the Guidelines.

Page 8: Staff are proposing a new section – VI Rehabilitation Evidence – be added to the Guidelines. This criteria will provide additional clarity and assist individuals with examples of types of evidence that may be submitted to demonstrate his or her rehabilitative efforts and competency. In developing this criteria staff worked with legal counsel, drew from the California Board of Pharmacy Disciplinary Guidelines, and considered past cases where the CBA considered types of evidence.

Page 64: Staff are proposing modifications to Optional Condition of Probation #32 – Ethics Continuing Education. The modifications are to create increased clarity and readability related to specifying a time period to complete prescribed ethics continuing education (CE). Additionally, the revised language makes it a violation of probation not to complete the CE within the time period provided, rather than 100 days prior to the termination of probation. This increases accountability and provides the CBA the option to seek termination of probation at an earlier period during probation. These changes are consistent with the present terms being adopted by the CBA.

Page 65: Staff are proposing modifications to Optional Condition of Probation #33 – Regulatory Review Course. The modifications are to create increased clarity and readability related to specifying a time period to complete a prescribed Regulatory Review Course. Additionally, the revised language makes it a violation of probation not to complete the CE within the time period provided, rather than 100 days prior to the termination of

Discussion and Possible Action Regarding Proposed Changes to the Disciplinary Guidelines and Model Orders

Page 3 of 4

probation. This increases accountability and provides the CBA the option to seek termination of probation at an earlier period during probation.

Page 65: Staff are proposing modification to Optional Condition of Probation #34 – Peer Review. The proposed modifications increase clarity related to the specific statutes and regulations governing the peer review process and articulate that the peer review is to be completed under a Board-recognized peer review program provider. Additionally, it requires that the individual provide a copy of the peer review report and any completed prescribed remedial or corrective actions within a specified time period. These changes are consistent with the present terms being adopted by the CBA.

Page 66: Staff are proposing modifications to Optional Condition of Probation #35 – CPA Exam. The modifications are to create increased clarity and readability related to specifying a time period to complete the Uniform CPA Examination. Staff are proposing adding an additional paragraph to clearly articulate that it is a violation to fail to complete the exam within a specified time period. This creates a consistency with the Ethics CE and Regulatory Review Course terms.

Page 66: Staff are proposing modifications to Optional Condition of Probation #36 – Enrolled Agents Exam. The modification would be to eliminate this optional condition. Staff have reviewed disciplinary orders for the past five years and could not locate an example of when this was last used. Presumably, this optional term is designed to ensure that an individual has sufficient knowledge to competently provide tax-related services. The CBA has an optional condition – specifically, Optional Condition #35 – CPA Exam – which appears sufficient to meet this goal. When using Optional Term #35, the CBA can specify the completion of a particular section be passed, which in this case would be Regulation (more commonly referred to as REG).

Page 66: Staff are proposing modifications to Optional Condition of Probation #37 – Continuing Education Courses. The modifications are to create increased clarity and readability related to specifying a time period to complete prescribed CE courses. Staff are proposing adding an additional paragraph to clearly articulate that it is a violation to fail to complete the courses within a specified time period. This creates a consistency with the ethics CE and Regulatory Review Course terms.

Note: Non-substantive formatting changes and corrections were made throughout the Guidelines to provide consistency and clarity for users.

Discussion and Possible Action Regarding Proposed Changes to the Disciplinary Guidelines and Model Orders

Page 4 of 4

Specific to the changes being proposed in the Guidelines related to the Rehabilitation Criteria in Section V, this will also require that the CBA modify CBA Regulations section 99.1. This section has the Rehabilitation Criteria from which the CBA uses for inclusion in the Guidelines. Staff have presented the proposed changes to the Rehabilitation Criteria via the Guidelines so the CBA could see conceptually how the modifications would impact the overall enforcement process. Any changes eventually adopted by the CBA regarding the Rehabilitation Criteria will necessitate a rulemaking that staff will coordinate to occur with the rulemaking activities associated with the revisions to the Guidelines.

Staff will make changes to the Guidelines based on feedback received by the CBA. At the September 2016 meeting, staff will bring back the Guidelines for CBA adoption and initiation of a rulemaking, including any modifications to CBA Regulations section 99.1 that the CBA ultimately adopts, if any. Any necessary edits and changes to references and numbering made as part of the revisions to the Guidelines will also be made and presented at the September 2016 meeting.

Fiscal/Economic Impact Considerations

There is no fiscal or economic impact to updating the disciplinary guidelines.

Recommendation

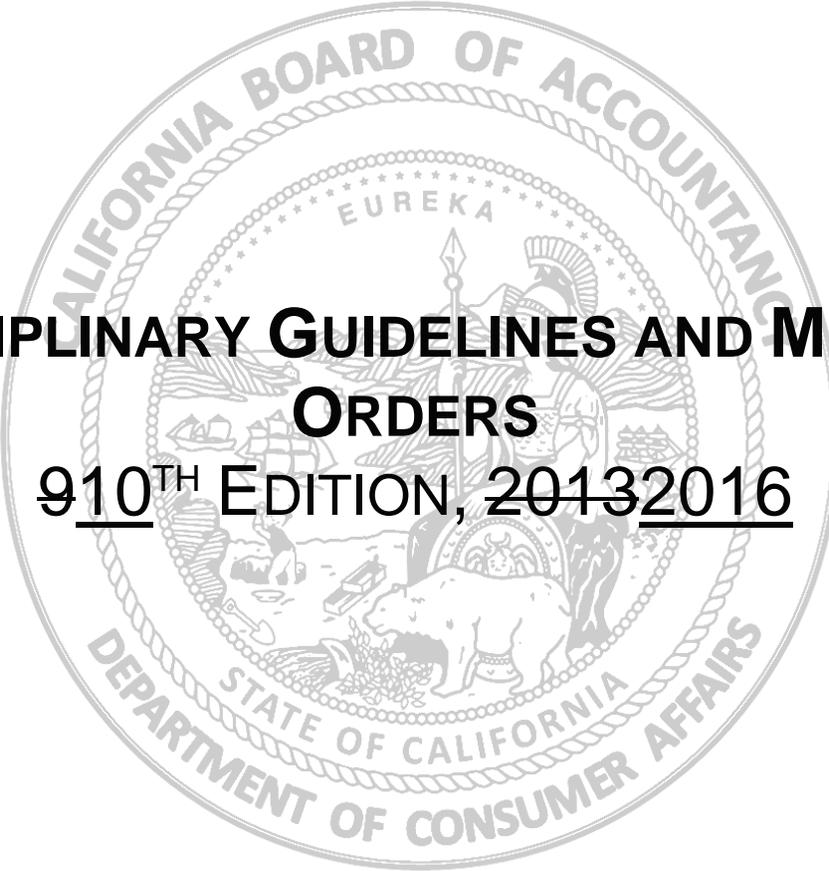
Staff recommend the CBA approve the proposed changes to the Guidelines for a future rulemaking, including any edits or additions members may have.

Attachment

Draft California Board of Accountancy Disciplinary Guidelines and Model Orders, 10th Edition, 2016

CALIFORNIA BOARD OF ACCOUNTANCY

DRAFT

The seal of the California Board of Accountancy is a circular emblem. It features a central figure of a woman in classical attire holding a scale and a sword, with a bear at her feet. The word "EUREKA" is inscribed above the figure. The outer ring of the seal contains the text "CALIFORNIA BOARD OF ACCOUNTANCY" at the top and "DEPARTMENT OF CONSUMER AFFAIRS" at the bottom. The inner ring contains "STATE OF CALIFORNIA".

**DISCIPLINARY GUIDELINES AND MODEL
ORDERS**
910TH EDITION, 2013~~2016~~

CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
(916) 263-3680 – TELEPHONE
(916) 263-3675 – FACSIMILE
WWW.CBA.CA.GO



DISCIPLINARY GUIDELINES AND MODEL ORDERS
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~~DISCIPLINARY GUIDELINES~~ ~~AND~~ ~~MODEL DISPLINARY ORDERS~~

I. INTRODUCTION

The California Board of Accountancy (CBA) ~~licenses~~regulates the practice of public accountancy in the State of California and may revoke, suspend, or refuse to renew any permit or certificate for violation of applicable statutes or regulations. The CBA examines applicants, sets education requirements, and may deny licensure and the authority to practice under practice privilege (California Business and Professions Code (BPC) section 5096 et seq.). The CBA may, by regulation, prescribe, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and competency in the profession.

The CBA, through its Enforcement Division, assisted by its statutorily established Enforcement Advisory Committee, receives and investigates complaints; initiates and conducts investigations or hearings, with or without the filing of a complaint; and obtains information and evidence relating to any matter involving the conduct of Certified Public Accountants (CPA), Public Accountants (PA) and Accountancy Firms. The California Accountancy Act and the CBA regulations provide the basis for CBA disciplinary action. (See BPC sections 5000 et seq., and Title 16 California Code of Regulations (CCR) sections 1 through 99.1.)

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy in California, or the voluntary surrender of a license by a licensee shall not deprive the CBA of the authority to proceed with an investigation, action, or disciplinary proceeding against the licensee or to render a decision suspending or revoking the license. (See BPC section 5109.)

These disciplinary guidelines, designed for the use of Administrative Law ~~(ALJ)~~ Judges (ALJ), attorneys, CBA licensees, and others involved in the CBA's disciplinary process, are revised from time to time. The guidelines cover model orders, including factors to be considered in aggravation and mitigation; standard probationary terms; and guidelines for specific offenses. The guidelines for specific offenses are referenced to the statutory and regulatory provisions violated.

These disciplinary guidelines set forth recommended discipline for the violation of current statutes and regulations; includes a provision for community service; and provides additional guidance regarding disciplinary and model orders.

The CBA recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein.

II. GENERAL CONSIDERATIONS

The CBA requests that **Proposed Decisions** following administrative hearings include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if he or she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate. (See factors set forth ~~below~~ in CCR section 99.1, under section V. Rehabilitation Criteria).
- e. When suspension or probation is recommended, the CBA requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure there from is clearly set forth in the findings and supported by the evidence.

If the ~~r~~Respondent fails to appear for the scheduled hearing, such action shall result in a **default decision** to revoke license.

When the CBA, at a **reinstatement hearing**, denies a petitioner's request for reinstatement, the CBA requests that the ~~Administrative Law Judge~~ ALJ provide technical assistance in formulating language clearly setting forth the reasons for denial. Such a **statement** should include, for example, a statement on rehabilitation, including suggestions for further approaches by petitioner to demonstrate rehabilitation, where appropriate. ~~The Petition for Reinstatement Checklist was designed to assist the CBA members and an ALJ with the preparation of a petition for reinstatement. See Attachment 1 for additional information.~~

- f. **Reimbursement** to the CBA for costs of investigation and prosecution as warranted by BPC section 5107.
- g. Imposition of an **Administrative Penalty** if warranted. See section VII for guidance.

The CBA will consider **stipulated settlements** to promote cost effectiveness and to expedite disciplinary decisions if such agreements achieve its disciplinary objectives. Deputy Attorneys General should inquire as to ~~r~~Respondent's interest in stipulated settlement promptly after receipt of a notice of defense. If stipulated settlement appears unlikely, the case should be set for hearing.

The CBA's policy is that all disciplinary actions will be published.

It is also the CBA's policy that matters resolved by stipulation include **cost recovery**.

The CBA's Executive Officer is authorized by statute to request an ~~Administrative Law Judge~~ ALJ, as part of any proposed decision in a disciplinary proceeding, to order the recovery of reasonable costs of investigation and prosecution (BPC section 5107). This statute does not preclude the CBA from seeking recovery of costs through stipulations; thus, it does not change the CBA's policy of requesting and recovering costs where appropriate in stipulated settlements. Restitution to victims and/or administrative penalties should not be reasons to reduce, eliminate, or stay full recovery of all reasonable costs of investigation and prosecution.

In stipulated decisions involving **revocation** (no revocation stayed), the order will generally include the requirement that ~~r~~Respondent must reimburse the CBA for all reasonable costs of investigation and prosecution prior to or upon reinstatement of ~~r~~Respondent's revoked certificate under BPC section 5115.

The period of **probation** is generally three years. During the probation period, licensees are required to appear in person at interviews/meetings as directed by the CBA or its designated representatives to report on probation compliance.

Where an actual **suspension** is imposed, the order shall include the requirement that ~~r~~Respondent engage in no activities for which certification is required (see model disciplinary orders). In addition, the ~~r~~Respondent shall relinquish the certificate in question to the CBA and shall notify clients regarding the suspended status of the certificate, if directed to do so by the CBA.

When discipline includes a violation that can be corrected, **correction of the violation** should be included as the basis for any discipline.

Restitution should be considered for all cases in which harm is demonstrated against the complainant. However, restitution should consider the actual harm to a complainant; it is not intended to award damages.

~~Note: Business and Professions Code section 143.5 prohibits the CBA from requiring restitution in disciplinary cases when the CBA's case is based on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties in the civil action.~~

III. EVIDENCE IN AGGRAVATION OF PENALTY

The following are among aggravating circumstances to be considered by ALJs in providing for penalties in proposed decisions:

1. Evidence that the violation was knowingly committed and/or was premeditated.
2. Licensee has a history of prior discipline, particularly where the prior discipline is for the same or similar type of conduct.
3. Licensee's actions resulted in financial damage to his or her clients or other consumers. The amount of loss may be an additional aggravating factor.
4. Violation of CBA probation.
5. Failure to comply with a final citation order.
6. Failure to comply with a notice to appear before the CBA or its designated representatives.
7. Failure to comply with continuing education requirements as ordered by the CBA or its designated representatives pursuant to CCR section 87.5.
8. Evidence that the licensee has not cooperated with the CBA's investigation.
9. Misappropriation of entrusted funds or other breach of fiduciary responsibility.
10. Duration of violation(s).
11. Evidence that the licensee knew or should have known that his or her actions could harm his or her clients or other consumers.
12. Evidence that the licensee took advantage of his or her client for personal gain, especially if the licensee was able to take advantage due to the ignorance, age, or lack of sophistication of the client.

IV. EVIDENCE IN MITIGATION OF PENALTY

The following are among mitigating circumstances that may be taken into account by ALJs in providing for penalties in proposed decisions:

1. The licensee has cooperated with the CBA's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
2. The passage of considerable time since an act of professional misconduct occurred with no evidence of recurrence or evidence of any other professional misconduct.
3. Convincing proof of rehabilitation, including the factors in CCR section 99.1 as well as other relevant considerations.
4. Demonstration of remorse by the licensee.
5. Recognition by licensee of his or her wrongdoing and demonstration of corrective action to prevent recurrence.
6. Violation was corrected without monetary losses to consumers and/or restitution was made in full.
7. If violation involved multiple licensees, the relative degree of culpability of the subject licensee should be considered.

V. REHABILITATION CRITERIA

The CBA's rehabilitation criteria, set forth in CCR section 99.1, are as follows:

When considering the denial of a certificate or permit or the restoration of a revoked certificate or reduction of penalty, the burden of proof lies with the individual to demonstrate sufficient competent evidence of rehabilitation to establish fitness to perform public accounting services in a manner consistent with professional standards and public protection. When considering the denial of a certificate or permit under BPC section 480, the suspension or revocation of a certificate or permit under BPC section 5100, or restoration of a revoked certificate or reduction of penalty under BPC section 5115, the CBA, in evaluating the rehabilitation of the applicant and his or her present eligibility for a certificate or permit, will consider the following criteria:

1. Nature and severity of the act(s) or offense(s).
2. Nature and extent of actual and potential consumer harm.
3. The person's attitude toward his or her commission of the violations.
4. Recognition of wrongdoing.
5. Person's history of violations.
6. Nature and extent to which the person has taken corrective action to ensure the violation will not recur.
7. Nature and extent of restitution to consumers harmed by violations.
8. Other aggravating or mitigating factors.
9. Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration that could also be considered as grounds for denial, suspension, or revocation.
10. The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).
11. The extent to which the ~~applicant or respondent~~ person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or Respondent.
12. If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
13. Evidence, if any, of rehabilitation submitted by the applicant or Respondent.

VI. REHABILITATION EVIDENCE

The following are examples of types of evidence which the licensee/applicant (Respondent) may submit to CBA demonstrate his or her rehabilitative efforts and competency:

- a. Letter from Respondent describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
- b. Recent, dated written statements or performance evaluations from past and/or current employers or persons in positions of authority who have on-the-job knowledge of the Respondent's current competence in the practice of public accountancy, including the period of time and capacity in which the person worked with the Respondent.
- c. Recent, dated letters or a current mental status examination by a clinical psychologist or psychiatrist regarding the Respondent's participation in a rehabilitation, therapy or recovery program, which should include a diagnosis of the condition or any impairment, current state of recovery, and the psychologist's or psychiatrist's basis for determining rehabilitation. The evaluation should also address the likelihood of similar acts occurring in the future, and should speak to the Respondent's competency and ability to practice public accountancy safely.
- d. Letters of reference from other knowledgeable professionals, such as probation or parole officers regarding the Respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions of probation or parole, and the officer's basis for determining compliance.
- e. Recent, dated letters from outside individuals describing Respondent's community or volunteer participation in civic activities or support groups (e.g., Alcoholics Anonymous, Narcotics Anonymous, other professional or community based-support groups).
- f. Documentary or other evidence showing continuing education related to the practice of public accountancy.

Any evidence submitted to the CBA will be subject to verification by CBA staff.

VII. ADMINISTRATIVE PENALTIES

BPC section 5116 et seq. allow the CBA to order any licensee or applicant for licensure or examination to pay an administrative penalty as part of any disciplinary proceeding. In matters that go through the administrative hearing process, the CBA's Executive Officer may request an ~~Administrative Law Judge~~ ALJ to impose an administrative penalty as part of any proposed decision.

The administrative penalty assessed shall be in addition to any other penalties or sanctions imposed on the licensee or other person, including but not limited to, license revocation, license suspension, denial of the application for licensure, or denial of admission to the licensing examination. When probation is ordered, an administrative penalty may be included as a condition of probation.

For any violation, with the exception of violation of subdivisions (a), (c), (i), (j), or (k) of BPC section 5100, any licensee may be assessed an administrative penalty of not more than \$5,000 for the first violation and not more than \$10,000 for each subsequent violation.

For violation of subdivisions (a), (c), (i), (j), or (k) of BPC section 5100, licensed firms may be assessed of an administrative penalty of not more than \$1,000,000 for the first violation and not more than \$5,000,000 for any subsequent violation. The administrative penalty that may be assessed an individual licensee who violates these sections is limited to not more than \$50,000 for the first violation and not more than \$100,000 for any subsequent violation.

Administrative penalties may be assessed under one or more violations; however, the total administrative penalty shall not exceed the amount of the highest administrative penalty allowed.

The term "violation" used in BPC sections 5116.1, 5116.2, and 5116.3 is intended to include the total violations in the disciplinary proceeding. Accordingly, "first violation" refers to the ~~Respondent's~~ Respondent's first disciplinary action and "subsequent violations" refers to any subsequent disciplinary actions.

Cost recovery ordered under BPC section 5107 should not be a reason to reduce or eliminate the amount of administrative fines.

The following criteria should be considered in assessing administrative penalties.

1. Nature and extent of actual and potential consumer harm.
2. Nature and extent of actual and potential harm to clients.
3. Nature and severity of the violation.
4. The role of the person in the violation.

5. The person's attitude toward his or her commission of the violations.
6. Recognition of wrongdoing.
7. Person's history of violations.
8. Nature and extent of cooperation with the CBA's investigation.
9. The person's ability to pay the administrative penalty.
10. The level of administrative penalty necessary to deter future violations.
11. Nature and extent to which the person has taken corrective action to ensure the violation will not recur.
12. Nature and extent of restitution to consumers harmed by violations.
13. The violations involve sanctions by other government agencies or other regulatory licensing bodies, i.e. Internal Revenue Service, Securities and Exchange Commission, and Public Company Accounting Oversight Board.
14. Other aggravating or mitigating factors.

VIII. DISCIPLINARY GUIDELINES

The offenses and penalties are listed chronologically by statute number in the Business and Professions Code (BPC) and by regulation number in Title 16 of the California Code of Regulations (CCR). The number in brackets following each condition of probation refers to the model order so numbered (See **Model Orders**). The probation terms listed under "if warranted" for each violation are to be considered, and imposed, if facts and circumstances warrant.

CALIFORNIA ACCOUNTANCY ACT: BUSINESS AND PROFESSIONS CODE, DIVISION 3, CHAPTER 1

ARTICLE 2

Section 5037(a) OWNERSHIP OF ACCOUNTANTS' WORKPAPERS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, [1, 2, 4] 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~45~~16-2425]

If warranted:

1. Suspension [3] with/without stay [4]
2. Supervised Practice [~~26~~25]
3. Probation Monitoring Costs [~~28~~27]
4. Restricted Practice [~~29~~28]
5. Ethics Continuing Education [~~32~~34]
6. Regulatory Review Course [~~33~~32]
7. Continuing Education Courses [36]
8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference CCR sSection 54.1)

Section 5037(b)(1)(2) RETURN OF CLIENT DOCUMENTS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required:

1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [~~16~~15-~~25~~24]

If warranted:

1. Suspension [3] with/without stay [4]
2. Supervised Practice [~~26~~25]
3. Restitution [~~27~~26]
4. Probation Monitoring Costs [~~28~~27]
5. Restricted Practice [~~29~~28]

6. Engagement Letters [3029]
7. Ethics Continuing Education [3234]
8. Regulatory Review Course [3332]
9. Continuing Education Courses [36]
10. Community Service – Free Services [40]
11. Administrative Penalty not to exceed maximum set forth in section 5116 [43]
12. Conditions as appropriate relating to physical or mental disability or condition [44-49]

(Reference CCR sSection 68)

ARTICLE 3

Section 5050(a) PRACTICE WITHOUT PERMIT; TEMPORARY PRACTICE

Except as provided for in sections 5050(c), 5054, and 5096.12, this section applies to a ~~r~~Respondent who practices for a time without a valid license to practice or to ~~r~~Respondent who practices without obtaining a practice privilege.

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1645-2524]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [2827]
 3. Restricted Practice [2928]
 4. Ethics Continuing Education [3234]
 5. Regulatory Review Course [3334]
 6. Continuing Education Courses [36]
 7. Active License Status [37]
 8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5050(c) PRACTICE WITHOUT PERMIT; TEMPORARY PRACTICE; FOREIGN ACCOUNTANTS

Applies to ~~r~~Respondents licensed in a foreign country who are temporarily practicing in California and hold out as California licensees.

Minimum Penalty – Cease and Desist Letter

Maximum Penalty – Refer to Prosecutorial Agency for Unlicensed Practice

(~~See~~Reference section on Unlicensed Activities.)

Section 5055
Section 5056

**TITLE OF CERTIFIED PUBLIC ACCOUNTANT/
TITLE OF PUBLIC ACCOUNTANT**

(Applies to Respondent who assumes or uses the title certified public accountant, CPA, public accountant, or PA without having an appropriate permit to practice.)

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Restricted Practice [~~2928~~]
 4. Ethics Continuing Education [~~3234~~]
 5. Regulatory Review Course [~~3332~~]
 6. Continuing Education Courses [36]
 7. Active License Status [37]
 8. Administrative Penalty not to exceed maximum set forth in
 BPC section 5116 [43]

Section 5058

USE OF CONFUSING TITLES OR DESIGNATIONS PROHIBITED

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed with actual suspension [1-4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Restricted Practice [~~2928~~]
 4. Ethics Continuing Education [~~3234~~]
 5. Regulatory Review Course [~~3332~~]
 6. Continuing Education Courses [36]
 7. Administrative Penalty not to exceed maximum set forth in
 BPC section 5116 [43]

(Reference CCR sSection 2)

Section 5058.1

**TITLES IN CONJUNCTION WITH
CERTIFIED PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTANT**

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed with actual suspension [1-4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2828~~]
 3. Restricted Practice [~~2928~~]
 4. Ethics Continuing Education [~~3234~~]
 5. Regulatory Review Course [~~3332~~]
 6. Continuing Education Courses [36]
 7. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5058.2 INACTIVE DESIGNATION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Continuing Education Courses [36]
 3. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5058.3 RETIRED DESIGNATION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Continuing Education Courses [36]
 3. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 3.5

Section 5060 NAME OF FIRM

Minimum Penalty – Continuing Education Courses [36] for licensee, licensee partners, licensee directors, shareholders, and/or officers of corporation

Maximum Penalty – Revocation stayed with actual suspension [1-4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1615-2524~~]

If warranted:

1. Suspension [3] with/without stay [4]
2. Probation Monitoring Costs [~~2827~~]
3. Restricted Practice [~~2928~~]
4. Ethics Continuing Education [~~3234~~]
5. Regulatory Review Course [~~3332~~]
6. Continuing Education Courses [36]
7. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5072)

Section 5061 COMMISSIONS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required:

1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [~~1615-2524~~]

If warranted:

1. Suspension [3] with/without stay [4]
2. Supervised Practice [~~2625~~]
3. Restitution [~~2726~~]
4. Probation Monitoring Costs [~~2827~~]
5. Restricted Practice [~~2928~~]
6. Engagement Letters [~~3029~~]
7. Ethics Continuing Education [~~3232~~]
8. Regulatory Review Course [~~3332~~]
9. Continuing Education Courses [36]
10. Community Service – Free Services [40]
11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5062 REPORT CONFORMING TO PROFESSIONAL STANDARDS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]
 3. Continuing Education Courses [36]
- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Restitution [~~2726~~]
 4. Probation Monitoring Costs [~~2827~~]
 5. Restricted Practice [~~2928~~]
 6. Engagement Letters [~~3029~~]
 7. Ethics Continuing Education [~~3234~~]
 8. Regulatory Review Course [~~3332~~]
 9. Peer Review [~~3433~~]
 10. CPA Exam [~~3534~~]
 11. Samples – Audits, Review or Compilation [38]
 12. Community Service – Free Services [40]
 13. Notice to Clients [42]
 14. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5100(j))

Section 5062.2 RESTRICTIONS ON ACCEPTING EMPLOYMENT WITH AN AUDIT CLIENT

Minimum Penalty – Revocation stayed, 30 day suspension, 3 years probation [1-4]
Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation of 3 to 5 years
 2. Suspension [3]
 3. Standard Conditions of Probation [~~1645-2524~~]
- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Community Service – Free Services [40]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5063 REPORTABLE EVENTS

Minimum Penalty – Continuing Education Courses [36]
Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [2625]
 3. Probation Monitoring Costs [2827]
 4. Restricted Practice [2928]
 5. Ethics Continuing Education [3234]
 6. Regulatory Review Course [3332]
 7. Continuing Education Courses [36]
 8. Samples – Audit, Review or Compilation [38]
 9. Prohibition from Handling Funds [39]
 10. Community Service – Free Services [40]
 11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
 12. Conditions as appropriate relating to physical or mental disability or condition [44-49]

(Reference CCR sSections 59, 60, 61)

Section 5063.3 CONFIDENTIAL INFORMATION DISCLOSURE

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1645-2527]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [2625]
 3. Probation Monitoring Costs [2827]
 4. Restricted Practice [2928]
 5. Ethics Continuing Education [3234]
 6. Regulatory Review Course [3332]
 7. Continuing Education Courses [36]
 8. Samples – Audit, Review or Compilation [38]
 9. Probation from Handling Funds [39]
 10. Community Service – Free Services [40]
 11. Notice to Clients [42]
 12. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 4

Section 5070.1(b) PRACTICE WITH A RETIRED LICENSE STATUS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]

- If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Restricted Practice [~~2928~~]
 4. Ethics Continuing Education [~~3234~~]
 5. Regulatory Review Course [~~3332~~]
 6. Continuing Education Courses [36]
 7. Active License Status [37]
 8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5071.2(b) PRACTICE WITH A MILITARY LICENSE STATUS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]

- If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Restricted Practice [~~2928~~]
 4. Ethics Continuing Education [~~3234~~]
 5. Regulatory Review Course [~~3332~~]
 6. Continuing Education Courses [36]
 7. Active License Status [37]
 8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5072(a) REQUIREMENTS FOR REGISTRATION AS A PARTNERSHIP

Applies to licensee(s) in a partnership who practices for a time without partnership license (BPC section 5073) and subsequently renews, or to a partnership in practice without a license.

Minimum Penalty – Continuing Education Courses for Licensee Partners [36]

Maximum Penalty – Revocation of partnership/individual licenses [1, 2]

CONDITIONS OF PROBATION:

- Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]

- If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Restricted Practice [~~2928~~]
 4. Ethics Continuing Education [~~3234~~]

5. Regulatory Review Course [3332]
6. Continuing Education Courses [36]
7. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference section on Unlicensed Activities.)

**Section 5073(d) PARTNERSHIP APPLICATIONS
(ADMISSION OR WITHDRAWAL OF PARTNER)**

Minimum Penalty – Continuing Education Courses for Licensee Partners [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645~~-2524]

- If warranted:
1. Probation Monitoring Costs [2827]
 2. Ethics Continuing Education [3234]
 3. Regulatory Review Course [3332]
 4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5076(a) PEER REVIEW

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645~~-2524]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [2827]
 4. Restricted Practice [2928]
 5. Ethics Continuing Education [3234]
 6. Regulatory Review Course [3332]
 7. Peer Review [3433]
 8. Continuing Education Courses [36]
 9. Sample – Audit, Review or Compilation [38]
 10. Notification to Clients/Cessation of Practice [42]
 11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference CCR sSections 40, 32, 43)

Section 5076(f) PEER REVIEW – DOCUMENT SUBMISSION REQUIREMENT

Minimum Penalty – Continuing Education Courses [36]
Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]
- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Ethics Continuing Education [~~3234~~]
 6. Regulatory Review Course [~~3332~~]
 7. Peer Review [~~3433~~]
 8. Continuing Education Courses [36]
 9. Sample – Audit, Review or Compilation [38]
 10. Notification to Clients/Cessation of Practice [42]
 11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference CCR sSection 46)

Section 5078 OFFICES NOT UNDER PERSONAL MANAGEMENT OF CERTIFIED PUBLIC ACCOUNTANT OR PUBLIC ACCOUNTANT; SUPERVISION

Minimum Penalty – Continuing Education Courses for Licensee Owners [36] and/or require CPA or PA to develop standards for supervision, and implement a practice plan; permit practice investigation within 3 months to insure compliance [20]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]
- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Ethics Continuing Education [~~3234~~]
 6. Regulatory Review Course [~~3332~~]
 7. Continuing Education Courses [36]
 8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5079(a)(b)(d) NONLICENSEE OWNERSHIP OF FIRMS

Minimum Penalty – Continuing Education Courses [36] for California licensee partners or for licensee shareholders of corporation

Maximum Penalty – Revocation of partnership or corporate registration and individual licenses [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed, 3 years probation
2. Standard Conditions of Probation [1615-2524]

If warranted: 1. Suspension [3] with/without stay [4]
2. Probation Monitoring Costs [2827]
3. Restricted Practice [2928]
4. Ethics Continuing Education [3234]
5. Regulatory Review Course [3332]
6. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference CCR sSection 51.1)

ARTICLE 5

Section 5081(a) REQUIREMENTS FOR ADMISSION TO CERTIFIED PUBLIC ACCOUNTANT EXAMINATION (ACTS DENYING ADMISSION TO EXAM)

Minimum Penalty – Probationary conditions on initial license (if not yet licensed) or revocation, stayed with probation (if already licensed); reference appropriate subsection of BPC Ssection 5100 for applicable provisions

Maximum Penalty – Denial of admission to examination or revocation of license if issued

(SeeReference relevant section for discipline based upon nature of act.)

If warranted: 1. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5081(b)(c) REQUIREMENTS FOR ADMISSION TO CERTIFIED PUBLIC ACCOUNTANT EXAMINATION

Minimum/Maximum Penalty – Denial of admission to examination, or revocation of license if issued.

If warranted: 1. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5088 INTERIM PRACTICE RIGHTS: OUT OF STATE CPA

Minimum/Maximum Penalty – If ~~Board~~ CBA rejects application, cease practice immediately. If practice continues, see provisions on **Unlicensed Activities** and **Practice Privilege**.

**Section 5095(a) MINIMUM NUMBER OF ATTEST SERVICES HOURS;
ATTEST EXPERIENCE**

Minimum Penalty – Revocation stayed and 3 years probation (if license was issued). Cannot apply for license for 12 months (if not yet licensed), and, if application is subsequently approved, conditional license with probation for 3 years.

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [~~1615-25~~24]

If warranted: 1. Suspension [3] with/without stay [4]
2. Probation Monitoring Costs [~~28~~27]
3. Restricted Practice [~~29~~28]
4. Ethics Continuing Education [~~32~~34]
5. Regulatory Review Course [~~33~~32]
6. CPA Exam [~~35~~34]
7. Continuing Education Courses [36]
8. Active License Status [~~37~~36]
9. Notification to Clients/Cessation of Practice [42]
10. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 5.1: Practice Privilege

Section 5096(d) PRACTICING THROUGH AN UNREGISTERED FIRM

Minimum Penalty – Revocation stayed [~~1, 2, 4~~], 3 years probation [1, 2, 4]

Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation 3 to 5 years
2. Standard Conditions of Probation [~~1615-21, 23, 24,~~25]

If warranted: 1. Suspension [3]
2. Probation Monitoring Costs [~~28~~27]
3. Ethics Continuing Education [~~32~~34]
4. Regulatory Review Course [~~33~~32]
5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5096(e)(2) COMPLY WITH RULES, LAWS, AND STANDARDS

Minimum Penalty – One year suspension [3]

Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation 3 to 5 years
 2. Suspension [3] (Section 5096(g)).
 3. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3330~~]
 4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5096(e)(3) PRACTICE FROM AN UNAUTHORIZED OFFICE IN THIS STATE

Minimum Penalty – One year suspension [3]
Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation 3 to 5 years
 2. Suspension [3] (BPC ~~§~~section 5096(g))
 3. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5096(e)(5) COOPERATE WITH BOARD

Minimum Penalty – One year suspension [3]
Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation 3 to 5 years
 2. Suspension [3] (BPC ~~§~~section 5096(g)).
 3. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5096(e)(6), (7), (8), (9) FAILURE TO CEASE EXERCISING THE PRACTICE PRIVILEGE

Minimum Penalty – One year suspension [3]
Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation 3 to 5 years
 2. Suspension [3] (BPC ~~§~~section 5096(g)).
 3. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

- If warranted:
1. Ethics Continuing Education [~~3234~~]
 2. Regulatory Review Course [~~3332~~]
 3. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

If it is determined that the failure to cease practice or provide the notice was intentional, that individual's practice privilege shall be revoked and there shall be no possibility of reinstatement for a minimum of two years pursuant to Section 5096(g).

Section 5096(e)(10) FAILURE TO REPORT NOTIFY THE BOARD OF PENDING CRIMINAL CHARGES

Minimum Penalty – One year of suspension [3]
Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation 3 to 5 years
 2. Suspension [3] (Section 5096(g)).
 3. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

- If warranted:
1. Probation Monitoring Costs [27]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5096(f) FAILURE TO NOTIFY THE BOARD/CEASE PRACTICE

Minimum Penalty – One year suspension [3]
Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation 3 to 5 years
 2. Suspension [3] (BPC ~~§~~section 5096(g))
 3. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

If it is determined that the failure to cease practice or provide the notice was intentional, that individual's practice privilege shall be revoked and there shall be no possibility of reinstatement for a minimum of two years pursuant to Section 5096(g).

Section 5096(i) FAILURE TO FILE PRE-NOTIFICATION FORM

Minimum Penalty – One year suspension [3]

Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation 3 to 5 years
 2. Suspension [3] (BPC §section 5096(g)).
 3. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

If warranted: 1. Probation Monitoring Costs [~~287~~]
 2. Ethics Continuing Education [~~324~~]
 3. Regulatory Review Course [~~332~~]
 4. Administrative Penalty not to exceed maximum set forth in
 BPC section 5116 [43]

If it is determined that the failure to cease practice or provide the notice was intentional, that individual's practice privilege shall be revoked and there shall be no possibility of reinstatement for a minimum of two years.

Section 5096.5 UNAUTHORIZED SIGNING OF ATTEST REPORTS

Minimum Penalty – Revocation stayed [~~1, 2, 4~~], 3 years probation [1, 2, 4]

Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation 3 to 5 years
 2. Suspension [3] (BPC §section 5096(g))
 3. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

If warranted: 1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Administrative Penalty not to exceed maximum set forth in
 BPC section 5116 [43]

Section 5096.12 FIRM PRACTICING WITHOUT A PRACTICE PRIVILEGE HOLDER

Minimum Penalty – Revocation stayed [~~1, 2, 4~~], 3 years probation [1, 2, 4]

Maximum Penalty – Revoke Practice Privilege [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation 3 to 5 years
 2. Standard Conditions of Probation [~~1645~~-21, 23, 24, 25]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Suspension [3] (BPC ~~§~~section 5096(g))
 3. Ethics Continuing Education [~~3234~~]
 4. Regulatory Review Course [~~3332~~]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 5.5

Section 5097 **AUDIT DOCUMENTATION**

Minimum Penalty – Continuing Education Courses [36]
 Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Library Reference Material [~~3130~~]
 6. Ethics Continuing Education [~~3234~~]
 7. Regulatory Review Course [~~33~~]
 8. Peer Review [~~3433~~]
 9. CPA Exam [~~3534~~]
 10. Continuing Education Courses [36]
 11. Samples - Audits, Review or Compilation [38]
 12. Community Service – Free Services [40]
 13. Notice to Clients [42]
 14. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference CCR ~~s~~Sections 68.2, 68.3, 68.4, 68.5)

ARTICLE 6

Section 5100 **DISCIPLINE IN GENERAL, (including but not limited to that set forth in subsections (a) through (l) of this section)**

Minimum Penalty – Continuing Education Courses [36]
 Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation of 3 to 5 years

2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Optional conditions which relate to underlying facts and circumstances; reference conditions listed in BPC sections 5100 (a)-(j)
 4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5100(a) CONVICTION OF ANY CRIME SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS AND DUTIES OF A CPA/PA

FOR FELONY CONVICTIONS OR MULTIPLE MISDEMEANOR CONVICTIONS:

Minimum Penalty – Revocation stayed. Actual suspension from practice 120 days. Three years probation [1-4]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation of 3 to 5 years
 2. Suspension [3]
 3. Standard Conditions of Probation [~~1625-2524~~]

- If warranted:
1. Supervised Practice [~~2625~~]
 2. Restitution [~~2726~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Engagement Letters [~~3029~~]
 6. Ethics Continuing Education [~~3234~~]
 7. Regulatory Review Course [~~3332~~]
 8. CPA Exam [~~3523~~] or ~~Enrolled Agents Exam~~ [~~35~~]
 9. Continuing Education Courses [36]
 10. Samples - Audit, Compilation or Review [38]
 11. Prohibition from Handling Funds [39]
 12. Community Service – Free Services [40]
 13. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
 14. Conditions as appropriate relating to physical or mental disability or condition [44-49]

IN THE CASE OF A SINGLE MISDEMEANOR VIOLATION, TAILOR PROBATION TO CIRCUMSTANCES; ADJUSTING THE REQUIRED CONDITIONS ACCORDINGLY AND CHOOSING APPROPRIATE WARRANTED CONDITIONS FROM THE ABOVE LIST.

Section 5100(b) FRAUD OR DECEIT IN OBTAINING LICENSE/PERMIT/REGISTRATION

Minimum Penalty – Revocation stayed with 180 days actual suspension and 3 years probation (if license was issued). Cannot apply for license for 12 months (if not yet

licensed), and, if application is subsequently approved, conditional license with probation for 3 years.

Maximum Penalty – Revocation or application denied. [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Suspension [3]
3. Standard Conditions of Probation [1615-2524]

If warranted: 1. Probation Monitoring Costs [2827]
2. Ethics Continuing Education [3234]
3. Regulatory Review Course [3332]
4. Continuing Education Courses [36]
5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5100(c) DISHONESTY, FRAUD, GROSS NEGLIGENCE, OR REPEATED ACTS OF NEGLIGENCE IN THE PRACTICE OF PUBLIC ACCOUNTANCY OR THE PERFORMANCE OF BOOKKEEPING

Minimum Penalty – Revocation stayed [1, 2, 4], 3 years probation [1, 2, 4],

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation of 3 to 5 years
2. Standard Conditions of Probation [1615-2524]

If warranted: 1. Supervised Practice [2615]
2. Restitution [2726]
3. Probation Monitoring Costs [2827]
4. Restricted Practice [2928]
5. Ethics Continuing Education [3234]
6. Regulatory Review Course [3334]
7. Peer Review [3433]
8. CPA Exam [3534]
9. Continuing Education Courses [36]
10. Samples - Audit, Review or Compilation [38]
11. Prohibition from Handling Funds [39]
12. Community Service – Free Services [40]
13. Notification to Clients [42]
14. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
15. Conditions as appropriate relating to physical or mental disability or condition [44-49]

Section 5100(d) CANCELLATION, REVOCATION OR SUSPENSION BY ANY OTHER STATE OR FOREIGN COUNTRY

Minimum Penalty – Revocation stayed [1, 2, 4], probation 3 years

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation of 3 to 5 years
 2. Standard Conditions of Probation [~~1615-2524~~]

If warranted (include those related to underlying offense(s)):

1. Suspension [3] with/without stay [4]
2. Supervised Practice [~~2625~~]
3. Restitution [~~2726~~]
4. Probation Monitoring Costs [~~2827~~]
5. Restricted Practice [~~2928~~]
6. Ethics Continuing Education [~~3234~~]
7. Regulatory Review Course [~~3332~~]
8. CPA Exam [~~3534~~] or ~~Enrolled Agents Exam~~ [~~35~~]
9. Continuing Education Courses [36]
10. Samples - Audit, Review or Compilation [38]
11. Prohibition from Handling Funds [39]
12. Community Service – Free Services [40]
13. Notice to Clients [42]
14. Conditions as appropriate relating to physical or mental disability or condition [44-49]

Section 5100(e) VIOLATION OF PROVISIONS OF SECTION 5097

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]
 3. Continuing Education Courses [36]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Library Reference Material [~~3130~~]
 6. Ethics Continuing Education [~~3234~~]
 7. Regulatory Review Course [~~3332~~]
 8. Peer Review [~~3432~~]
 9. CPA Exam [~~3534~~]
 10. Samples - Audits, Review or Compilation [38]
 11. Community Service – Free Services [40]
 12. Notice to Clients [42]
 13. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5100(f) VIOLATIONS OF PROVISIONS OF SECTION 5120

BPC sSection 5120 states "Any person who violates any of the provisions of Article 3 (commencing with section 5050) is guilty of a misdemeanor, punishable by imprisonment for not more than six months, or by a fine of not more than one thousand dollars, or both. "Whenever the Board has reason to believe that any person is liable for punishment under this article, the Board or its designated representatives, may certify the facts to the appropriate enforcement officer of the city or county where the alleged violation had taken place and the officer may cause appropriate proceedings to be brought."

Violations of Article 3 include:

5050 and 5051	PRACTICE WITHOUT PERMIT/" PUBLIC ACCOUNTANCY" DEFINED
5055 and 5056	TITLE OF CERTIFIED PUBLIC ACCOUNTANT/ PUBLIC ACCOUNTANT
5058	USE OF CONFUSING TITLES OR DESIGNATIONS PROHIBITED

Minimum/Maximum Penalty – See specific statute/regulation violated for recommended penalty

Section 5100(g) WILLFUL VIOLATION OF THE ACCOUNTANCY ACT, OR A RULE OR REGULATION PROMULGATED BY THE BOARD

Minimum/Maximum Penalty – See specific statute or regulation violated for recommended penalty

Section 5100(h) SUSPENSION OR REVOCATION OF THE RIGHT TO PRACTICE BEFORE ANY GOVERNMENTAL BODY OR AGENCY

Minimum Penalty – Revocation stayed ~~[1, 2, 4]~~, 3 years probation [1, 2, 4]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed ~~[4]~~, 3 years probation
 2. Standard Conditions of Probation [1645-2534]

If warranted (include those related to underlying offense(s)):

1. Suspension ~~[3]~~ with/without stay ~~[4]~~
2. Supervised Practice ~~[26]~~
3. Restitution [2726]
4. Probation Monitoring Costs [2827]
5. Restricted Practice [2928]
6. Ethics Continuing Education [3234]
7. Regulatory Review Course [3332]
8. CPA Exam [3534] or Enrolled Agents Exam ~~[35]~~
9. Continuing Education Courses ~~[36]~~
10. Samples - Audit, Review or Compilation ~~[38]~~
11. Prohibition from Handling Funds ~~[39]~~

12. Community Service – Free Services [40]
13. Notice to Clients [42]
14. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
15. Conditions as appropriate relating to physical or mental disability or condition [44-49]

Section 5100(i) FISCAL DISHONESTY OR BREACH OF FIDUCIARY RESPONSIBILITY OF ANY KIND

Minimum Penalty – Revocation stayed, 30 day suspension, 3 years probation [1-4]
 Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation of 3 to 5 years
 2. Suspension [3]
 3. Standard Conditions of Probation [~~1615~~-~~2524~~]

- If warranted:
1. Supervised Practice [~~2625~~]
 2. Restitution [~~2726~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Ethics Continuing Education [~~3234~~]
 6. Regulatory Review Course [~~3332~~]
 7. CPA Exam [~~3534~~] or ~~Enrolled Agents Exam~~ [35]
 8. Continuing Education Courses [36]
 9. Prohibition from Handling Funds [39]
 10. Community Service – Free Services [40]
 11. Notice to Clients [42]
 12. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
 13. Conditions as appropriate relating to physical or mental disability or condition [44-49]

Section 5100(j) KNOWING PREPARATION, PUBLICATION OR DISSEMINATION OF FALSE, FRAUDULENT, OR MATERIALLY MISLEADING FINANCIAL STATEMENTS, REPORTS, OR INFORMATION

Minimum Penalty – Revocation stayed, 60 days suspension, 3 years probation [1-4]
 Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 to 5 years probation
 2. Suspension [3]
 3. Standard Conditions of Probation [~~1615~~-~~2524~~]

- If warranted:
1. Supervised Practice [~~2625~~]
 2. Restitution [~~2726~~]
 3. Probation Monitoring Costs [~~2827~~]

4. Restricted Practice [2928]
5. Engagement Letters [3029]
6. Ethics Continuing Education [3234]
7. Regulatory Review Course [3332]
8. CPA Exam [3525] or Enrolled Agents Exam [35]
9. Continuing Education Courses [36]
10. Samples - Audit, Review or Compilation [38]
11. Community Service – Free Services [40]
12. Notice to Clients [42]
13. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
14. Conditions as appropriate relating to physical or mental disability or condition [44-49]

Section 5100(k) EMBEZZLEMENT, THEFT, MISAPPROPRIATION OF FUNDS OR PROPERTY, OR OBTAINING MONEY, PROPERTY OR OTHER VALUABLE CONSIDERATION BY FRAUDULENT MEANS OR FALSE PRETENSES

Minimum Penalty – Revocation stayed, 90 day suspension, 3 years probation [1-4]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation of 3 to 5 years
 2. Suspension [3]
 3. Standard Conditions of Probation [1645-2524]

- If warranted:
1. Supervised Practice [2625]
 2. Restitution [2726]
 3. Probation Monitoring Costs [2827]
 4. Restricted Practice [2928]
 5. Ethics Continuing Education [3234]
 6. Regulatory Review Course [3332]
 7. CPA Exam [354] or Enrolled Agents Exam [35]
 8. Continuing Education Courses [36]
 9. Prohibition from Handling Funds [39]
 10. Notice to Clients [42]
 11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
 12. Conditions as appropriate relating to physical or mental disability or condition [44-49]

Section 5100(l) DISCIPLINE, PENALTY, OR SANCTION BY THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OR SECURITIES AND EXCHANGE COMMISSION

Minimum Penalty – Revocation stayed [1, 2, 4], 3 years probation [1, 2, 4]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-25~~24]

If warranted (include those related to underlying offense(s)):

1. Suspension [3] with/without stay [4]
2. Supervised Practice [~~26~~25]
3. Restitution [~~27~~26]
4. Probation Monitoring Costs [~~28~~27]
5. Restricted Practice [~~29~~28]
6. Ethics Continuing Education [~~32~~32]
7. Regulatory Review Course [~~33~~32]
8. CPA Exam [~~35~~34] or ~~Enrolled Agents Exam~~ [35]
9. Continuing Education Courses [36]
10. Samples - Audit, Review or Compilation [38]
11. Prohibition from Handling Funds [39]
12. Community Service – Free Services [40]
13. Notice to Clients [42]
14. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
15. Conditions as appropriate relating to physical or mental disability or condition [44-49]

Section 5100(m) UNLAWFULLY ENGAGING IN PRACTICE OF PUBLIC ACCOUNTANCY IN ANOTHER STATE

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-25~~24]

If warranted:

1. Suspension [3] with/without stay [4]
2. Probation Monitoring Costs [~~28~~27]
3. Restricted Practice [~~29~~28]
4. Ethics Continuing Education [~~32~~34]
5. Regulatory Review Course [~~33~~32]
6. Continuing Education Courses [36]
7. Active License Status [37]
8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5101 DISCIPLINE OF PARTNERSHIP

Minimum Penalty – Revocation stayed [~~1, 2, 4~~], 3 years probation [1, 2, 4]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [1615-2524]

If warranted: 1. Suspension [3] with/without stay [4]
2. Supervised Practice [2625]
3. Restitution [2726]
4. Probation Monitoring Costs [2827]
5. Restricted Practice [2928]
6. Engagement Letters [3029]
7. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5104 RELINQUISHMENT OF CERTIFICATE OR PERMIT (revocation or suspension)

Minimum/Maximum Penalty – Revocation [1, 2]

Section 5105 RELINQUISHMENT OF CERTIFICATE OR PERMIT (delinquent)

Minimum/Maximum Penalty – Revocation [1, 2]

Section 5110(a) ACTS CONSTITUTING CAUSE FOR BOARD’S DENIAL OF EXAM APPLICATION OR ADMISSION, VOIDANCE OF GRADES, OR DENIAL OF LICENSE APPLICATION OR REGISTRATION

Minimum/Maximum Penalty – Denial of admission to examination, denial of licensure application, or revocation of license if issued.

If warranted: 1. Administrative Penalty not to exceed maximum set forth in BPC Section 5116 [43]

ARTICLE 7

Sections 5120/5121 VIOLATIONS AS MISDEMEANOR/EVIDENCE OF VIOLATION

(See Reference BPC sSection 5100(f) and section on Unlicensed Activities.)

ARTICLE 9

Section 5152 CORPORATION REPORTS

Minimum Penalty – Continuing Education Courses [36] for licensee directors, shareholders, and/or officers of corporation

Maximum Penalty – Suspend corporate accountancy registration and/or individual licenses for 90 days [3]

Section 5152.1 ACCOUNTANCY CORPORATION RENEWAL OF PERMIT TO PRACTICE

Minimum Penalty – Continuing Education Courses [36] for licensee directors, shareholders, and/or officers of corporation
Maximum Penalty – Suspend corporate accountancy registration and/or individual licenses for 90 days [3]

(Reference BPC sections 5050 and 5060(b))

**Section 5154 DIRECTORS, SHAREHOLDERS, AND OFFICERS
 MUST BE LICENSED**

Minimum Penalty – Continuing Education Courses for licensee directors, shareholders, and/or officers of corporation [36]
Maximum Penalty – Revocation of corporate registration [1, 2] and discipline of individual licenses

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1645-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Ethics Continuing Education [~~3234~~]
 4. Regulatory Review Course [~~3332~~]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 5155 DISQUALIFIED SHAREHOLDER NONPARTICIPATION

Minimum Penalty – Revocation stayed [~~1, 2, 4~~], 3 years probation [1, 2, 4]
Maximum Penalty – Revocation of individual and corporate license [1, 2]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1645-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Ethics Continuing Education [~~3234~~]
 4. Regulatory Review Course [~~3332~~]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

**Section 5156 UNPROFESSIONAL CONDUCT
 (ACCOUNTANCY CORPORATION)**

Minimum Penalty – Continuing Education Courses [36] for licensee directors, shareholders, and/or officers of corporation
Maximum Penalty – Revocation of individual and corporate licenses [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If Revocation stayed [4], 3-5 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Ethics Continuing Education [~~3234~~] for licensee directors, shareholders and/or officers
 4. Regulatory Review Course [~~3332~~] for licensee directors, shareholders and/or officers
 5. Community Service – Free Services [40]
 6. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Note: An accountancy corporation is bound by the same regulations as individual Respondents. See specific statute or regulation violated for recommended penalty.

Section 5158 PRACTICE OF PUBLIC ACCOUNTANCY; MANAGEMENT (ACCOUNTANCY CORPORATION)

Minimum Penalty – Continuing Education Courses [36] for licensee directors, stakeholders, and/or officers of corporation. Require CPA or PA to develop management plan; permit practice investigation within 3 months to ensure compliance with management requirement and plan [20, 33]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If Revocation stayed [4], 3-5 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Supervised Practice [~~2626~~]
 2. Restitution [~~2726~~]
 3. Probation Monitoring Cost [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Engagement Letters [~~3029~~]
 6. Ethics Continuing Education [~~3234~~]
 7. Regulatory Review Course [~~3332~~]
 8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
 9. Conditions as appropriate relating to physical or mental disability or condition [44-49]

CALIFORNIA BOARD OF ACCOUNTANCY REGULATIONS

TITLE 16 CALIFORNIA CODE OF REGULATIONS

ARTICLE 1: GENERAL

SECTION 3 NOTIFICATION OF CHANGE OF ADDRESS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – 90 day Suspension [3]

SECTION 5 OBSERVANCE OF RULES

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required:

1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [~~1645-2524~~]

If warranted:

1. Probation Monitoring Costs [~~2827~~]
2. Ethics Continuing Education [~~3234~~]
3. Regulatory Review Course [~~3332~~]
4. Continuing Education Courses [36]
5. Samples - Audit, Review or Compilation [38]
6. Community Service – Free Services [40]
7. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Note: Reference the specific regulation for appropriate discipline.

ARTICLE 2: EXAMINATIONS

SECTION 8.2 REQUIREMENTS FOR ISSUANCE OF THE AUTHORIZATION TO TEST

Minimum Penalty – Probationary conditions on initial license (if not yet licensed) or revocation, stayed with probation (if already licensed); reference appropriate subsection of BPC section 5100 for applicable provisions

Maximum Penalty – Denial of admission to examination or revocation of license if issued; Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 3: PRACTICE PRIVILEGES

SECTION 20 NOTIFICATION OF CHANGE OF INFORMATION FOR REGISTERED OUT-OF-STATE ACCOUNTING FIRMS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – 90 day Suspension [3]

CONDITIONS OF PROBATION:

Required: 1. If suspension stayed [4], probation 3 to 5 years
 2. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 5: REGISTRATION

SECTION 37.5 FINGERPRINTING

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Continuing Education Courses [36]
 5. Administrative Penalty not to exceed maximum set forth in BPC ~~S~~section 5116 [43]

ARTICLE 6: PEER REVIEW

SECTION 40(a)(b)(c) ENROLLMENT AND PARTICIPATION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]

5. Ethics Continuing Education [~~32~~34]
6. Regulatory Review Course [~~33~~32]
7. Peer Review [~~34~~33]
8. Continuing Education Courses [36]
9. Sample – Audit, Review or Compilation [38]
10. Notification to Clients/Cessation of Practice [42]
11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5076(a))

SECTION 41 FIRM RESPONSIBILITIES

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~16~~15-~~25~~24]

- If warranted:
1. Probation Monitoring Costs [~~28~~27]
 2. Ethics Continuing Education [~~32~~34]
 3. Regulatory Review Course [~~33~~32]
 4. Continuing Education Courses [36]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5076(a))

SECTION 43 EXTENSIONS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~16~~15-~~25~~24]

- If warranted:
1. Probation Monitoring Costs [~~28~~27]
 2. Ethics Continuing Education [~~32~~34]
 3. Regulatory Review Course [~~33~~32]
 4. Continuing Education Courses [36]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 44 NOTIFICATION OF EXPULSION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1615-2524]
- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [2625]
 3. Probation Monitoring Costs [2827]
 4. Restricted Practice [2928]
 5. Ethics Continuing Education [3234]
 6. Regulatory Review Course [3332]
 7. Continuing Education Courses [36]
 8. Sample – Audit, Review or Compilation [38]
 9. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
 10. Conditions as appropriate relating to physical or mental disability or condition [44-49]

SECTION 45 REPORTING TO BOARD

Minimum Penalty – Continuing Education Courses [36]
Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1615-2524]
- If warranted:
1. Probation Monitoring Costs [2827]
 2. Ethics Continuing Education [3234]
 3. Regulatory Review Course [3332]
 4. Continuing Education Courses [36]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5076(a))

SECTION 46(a) DOCUMENT SUBMISSION REQUIREMENTS

Applies to firms that receive a substandard peer review rating.

Minimum Penalty – Continuing Education Courses [36]
Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1615-2524]
- If warranted:
1. Probation Monitoring Costs [2827]
 2. Ethics Continuing Education [3234]

3. Regulatory Review Course [3332]
4. Continuing Education Courses [36]
5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5076(f))

SECTION 46(b) DOCUMENT SUBMISSION REQUIREMENTS

Applies to firms that receive a “pass” or “pass with deficiencies” peer review rating.

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [3332]
 4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 9: RULES OF PROFESSIONAL CONDUCT

SECTION 50 CLIENT NOTIFICATION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION:

- Required:
1. Standard Conditions of Probation [~~1645-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Ethics Continuing Education [~~3234~~]
 4. Regulatory Review Course [3332]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

Section 50.1 ATTEST CLIENT NOTIFICATION

Minimum Penalty – Continuing Education Courses [36] for California licensee partners or for licensee shareholders of corporation

Maximum Penalty – Revocation of partnership or corporate registration and individual licenses

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation

2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Ethics Continuing Education [~~3234~~]
 4. Regulatory Review Course [~~3332~~]
 5. Administrative Penalty not to maximum set forth in BPC section 5116 [43]

SECTION 51 FIRMS WITH NONLICENSEE OWNERS

Minimum Penalty – Continuing Education Courses [36] for California licensee partners or for licensee shareholders of corporation

Maximum Penalty – Revocation stayed, suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Restricted Practice [~~2928~~]
 4. Ethics Continuing Education [~~3234~~]
 5. Regulatory Review Course [~~3332~~]
 6. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 51.1 NOTIFICATION OF NON-LICENSEE OWNERSHIP

Minimum Penalty – Continuing Education Courses [36] for California licensee partners or for licensee shareholders of corporation

Maximum Penalty – Revocation of partnership or corporate registration and individual licenses

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Ethics Continuing Education [~~3234~~]
 4. Regulatory Review Course [~~3332~~]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5079)

SECTION 52 RESPONSE TO BOARD INQUIRY

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Continuing Education Courses [36]
 5. Community Service – Free Services [40]
 6. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 53 DISCRIMINATION PROHIBITED

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

- Required:
1. Standard Conditions of Probation [~~1645-2524~~]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Continuing Education Courses [36]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 54.1 DISCLOSURE OF CONFIDENTIAL INFORMATION PROHIBITED

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Ethics Continuing Education [~~3234~~]
 5. Regulatory Review Course [~~3332~~]
 6. Continuing Education Courses [36]
 7. Notice to Clients [42]
 8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5037)

SECTION 54.2 RECIPIENTS OF CONFIDENTIAL INFORMATION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed, [4], 3 years probation
 2. Standard Conditions of Probation [1615-2524]

If warranted: 1. Supervised Practice [2625]
 2. Probation Monitoring Costs [2827]
 3. Ethics Continuing Education [3234]
 4. Regulatory Review Course [3332]
 5. Continuing Education Courses [36]
 6. Administrative Penalty not to exceed maximum set forth in
 BPC section 5116 [43]

SECTION 56 COMMISSIONS – BASIC DISCLOSURE REQUIREMENT

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1615-2524]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Supervised Practice [2625]
 3. Restitution [2726]
 4. Probation Monitoring Costs [2827]
 5. Restricted Practice [2928]
 6. Engagement Letters [3029]
 7. Ethics Continuing Education [3234]
 8. Regulatory Review Course [3332]
 9. Continuing Education Courses [36]
 10. Community Service – Free Services [40]
 11. Administrative Penalty not to exceed maximum set forth in
 BPC section 5116 [43]

SECTION 56.1 COMMISSIONS – PROFESSIONAL SERVICES PROVIDED TO CLIENT

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1615-2524]

If warranted: 1. Suspension [3] with/without stay [4]

2. Supervised Practice [2625]
3. Restitution [2726]
4. Probation Monitoring Costs [2827]
5. Restricted Practice [2928]
6. Ethics Continuing Education [3234]
7. Regulatory Review Course [3332]
8. Continuing Education Courses [36]
9. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 57 INCOMPATIBLE OCCUPATIONS AND CONFLICT OF INTEREST

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1615-2524]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [2625]
 3. Probation Monitoring Costs [2827]
 4. Restricted Practice [2928]
 5. Engagement Letters [3029]
 6. Ethics Continuing Education [3234]
 7. Regulatory Review Course [3332]
 8. Continuing Education Courses [36]
 9. Prohibition from Handling Funds [39]
 10. Community Service – Free Services [40]
 11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 58 COMPLIANCE WITH STANDARDS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [1615-2524]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [2625]
 3. Probation Monitoring Costs [2827]
 4. Restricted Practice [2928]
 5. Engagement Letters [3029]
 6. Ethics Continuing Education [3234]
 7. Regulatory Review Course [3332]
 8. Peer Review [3433]

9. CPA Exam [3534]
10. Continuing Education Courses [36]
11. Samples - Audit, Review or Compilation [38]
12. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 59 REPORTING OF RESTATEMENTS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Ethics Continuing Education [~~3234~~]
 6. Regulatory Review Course [~~3332~~]
 7. Continuing Education Courses [36]
 8. Community Service – Free Services [40]
 9. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5063)

SECTION 60 REPORTING OF INVESTIGATIONS BY THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Ethics Continuing Education [~~3234~~]
 6. Regulatory Review Course [~~3332~~]
 7. Continuing Education Courses [36]
 8. Community Service – Free Services [40]
 9. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5063)

SECTION 61 THE REPORTING OF SETTLEMENTS, ARBITRATION AWARDS, AND JUDGMENTS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Engagement Letters [~~3029~~]
 6. Ethics Continuing Education [~~3234~~]
 7. Regulatory Review Course [~~3332~~]
 8. Continuing Education Courses [36]
 9. Community Service – Free Services [40]
 10. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5063)

SECTION 62 CONTINGENT FEES

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [~~1, 2, 4~~], 3 years probation [1, 2, 4]
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Restitution [~~2726~~]
 4. Probation Monitoring Costs [~~2827~~]
 5. Restricted Practice [~~2929~~]
 6. Engagement Letters [~~3029~~]
 7. Ethics Continuing Education [~~3234~~]
 8. Regulatory Review Course [~~3332~~]
 9. Continuing Education Courses [36]
 10. Community Service – Free Services [40]
 11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 63 ADVERTISING

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~2827~~]
 3. Ethics Continuing Education [~~3234~~]
 4. Regulatory Review Course [~~3332~~]
 5. Community Service – Free Services [40]
 6. Administrative Penalty not to exceed maximum set forth in
 BPC section 5116 [43]

SECTION 65 INDEPENDENCE

Minimum Penalty – Revocation stayed [~~1,2,4~~], 3 years of probation [1, 2, 4]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], probation of 3 to 5 years
 2. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Restitution [~~2726~~]
 4. Probation Monitoring Costs [~~2827~~]
 5. Restricted Practice [~~2928~~]
 6. Engagement Letters [~~3029~~]
 7. Ethics Continuing Education [~~3234~~]
 8. Regulatory Review Course [~~3332~~]
 9. Peer Review [~~3433~~]
 10. CPA Exam [~~3534~~]
 11. Samples - Audit, Review or Compilation [38]
 12. Administrative Penalty not to exceed maximum set forth in
 BPC section 5116 [43]

SECTION 67 APPROVAL OF USE OF FICTITIOUS NAME

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, 90 day suspension, 3 years probation [1-4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Probation Monitoring Costs [~~2827~~]

2. Ethics Continuing Education [~~3234~~]
3. Regulatory Review Course [~~3332~~]
4. Community Service – Free Services [40]
5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 68 RETENTION OF CLIENT'S RECORDS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [~~1, 2, 4~~], 3 years probation [1, 2, 4]
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Restitution [~~2726~~]
 4. Probation Monitoring Costs [~~2827~~]
 5. Restricted Practice [~~2928~~]
 6. Engagement Letters [~~3029~~]
 7. Ethics Continuing Education [~~3234~~]
 8. Regulatory Review Course [~~3332~~]
 9. Continuing Education Courses [36]
 10. Community Service – Free Services [40]
 11. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
 12. Conditions as appropriate relating to physical or mental disability or condition [44-49]

(Reference BPC sSection 5037)

SECTION 68.1 WORKING PAPERS DEFINED; RETENTION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Restitution [~~2726~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Engagement Letters [~~3029~~]
 6. Ethics Continuing Education [~~3234~~]
 7. Regulatory Review Course [~~3332~~]
 8. Continuing Education Courses [36]

9. Community Service – Free Services [40]
10. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]
11. Conditions as appropriate relating to physical or mental disability or condition [44-49]

SECTION 68.2 COMPONENTS OF AUDIT DOCUMENTATION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]
 3. Continuing Education Courses [36]
- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Ethics Continuing Education [~~3234~~]
 6. Regulatory Review Course [~~3332~~]
 7. Peer Review [~~3433~~]
 8. CPA Exam [~~3524~~]
 9. Samples - Audits, Review or Compilation [38]
 10. Community Service – Free Services [40]
 11. Notice to Clients [42]
 12. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5097)

SECTION 68.3 RETENTION PERIOD FOR AUDIT DOCUMENTATION

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]
 3. Continuing Education Courses [36]
- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Library Reference Material [~~3130~~]
 6. Ethics Continuing Education [~~3234~~]
 7. Regulatory Review Course [~~3332~~]

8. Peer Review [~~3433~~]
9. CPA Exam [~~3534~~]
10. Samples - Audits, Review or Compilation [38]
11. Community Service – Free Services [40]
12. Notice to Clients [42]
13. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BCP sSection 5097)

SECTION 68.4 CHANGES IN AUDIT DOCUMENTATION AFTER ISSUANCE OF REPORT

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]
 3. Continuing Education Courses [36]
- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2927~~]
 5. Library Reference Material [~~3130~~]
 6. Ethics Continuing Education [~~3234~~]
 7. Regulatory Review Course [~~3332~~]
 8. Peer Review [~~3433~~]
 9. CPA Exam [~~3534~~]
 10. Samples - Audits, Review or Compilation [38]
 11. Community Service – Free Services [40]
 12. Notice to Clients [42]
 13. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference PBC section 5097)

SECTION 68.5 AUDIT DOCUMENTATION RETENTION AND DESTRUCTION POLICY

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1645-2524~~]
 3. Continuing Education Courses [36]
- If warranted:
1. Suspension [3] with/without stay [4]

2. Supervised Practice [2625]
3. Probation Monitoring Costs [2827]
4. Restricted Practice [2928]
5. Library Reference Material [3130]
6. Ethics Continuing Education [3234]
7. Regulatory Review Course [3332]
8. Peer Review [3433]
9. CPA Exam [3534]
10. Samples - Audits, Review or Compilation [38]
11. Community Service – Free Services [40]
12. Notice to Clients [42]
13. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

(Reference BPC sSection 5097)

SECTION 69 CERTIFICATION OF APPLICANT'S EXPERIENCE

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615~~-~~2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [2625]
 3. Probation Monitoring Costs [2827]
 4. Ethics Continuing Education [3234]
 5. Regulatory Review Course [3332]
 6. Community Service – Free Services [40]
 7. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [46]

ARTICLE 11: ACCOUNTANCY CORPORATION RULES

SECTION 75.8 SECURITY FOR CLAIMS AGAINST AN ACCOUNTANCY CORPORATION

Minimum Penalty – Continuing Education Courses [36] for licensee directors, shareholders, and/or officers of corporation

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], probation of 3 to 5 years
 2. Standard Conditions of Probation [~~1615~~-~~2524~~]

- If warranted:
1. Supervised Practice [2625]

2. Restitution [~~27~~26]
3. Probation Monitoring Costs [~~28~~27]
4. Restricted Practice [~~29~~28]
5. Ethics Continuing Education [~~32~~34]
6. Regulatory Review Course [~~33~~32]
7. Continuing Education Courses [36]
8. Samples - Audit, Review or Compilation [38]
9. Prohibition from Handling Funds [39]
10. Community Service – Free Services [40]
11. Notification to Clients [42]
12. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 75.9 SHARES: OWNERSHIP AND TRANSFER

Minimum Penalty – Continuing Education Courses [36] for licensee directors, shareholders, and/or officers of corporation

Maximum Penalty – Revocation of corporate registration [1, 2] and discipline of individual licenses

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~16~~16515-~~25~~25424]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Probation Monitoring Costs [~~28~~27]
 3. Restricted Practice [~~29~~28]
 4. Ethics Continuing Education [~~32~~34]
 5. Regulatory Review Course [~~33~~32]
 6. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 75.11(b) CERTIFICATION OF REGISTRATION; CONTINUING VALIDITY; NOTIFICATION OF NAME AND ADDRESS CHANGES

Minimum Penalty – Continuing Education Courses [36] for licensee directors, shareholders, and/or officers of corporation

Maximum Penalty – Suspend corporate accountancy registration and/or individual licensees for 90 days [3]

CONDITIONS OF PROBATION:

- Required:
1. Standard Conditions of Probation [~~16~~15-~~25~~24]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Restricted Practice [~~29~~28]
 3. Ethics Continuing Education [~~32~~34]
 4. Regulatory Review Course [~~33~~32]
 5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 12: CONTINUING EDUCATION RULES

Section 80 INACTIVE LICENSE STATUS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
2. Probation Monitoring Costs [~~2827~~]
3. Restricted Practice [~~2928~~]
4. Ethics Continuing Education [~~3234~~]
5. Regulatory Review Course [~~3332~~]
6. Continuing Education Courses [36]
7. Active License Status [37]
8. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 81(a) CONTINUING EDUCATION REQUIREMENTS FOR RENEWING AN EXPIRED LICENSE

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [~~1615-2524~~]

If warranted: 1. Suspension [3] with/without stay [4]
2. Supervised Practice [~~2625~~]
3. Probation Monitoring Costs [~~2827~~]
4. Restricted Practice [~~2928~~]
5. Ethics Continuing Education [~~3234~~]
6. Regulatory Review Course [~~3332~~]
7. Continuing Education Courses [36]
8. Samples – Audit, Review or Compilation [38]
9. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 87 BASIC REQUIREMENTS (Continuing Education)

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4], 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Ethics Continuing Education [~~3234~~]
 6. Regulatory Review Course [~~3332~~]
 7. Continuing Education Courses [36]
 8. Samples – Audit, Review or Compilation [38]
 9. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 87.5 ADDITIONAL CONTINUING EDUCATION REQUIREMENTS

Minimum Penalty – Continuing Education Courses [~~2536~~]

Maximum Penalty – Revocation stayed, 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

- Required:
1. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Continuing Education Courses [36]
 5. Active License Status [37]
 6. Samples - Audit, Review or Compilation [38]
 7. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 87.6 RECORDS REVIEW CONTINUING EDUCATION REQUIREMENTS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

- Required:
1. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Probation Monitoring Costs [~~28727~~]
 2. Ethics Continuing Education [~~3234~~]
 3. Regulatory Review Course [~~3332~~]
 4. Continuing Education Courses [36]
 5. Samples - Audit, Review or Compilation [38]
 6. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 87.8 REGULATORY REVIEW COURSE

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1645-2524~~]

If warranted: 1. Probation Monitoring Costs [~~2827~~]
2. Ethics Continuing Education [~~3234~~]
3. Continuing Education Courses [36]
4. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 89 CONTROL AND REPORTING

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

Required: 1. If revocation stayed [4], 3 years probation
2. Standard Conditions of Probation [~~1645-2524~~]

If warranted: 1. Probation Monitoring Costs [~~2827~~]
2. Ethics Continuing Education [~~3234~~]
3. Regulatory Review Course [~~3332~~]
4. Continuing Education Courses [36]
5. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 89.1 REPORTS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation stayed, 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

Required: 1. Standard Conditions of Probation [~~1645-2524~~]

If warranted: 1. Probation Monitoring Costs [~~2827~~]
2. Ethics Continuing Education [~~3234~~]
3. Regulatory Review Course [~~3332~~]
4. Continuing Education Courses [36]
5. Samples - Audit, Review or Compilation [38]
6. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

SECTION 90 EXCEPTIONS AND EXTENSIONS

Minimum Penalty – Continuing Education Courses [36]

Maximum Penalty – Revocation [1, 2]

CONDITIONS OF PROBATION:

- Required:
1. If revocation stayed [4] 3 years probation
 2. Standard Conditions of Probation [~~1615-2524~~]

- If warranted:
1. Suspension [3] with/without stay [4]
 2. Supervised Practice [~~2625~~]
 3. Probation Monitoring Costs [~~2827~~]
 4. Restricted Practice [~~2928~~]
 5. Ethics Continuing Education [~~3234~~]
 6. Regulatory Review Course [~~3232~~]
 7. Continuing Education Courses [36]
 8. Samples – Audit, Review or Compilation [38]
 9. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

ARTICLE 12.5: CITATIONS AND FINES

SECTION 95.4 FAILURE TO COMPLY WITH CITATION

Minimum Penalty – Compliance with Citation Abatement Order and/or Fine as issued
Maximum Penalty – Revocation stayed, 3 years probation [1, 2, 4]

CONDITIONS OF PROBATION:

- Required:
1. Standard Conditions of Probation [~~1615-2524~~]
 2. Restitution [~~2726~~]
 3. Compliance with Citation Abatement Order and/or Fine

- If warranted:
1. Probation Monitoring Costs [~~2827~~]
 2. Administrative Penalty not to exceed maximum set forth in BPC section 5116 [43]

VIOLATION OF PROBATION

Minimum penalty - Citation and Fine (19)

Maximum penalty - Vacate stay order and impose penalty that was previously stayed; and/or revoke, separately and severally, for violation of probation and/or for any additional offenses. [1-4]

California Code of Regulations (CCR) section 95 provides the authority for the Executive Officer to issue citations and fines from \$100 to \$5000 to a licensee for violation of a term or condition contained in a decision placing that licensee on probation.

The maximum penalty is appropriate for repeated **similar** offenses, or for probation violations indicating a cavalier or recalcitrant attitude. If the probation violation is due in part to the commission of additional offense(s), additional penalties shall be imposed according to the nature of the offense; and the probation violation shall be considered as an aggravating factor in imposing a penalty for those offenses.

UNLICENSED ACTIVITIES

If any unlicensed individual or firm violates, or is suspected of violating, any of the following Business and Professions Code (BPC) sections, the matter may be referred to the Division of Investigation and if the allegation is confirmed, to the District Attorney or other appropriate law enforcement officer for prosecution.

Section 5050	Section 5056	Section 5072
Section 5051	Section 5058	Section 5088
Section 5055	Section 5071	

CCR section 95.6 also provides the authority for the Executive Officer to issue citations and fines from \$100 to \$5000 and an order of abatement against any person defined in Business and Professions Code section 5035 who is acting in the capacity of a licensee under the jurisdiction of the CBA.

BPC section 5120 provides that any person who violates any provisions of Article 3 is guilty of a misdemeanor and can be imprisoned for not more than 6 months or assessed a fine of not more than \$1,000 or both. Injunctions may be requested (see BPC section 5122 immediately following).

INJUNCTIONS

BPC ~~s~~Section 5122 provides that "Whenever in the judgment of the board, (or with its approval, ~~in the judgment of the enforcement advisory committee~~), any person has engaged, or is about to engage, in any acts or practices that ~~which~~ constitute, or will constitute, an offense against this chapter, the board may make application to the appropriate court for an order enjoining the acts or practices, and upon showing by the board that the person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or ~~such~~ other order that may be appropriate shall be granted by the court." This section applies to licensees and unlicensed persons.

VIII. MODEL ORDERS

LICENSEES

1. Revocation - Single Cause:

_____ License No. _____ issued
(Ex: Certified Public Accountant) (Ex: 00000)

to rRespondent _____ is revoked.
(Name)

2. Revocation - Multiple Causes:

_____ License No. _____ issued to rRespondent _____ is revoked
pursuant to Determination(s) of Issues _____ separately and for all of them.

3. Suspension:

_____ License No. _____ issued to rRespondent _____ is suspended
for _____. During the period of suspension the rRespondent shall engage in no
activities for which certification as a Certified Public Accountant or Public Accountant is
required as described in Business and Professions Code, Division 3, Chapter 1, §section
5051.

4. Standard Stay Order:

However, _____ (revocation/suspension) _____ is stayed and rRespondent is placed on
probation for _____ years upon the following terms and conditions:

5. **Permanent Restricted Practice Order (to be placed after any probationary order):**

Order of Restricted Practice

After the period of probation set forth above is successfully completed, it is further ordered that Respondent shall be prohibited from (performing certain types of engagements such as audits, reviews, compilations, or other attestation engagements, etc.), and/or from practice in (certain specialty areas, i.e. bookkeeping, write-up, tax, auditing, etc.). Respondent shall be prohibited from performing the above mentioned services permanently or until such time as Respondent successfully petitions the CBA for reinstatement of the privilege to engage in any of the service(s) or act(s) restricted by this Order.

(Note: This restriction is authorized by Business and Professions Code section 5100.5. It should be used where the violation involves unprofessional conduct in the performance or failure to perform particular accountancy acts or services or where serious or repeated violations in a particular practice area are found and revocation is not warranted.)

PETITIONS FOR REINSTATEMENT

6. Grant petition without restrictions on the license:

The petition for reinstatement filed by _____ is hereby granted and Petitioner's certificate shall be fully restored.

67. Grant petition and place license on probation:

The petition for reinstatement filed by _____ is hereby granted. Petitioner's certificate shall be fully restored. However, the certificate shall then be immediately revoked, the revocation shall be stayed, and petitioner shall be placed on probation for ___ years upon the following terms and conditions (*list standard and applicable optional conditions of probation*):

78. Grant petition and place license on probation after petitioner completes conditions precedent to reinstatement of the license:

The petition for reinstatement filed by _____ is hereby granted and Petitioner's certificate shall be fully reinstated upon the following conditions precedent (*list conditions precedent such as restitution, cost reimbursement, completion of CE, completion of rehabilitation program, take and pass CPA/Enrolled Agents exam, etc.*):

Upon completion of the conditions precedent above, Petitioner's certificate shall be reinstated. Upon reinstatement, Petitioner's certificate shall be revoked. However, said revocation shall be stayed and Petitioner shall be placed on probation for a period of ___ years under the following terms and conditions (*list standard and applicable optional conditions of probation*):

89. Deny Petition:

The petition for reinstatement filed by _____ is hereby denied. Option: In accordance with Section 5115(a) of the Business and Professions Code, Petitioner may file a new petition for reinstatement only after ___ years have elapsed from the effective date of this decision.

Note: (3 years maximum)

Note: Business and Professions Code section 5115 also allows a person to file a petition for a reduction in penalty. The above checklist can also be used for these petitions.

PETITION FOR REVOCATION OF PROBATION

910. Revocation of Probation:

Certified Public Accountant Certificate No. _____, heretofore issued to Respondent _____, is revoked.

4011. Continuance of Probation:

However, revocation is stayed and Respondent is placed on probation for years upon the following terms and conditions:

APPLICANTS

4112. Grant application without restrictions on the license:

The application of Respondent _____ for initial licensure is hereby granted and a license shall be issued to Respondent upon successful completion of all licensing requirements including payment of all fees.

4213. Grant application and place license on probation:

The application of Respondent _____ for initial licensure is hereby granted and a license shall be issued to Respondent upon successful completion of all licensing requirements including payment of all fees. Said license shall immediately be revoked, the order of revocation stayed and Respondent's license placed on probation for a period of _____ years on the following conditions:

4314. Grant application and place license on probation after applicant completes conditions precedent to reinstatement of the license:

The application filed by _____ for initial licensure is hereby granted and a license shall be issued upon the following conditions precedent (*list conditions precedent such as restitution, cost reimbursement, completion of CE, completion of rehabilitation program, take and pass CPA/~~Enrolled Agents exam~~, etc.*):

Upon completion of the conditions precedent above and successful completion of all licensing requirements, Respondent shall be issued a license. However, the license shall be immediately revoked, and Respondent shall be placed on probation for a period of ____ years under the following terms and conditions (*list standard and applicable optional conditions of probation*):

4415. Deny Application:

The application of Respondent _____ for initial licensure is hereby denied.

STANDARD CONDITIONS OF PROBATION (TO BE INCLUDED IN ALL CASES OF PROBATION)

1516. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

1617. Cost Reimbursement

Respondent shall reimburse the ~~Board~~ CBA \$ _____ for its investigation and prosecution costs. The payment shall be made within __ days/months of the date the ~~Board's~~CBA's decision is final.

Option: The payment shall be made as follows: _____ [specify either prior to the resumption of practice or in quarterly payments (due with quarterly written reports), the final payment being due one year before probation is scheduled to terminate].

1718. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the ~~Board~~ California Board of Accountancy (CBA) on a form obtained from the ~~Board~~ CBA. The ~~Respondent~~ shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to ~~Respondent's~~ compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the ~~Board~~ CBA or its representatives.

1819. Personal Appearances

Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the ~~Board~~ California Board of Accountancy or its designated representatives, provided such notification is accomplished in a timely manner.

1920. Comply With Probation

Respondent shall fully comply with the terms and conditions of the probation imposed by the ~~Board~~ California Board of Accountancy (CBA) and shall cooperate fully with representatives of the ~~California Board of Accountancy~~ CBA in its monitoring and investigation of the ~~Respondent's~~ compliance with probation terms and conditions.

2021. Practice Investigation

Respondent shall be subject to, and shall permit, a practice investigation of the ~~Respondent's~~ professional practice. Such a practice investigation shall be conducted by representatives of the ~~Board~~ California Board of Accountancy, provided notification of such review is accomplished in a timely manner.

2122. Comply With Citations

Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

2223. Tolling of Probation for Out-of-State Residence/Practice

In the event ~~r~~Respondent should leave California to reside or practice outside this state, ~~r~~Respondent must notify the ~~Board~~ California Board of Accountancy (CBA) in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the ~~Board~~ CBA costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the CBA.

2324. Violation of Probation

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

The CBA's Executive Officer may issue a citation under California Code of Regulations, Section 95, to a licensee for a violation of a term or condition contained in a decision placing that licensee on probation.

2425. Completion of Probation

Upon successful completion of probation, ~~r~~Respondent's license will be fully restored, unless the ~~Board~~ California Board of Accountancy has ordered that Respondent's license be permanently restricted or limited even after probation has been completed.

OPTIONAL CONDITIONS OF PROBATION (To Be Included In Cases Where Appropriate)

2526. Supervised Practice

Within ~~thirty~~ 30 days of the effective date of this decision, ~~r~~Respondent shall submit to the ~~Board~~ California Board of Accountancy (CBA) or its designee for its prior approval a plan of practice that shall be monitored by another CPA or PA who provides periodic reports to the CBA or its designee. Respondent shall pay all costs for such monitoring.

2627. Restitution

Respondent shall make restitution to _____ in the amount of \$_____ and shall provide the ~~Board~~ California Board of Accountancy with a written release from _____ attesting that full restitution has been paid. Restitution shall be completed before the termination of probation.

2728. Probation Monitoring Costs

Respondent shall pay all costs associated with probation monitoring as determined by the ~~CBA~~ California Board of Accountancy (CBA). Such costs shall be payable to the CBA within 30 days. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation. If costs are billed after the completion of the probationary period, the obligation to pay the costs shall continue, but the probation shall not be extended.

2829. Restricted Practice

Respondent shall be prohibited from _____ (performing certain types of engagements such as audits, reviews, compilations, or other attestation engagements, etc.), and/or from practice in _____ (certain specialty areas, i.e. bookkeeping, write-up, tax, auditing, etc.). The Respondent will be prohibited from performing the above mentioned services until such time that they successfully petition the California Board of Accountancy as listed in BPC section 5115.

2930. Engagement Letters

Respondent shall use engagement letters with each engagement accepted during probation and shall provide copies of same to the ~~Board~~ California Board of Accountancy or its designee upon request.

3031. Library Reference Materials

Respondent shall have immediate access to, shall use, and shall maintain published materials and/or checklists that are consistent with the practice. Such materials and checklists shall be produced on-site for review by the ~~Board~~ California Board of Accountancy or its designee upon reasonable notice.

3132. Ethics Continuing Education

~~Respondent~~ Within (a specified time period (i.e. 180 days)) of the effective date of the Order or Prior to the resumption of practice (where the license has been suspended), Respondent shall complete four hours of continuing education in course subject matter pertaining to the following: a review of nationally recognized codes of conduct emphasizing how the codes relate to professional responsibilities; case-based instruction focusing on real-life situational learning; ethical dilemmas facing the accounting profession; or business

ethics, ethical sensitivity, and consumer expectations (~~within a given period of time or prior to resumption of practice~~). Courses must be a minimum of one hour as described in California Code of Regulations section 88.2., (~~Courses will be passed prior to resumption of practice where license has been suspended or where otherwise appropriate.~~)

If Respondent fails to complete said courses within the time period provided, Respondent shall so notify the California Board of Accountancy (CBA) ~~CBA~~ and shall cease practice until Respondent completes said courses, has submitted proof of same to the CBA, and has been notified by the CBA that he or she may resume practice. Failure to complete the required courses within the time period provided ~~no later than 100 days prior to the termination of probation~~ shall constitute a violation of probation. This shall be in addition to continuing education requirements for relicensing.

3233. Regulatory Review Course

Respondent ~~Within (a specified time period (i.e. 180 days)) of the effective date of the Order or~~ Prior to the resumption of practice (where the license has been suspended), Respondent shall complete a California Board of Accountancy (CBA) ~~CBA-~~ approved course on the provisions of the California Accountancy Act and the (CBA) Regulations specific to the practice of public accountancy in California emphasizing the provisions applicable to current practice situations (~~within a given period of time or prior to resumption of practice~~). The course also will include an overview of historic and recent disciplinary actions taken by the CBA, highlighting the misconduct which led to licensees being disciplined. ~~The course shall be (a minimum of) two hours.~~

If Respondent fails to complete said courses within the time period provided, Respondent shall so notify the CBA and shall cease practice until Respondent completes said courses, has submitted proof of same to the CBA, and has been notified by the CBA that he or she may resume practice. Failure to complete the required courses within the time period provided ~~no later than 100 days prior to the termination of probation~~ shall constitute a violation of probation. This shall be in addition to continuing education requirements for relicensing. ~~Addition to continuing education requirements for licensing.~~

3334. Peer Review

During the period of probation, all audit, review, and compilation reports and work papers shall be subject to peer review by a Board-recognized peer review program provider pursuant to Business and Professions Code section 5076 and California Code of Regulations, Title 16, Division 1, Article 6, commencing with section 38, ~~certified peer reviewer~~ at Respondent's expense. The specific engagements to be reviewed shall be at the discretion of the peer reviewer. Within 45 days of the peer review report being accepted by a Board-recognized peer review program provider, Respondent shall submit to the California Board of Accountancy (CBA) a copy of the peer review report, including any materials documenting the prescription of remedial or corrective actions imposed by the Board-recognized peer review program provider. Respondent shall also submit, if available, within 45 days from the date of the request by the CBA or its designee, any materials documenting completion of any prescribed or remedial actions.

~~Upon completion of the peer review, respondent shall submit a copy of the report with the reviewer's conclusions and findings to the Board.~~

3435. CPA Exam

Within (a specified time period (i.e. 180 days)) of the effective date of the Order or Prior to the resumption of practice (where the license has been suspended), Respondent shall take and pass the (section) of the Uniform CPA Examination – e.g., within 180 days of the effective date of the decision or within 180 days of completion of educational program, etc., or Prior to the resumption of practice. (Exam will be passed Prior to resumption of practice where license has been suspended or where otherwise appropriate.)

If ~~r~~Respondent fails to pass said examination within the time period provided ~~or within two attempts~~, ~~r~~Respondent shall so notify the ~~Board~~ California Board of Accountancy (CBA) and shall cease practice until ~~r~~Respondent ~~takes~~ completes and successfully passes said examination, has submitted proof of same to the CBA, and has been notified by the CBA that he or she may resume practice. Failure to pass the required examination within the time period provided ~~no later than 100 days prior to the termination of probation~~ shall constitute a violation of probation.

36. Enrolled Agents Exam

~~Respondent shall take and pass the enrolled agents exam (within a given period of time or prior to the resumption of practice). (Exam will be passed prior to resumption of practice where license has been suspended or where otherwise appropriate.)~~

~~If respondent fails to pass said examination within the time period provided or within two attempts, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he or she may resume practice. Failure to pass the required examination no later than 100 days prior to the termination of probation shall constitute a violation of probation.~~

3736. Continuing Education Courses

~~Respondent~~Within (a specified time period (i.e. 180 days)) of the effective date of the Order or Prior to the resumption of practice (where the license has been suspended), Respondent shall complete and provide proper documentation of (specified) professional education courses within ~~(a designated time)~~. This shall be in addition to continuing education requirements for relicensing.

If Respondent fails to complete said courses within the time period provided, Respondent shall so notify the CBA-California Board of Accountancy (CBA) and shall cease practice until Respondent completes said courses, has submitted proof of same to the CBA, and has been notified by the CBA that he or she may resume practice. Failure to complete the required courses within the time period provided no later than 100 days prior to the termination of probation shall constitute a violation of probation. This shall be in addition to continuing education requirements for relicensing.

3837. Active License Status

Respondent shall at all times maintain an active license status with the ~~Board~~ California Board of Accountancy (CBA), including during any period of suspension. If the license is expired at the time the ~~Board~~ CBA's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.

3938. Samples - Audit, Review or Compilation

During the period of probation, if the Respondent undertakes an audit, review or compilation engagement, the Respondent shall submit to the ~~Board~~ California Board of Accountancy (CBA) as an attachment to the required quarterly report a listing of the same. The CBA or its designee may select one or more from each category and the resulting report and financial statement and all related working papers must be submitted to the CBA or its designee upon request.

4039. Prohibition from Handling Funds

During the period of probation the Respondent shall engage in no activities which require receiving or disbursing funds for or on behalf of any other person, company, partnership, association, corporation, or other business entity.

4140. Community Service - Free Services

Respondent shall participate in a community service program as directed by the ~~Board~~ California Board of Accountancy (CBA) or its designee in which Respondent provides free professional services on a regular basis to a community or charitable facility or agency, amounting to a minimum of ____ hours. Such services to begin no later than __ days after Respondent is notified of the program and to be completed no later than _____. Respondent shall submit proof of compliance with this requirement to the CBA. Respondent is entirely responsible for his or her performance in the program and the CBA assumes neither express nor implied responsibility for Respondent's performance nor for the product or services rendered.

4241. Relinquish Certificate

Respondent shall relinquish and shall forward or deliver the certificate or permit to practice to the ~~Board~~ California Board of Accountancy office within 10 days of the effective date of this decision and order.

4342. Notification to Clients/Cessation of Practice

In orders that provide for a cessation or suspension of practice, Respondent shall comply with procedures provided by the California Board of Accountancy or its designee regarding notification to, and management of, clients.

4443. Administrative Penalty

Respondent shall pay to the ~~Board~~ California Board of Accountancy an administrative penalty in the amount of \$_____ for violation of Section(s) _____ of the California Accountancy Act. The payment shall be made within __days/months of the date the ~~Board~~CBA's decision is final.

4544. Medical Treatment

Respondent shall undergo and continue treatment by a licensed physician of Respondent's choice and approved by the ~~Board~~ California Board of Accountancy (CBA) or its designee until the treating physician certifies in writing in a report to the CBA or its designee that treatment is no longer necessary. Respondent shall have the treating physician submit reports to the CBA at intervals determined by the ~~Board~~ CBA or its designee. Respondent is responsible for costs of treatment and reports.

(Optional)

Respondent shall not engage in practice until notified by the CBA of its determination that ~~r~~Respondent is physically fit to practice.

4645. Psychotherapist

Respondent shall undergo and continue treatment by a licensed psychotherapist of ~~r~~Respondent's choice and approved by ~~Board~~ California Board of Accountancy (CBA) or its designee until the treating psychotherapist certifies in writing in a report to the ~~Board~~ CBA or its designee that treatment is no longer necessary. Respondent shall have the treating psychotherapist submit reports to the ~~Board~~CBA at intervals determined by the ~~Board~~CBA or its designee. Respondent is responsible for costs of treatment and reports.

(Optional)

Respondent shall not engage in practice until notified by the ~~Board~~CBA of its determination that ~~r~~Respondent is mentally fit to practice.

4746. Rehabilitation Program/Chemical Dependence

Respondent shall successfully complete or shall have successfully completed a rehabilitation program for chemical dependence that the ~~Board~~ California Board of Accountancy (CBA) or its designee approves and shall have reports submitted by the program. If a program was not successfully completed prior to the period of probation, the ~~r~~Respondent, within a reasonable period of time as determined by the ~~Board~~CBA or its designee but not exceeding 90 days of the effective date of the decision, shall be enrolled in a program. In addition, ~~r~~Respondent must attend support groups, (e.g. Narcotics Anonymous, Alcoholic Anonymous etc.), as directed by the ~~Board~~CBA or its designee. Respondent is responsible for all costs of such a program.

4847. Drugs - Abstain From Use

Respondent shall completely abstain from the personal use of all psychotropic drugs, including alcohol, in any form except when the same are lawfully prescribed.

4948. Drugs - Screening

Respondent shall participate or shall have participated in a drug screening program acceptable to the ~~Board~~ California Board of Accountancy (CBA) and shall have reports submitted by the program. Respondent is responsible for all costs associated with said screening and reporting.

5049. Biological Fluid Testing

Respondent, at any time during the period of probation, shall fully cooperate with the ~~Board~~ California Board of Accountancy (CBA) or its designee in its supervision and investigation of compliance with the terms and conditions of probation, and shall, when requested, submit to such tests and samples as the CBA or its designee may require for the detection of alcohol, narcotics, hypnotic, dangerous drugs, or controlled substances. Respondent is responsible for all costs associated with this investigation and testing.

Conditions 44-49 shall be used when evidence indicates ~~r~~Respondent may have physical or mental ailment(s) or condition(s) which contributed to the violation or when the same are alleged by ~~r~~Respondent to be a contributing factor to the violation(s).



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



LC Item II.
May 19, 2016

CBA Item IX.C.2.A.-C.
May 19-20, 2016

Update, Discussion, and Possible Action on Legislation on Which the California Board of Accountancy Has Taken a Position or is Monitoring

Presented by: Nooshin Movassaghi, Legislative Analyst

Purpose of the Item

The purpose of this agenda item is to present the status of legislation being followed by the California Board of Accountancy (CBA).

Consumer Protection Objective

Following the progress of these bills allows the CBA to provide input on legislation to ensure consumer protection.

Action Needed

The CBA will be asked to make decisions regarding positions on the bills being followed.

Background

The CBA has taken positions on various pieces of legislation and continues to monitor several others (**Attachment 1**). Staff have included the CBA's position letters (**Attachment 2**), for information, on the seven bills on which the CBA has taken a Support or Support if Amended positions.

Comments

Recommendation to Maintain the CBA's Current Position

Staff recommend maintaining the current positions on Assembly Bill (AB) 507, AB 1707, AB 2859, ACR 131, Senate Bill (SB) 1251, SB 1348, SB 1445 and SB 1479 which have not been amended since the CBA's March 2016 meeting. Staff also recommend that the CBA maintain its current position on AB 1566 and SB 1155, which have been amended, but not in ways that change the effect of the bills.

In mid March, the CBA-sponsored bill, AB 2560, was amended to reflect the previously approved language relating the CBA's statutory authority to remove a state from the list of substantially equivalent states pertaining to the Practice Privilege program.

Lastly, AB 1939 was substantially amended, and the updated analysis has been provided.

Update, Discussion, and Possible Action on Legislation on Which the California Board of Accountancy Has Taken a Position or is Monitoring

Page 2 of 3

AB 1939 – Study of Licensing Requirements (**Attachment 3**)

CBA Position: Watch.

What It Did

This bill would require the director of the Department of Consumer Affairs to conduct a study and submit it to the Legislature by July 1, 2017, to identify, explore, and address areas where occupational licensing requirements create an unnecessary barrier to labor market entry or labor mobility, particularly for dislocated workers, transitioning service members, and military spouses.

Amendments

The amendments added the following provisions to the bill:

- Require the Legislative Analyst Office (LAO) instead of the Director of DCA to conduct the study and submit it to the Legislature and DCA by July 1, 2017.
- Repeal this requirement by January 1, 2021.

Analysis

Amendments made to the bill would shift the responsibility to conduct the study from the Director of DCA to the LAO.

Fiscal Impact

Unknown. This bill has been identified as having a fiscal impact.

Recommendation

Staff recommend that the CBA maintain a Watch position on AB 1939.

Recommendation for Possible Action to Change the CBA's Current Position

AB 2853 was substantially amended and the updated analysis has been provided, including staff's recommendation for the CBA to take a Support position.

AB 2853 – Public Records (**Attachment 4**)

CBA Position: Watch.

What It Did

This bill would amend the term "public record," for purposes of the California Public Records Act, to include those writings kept on a private cell phone or other electronic device of an elected official or employee of a public agency if those records relate to the public's business.

Update, Discussion, and Possible Action on Legislation on Which the California Board of Accountancy Has Taken a Position or is Monitoring

Page 3 of 3

Amendments

The amendments deleted the provisions regarding cell phones subject to a public records request contained in the original version of the bill, and added the following provisions to the bill (**Attachment 4**):

- Authorize a public agency to post a public record on its Internet website and refer a person that requests public records to the public agency's Internet website where the public record is posted.
- If, after the agency refers the person to the Internet website, the person requesting the record requests a copy of the record due to an inability to access or reproduce the one online, the agency shall, within 10 days, prepare a copy of the public record and promptly notify the person of the availability of the public record.

Analysis

At the CBA 2016 March meeting, staff informed the CBA that AB 2853 was undergoing amendments and recommended a Watch position. However, the current version of this bill falls in line with the CBA's efforts to increase transparency and public access to information.

Fiscal Impact

Unknown. This bill has been identified as having a fiscal impact.

Recommendation

Staff recommend that the CBA take a Support position on SB 2853.

Bills Being Monitored by the CBA

There are 11 bills that staff provided at the CBA's March 2016 meeting that are presently being monitored for further developments and impact on the CBA: AB 1868, AB 1887, AB 1949, AB 2421, AB 2423, AB 2701, AB 2843, SB 1130, SB 1195, SB 1444, and SB 1448. Staff recommend that the CBA continue to monitor these bills.

Staff recommendation

1. AB 507, AB 1566, AB 1707, AB 1939, AB 2560, AB 2859, ACR 131, SB 1251, SB 1348, SB 1155, SB 1445 and SB 1479 – Staff recommend that the CBA maintain its current positions on these bills.
2. AB 2853 – In light of recent amendments which fall in line with the CBA's efforts to increase transparency, staff recommend that the CBA revise its Watch position and take a Support position.
3. AB 1868, AB 1887, AB 1949, AB 2421, AB 2423, AB 2701, AB 2843, SB 1130, SB 1195, SB 1444, and SB 1448 – Staff recommend that the CBA continue monitoring the bills identified for further developments.

Attachments

1. Legislative Tracking List
2. CBA position letters
3. AB 1939
4. AB 2853

**DEPARTMENT OF CONSUMER AFFAIRS**

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



Attachment 1

Legislative Tracking List

<u>Bill#</u>	<u>Author</u>	<u>Topic</u>	<u>Version</u>	<u>Board Position</u>	<u>Location/Status</u>
AB 507	Olsen	DCA: BreEZe: annual report	7/9/2015	Support	Two-year bill
AB 1566	Wilk	Reports to the Legislature	3/1/2016	Support if Amended	Assembly Business and Professions (B&P)
AB 1707	Linden	Public Records: response to request	1/25/2016	Watch	Assembly Local Government
AB 1939	Patterson	Study of Licensing Requirements	4/12/2016	Watch	Assembly Appropriations
AB 2560	Obernolte	Accountants: practice privileges: out-of-state individuals	3/18/2016	Sponsor	Assembly B&P
AB 2853	Gatto	Public Records	4/13/2016	Watch	Assembly Judiciary
AB 2859	Low	Professions and vocations: retired category: license	2/19/2016	Support if Amended	Assembly Appropriations
ACR 131	Patterson	Professions and vocations: licensing fees: equity	2/2/2016	Watch	Assembly Appropriations
SB 1155	Morrell	Professions and vocations: licenses: military service fee waiver	3/28/2016	Support	Senate Appropriations
SB 1251	Moorlach	Publication of state financial obligations	2/18/2016	Watch	Senate Public Employment
SB 1348	Cannella	Licensure applications: military	2/19/2016	Support	Senate Appropriations
SB 1445	Hertzberg	Taxation	2/19/2016	Watch	Senate Government and Finance
SB 1479	Senate B&P	Business and Professions (Omnibus bill)	3/10/2016	Support	Senate B&P

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



June 4, 2015

Assembly Member Kristin Olsen
 State Capitol
 Sacramento, CA 95814

Bill: AB 507
Position: SUPPORT

Dear Assembly Member Olsen,

At its May 28, 2015, meeting, the California Board of Accountancy (CBA) voted to take a support position on Assembly Bill (AB) 507.

AB 507 would provide further information regarding direct fiscal and operational impacts on the CBA related to phase three implementation of BreZE. The CBA has spent approximately \$388,000 in the last four fiscal years on the project, and costs for the current and next two fiscal years are estimated to be approximately \$730,000 without a scheduled transition date.

The CBA is in support of this important bill as it seeks to promote government transparency.

Sincerely,

Jose A. Campos, CPA
 President

c: Assembly Member Adam Gray, Principal Coauthor
 Assembly Member Ling-Ling Chang, Coauthor
 Assembly Member Bill Dodd, Coauthor
 Senator Patricia Bates, Coauthor
 Senator Jerry Hill, Chair, Senate Business, Professions and Economic
 Development Committee
 Members, California Board of Accountancy
 Patti Bowers, Executive Officer

**DEPARTMENT OF CONSUMER AFFAIRS**

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



April 5, 2016

The Honorable Scott Wilk
State Capitol, Room 4158
Sacramento, CA 95819

Bill: AB 1566
Position: Support if Amended

Dear Assembly Member Wilk:

At its March 17-18, 2016 meeting, the California Board of Accountancy (CBA) voted to take a support if amended position on Assembly Bill (AB) 1566.

AB 1566 would require a written report submitted to the Legislature by any state agency, to include a signed statement by the head of that agency, declaring that the factual content of the report are true to the best of his or her knowledge.

The CBA truly appreciates the goal of this bill to increase government transparency and has unilaterally taken several steps to increase its transparency. However, the CBA suggests an amendment to (c)(2) of the bill to ensure that the head of an agency or department would only need to certify to a document, summary, or statement created by the board if it is created in the ordinary course of business and requested by a Member of the Legislature. This would prevent the CBA's Executive Officer from being required to certify to a document not created by the CBA.

This amendment allows for transparency while narrowing the scope to reflect California's business records certification requirement. For this reason, the CBA has taken a support if amended position on AB 1566.

Sincerely,

A handwritten signature in black ink that reads 'Katrina L. Salazar'.

Katrina L. Salazar, CPA,
President

c: Members, California Board of Accountancy
Patti Bowers, Executive Officer

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2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
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April 5, 2016

The Honorable Evan Low
State Capitol, Room 2175
Sacramento, CA 95814

Bill: AB 2859
Position: Support if Amended

Dear Assembly Member Low:

At its March 17-18, 2016 meeting, the California Board of Accountancy (CBA) voted to take a support if amended position on Assembly Bill (AB) 2859.

AB 2859 would add a section to the Business and Professions Code to authorize any boards, bureaus, commissions, or programs within the Department of Consumer Affairs (DCA) to establish by regulation a system for a retired category of license for persons who are not actively engaged in practice. AB 2859 would prohibit the holder of a retired license from engaging in any activity for which a license is required, unless regulation specifies the criteria for a retired licensee to practice his or her profession.

The CBA presently has regulations that allow for a licensee to obtain a retired status license. When comparing the CBA's provisions to that which is being proposed in AB 2859, the CBA has additional requirements including:

- Submission of a \$75 application fee
- Submission of a renewal application every two years (no fee) to ensure current contact information
- Licensee must have had a certified public accountant license for a minimum of 20 years, of which a minimum of five are with the CBA

AB 2859 and the CBA provisions for a retired status license are similar in that those in a retired status are not allowed to practice their profession.

The CBA respectfully requests that the proposed language be amended to exclude entities within DCA that have their own laws regarding retired license status. For these reasons, the CBA has taken a support if amended position on AB 2859.

Sincerely,

A handwritten signature in black ink that reads 'Katrina L. Salazar'.

Katrina L. Salazar, CPA
President

c: Assembly Committee on Business and Professions
Members, California Board of Accountancy
Patti Bowers, Executive Officer

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2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
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WEB ADDRESS: <http://www.cba.ca.gov>



April 5, 2016

The Honorable Jay Obernolte
State Capitol, Room 4158
Sacramento, CA 95814

Bill: AB 2560
Position: Sponsor

Dear Assembly Member Obernolte:

The California Board of Accountancy (CBA) is pleased to sponsor Assembly Bill (AB) 2560.

This bill proposes amendments to grant the CBA the legislative authority to adopt emergency regulations pursuant to Business and Professions Code section 5096.21(a) to expedite the rulemaking process related to participation in the no notice, no fee practice privilege program.

Current law states that if the CBA determines that allowing individuals from a particular state to practice in California under a no notice, no fee practice privilege violates its duty to protect the public, it shall require, by regulation, out-of-state individuals licensed from that state, to file the notification form and pay the fees as required under the prior notice and fee practice privilege program. As the normal rulemaking process takes between 12 to 18 months to complete, expediting the process will better protect consumers.

On behalf of the CBA, I would like to thank you for authoring this important bill.

Sincerely,

Katrina L. Salazar, CPA
President

c: Assembly Member Rudy Salas, Chair, Assembly Committee on Business and Professions
Members, Assembly Committee on Business and Professions
Patti Bowers, Executive Officer

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CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
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April 5, 2016

The Honorable Mike Morrell
State Capitol, Room 3056
Sacramento, CA 95814

Bill: SB 1155
Position: Support

Dear Senator Morrell:

At its March 17-18, 2016 meeting, the California Board of Accountancy (CBA) voted to take a support position on Senate Bill (SB) 1155.

SB 1155 would add a new section to the Business and Professions Code requiring the Department of Consumer Affairs to establish and maintain a program that grants a fee waiver for the application for, and issuance of, a license to an individual who is an honorably discharged veteran.

Current law requires each board, including the CBA, to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military. The CBA expedites and assists the initial licensure process for an applicant who has served in the military or who is married to, or in a domestic partnership or other legal union with, an active member of the Armed Forces.

For these reasons, the CBA has taken a support position on SB 1155 as it is in line with the CBA's stance on offering assistance to military personnel.

Sincerely,

A handwritten signature in cursive script that reads 'Katrina L. Salazar'.

Katrina L. Salazar, CPA
President

c: Senate Committee on Veteran Affairs
Members, California Board of Accountancy
Patti Bowers, Executive Officer

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



April 5, 2016

The Honorable Anthony Cannella
State Capitol, Room 3056
Sacramento, CA 95814

Bill: SB 1348
Position: Support

Dear Senator Cannella:

At its March 17-18, 2016 meeting, the California Board of Accountancy (CBA) voted to take a support position on Senate Bill (SB) 1348.

SB 1348 would require each board, with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements.

Under the Accountancy Act, military experience can be applied towards licensure as long as it meets legal requirements and is done under the supervision of a licensed CPA.

The CBA is supportive of amending its application to clarify that all valid experience including military is accepted for licensure. For this reason, the CBA has taken a support position on SB 1348 as it is in line with the CBA's stance on offering assistance to military personnel.

Sincerely,

A handwritten signature in cursive script that reads 'Katrina L. Salazar'.

Katrina L. Salazar, CPA
President

c: Senate Business, Professions, and Economic Development Committee
Members, California Board of Accountancy
Patti Bowers, Executive Officer

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



April 5, 2016

The Senate Committee on Business,
Professions and Economic Development
The Honorable Jerry Hill, Chair
State Capitol
Room 2053
Sacramento, CA 95814

Bill: SB 1479
Position: Support

Dear Senator Hill:

At its March 17-18, 2016 meeting, the California Board of Accountancy (CBA) voted to take a support position on Senate Bill (SB) 1479.

The CBA would like to thank you for including our proposal to amend the CBA's ethics study education requirements for Certified Public Accountant licensure to provide a level of flexibility by changing the current course title requirement to a subject requirement in SB 1479.

On behalf of the CBA, I would like to thank you for authoring this important bill.

Sincerely,

A handwritten signature in black ink that reads 'Katrina L. Salazar'.

Katrina L. Salazar, CPA
President

c: Assembly Member Rudy Salas, Chair, Assembly Business and Professions Committee
Members, California Board of Accountancy
Patti Bowers, Executive Officer

AMENDED IN ASSEMBLY APRIL 12, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1939

Introduced by Assembly Member Patterson

February 12, 2016

An act to add *and repeal* Section 312.3 to the Business and Professions Code, relating to professions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1939, as amended, Patterson. Licensing requirements.

Under existing law, the Department of Consumer Affairs is comprised of various boards, bureaus, commissions, committees, and similarly constituted agencies that license and regulate the practice of various professions and vocations for the purpose of protecting the people of California. Existing law requires each of these entities to submit annually to the director of the department its methods for ensuring that every licensing examination it administers is subject to periodic evaluation.

This bill would require the ~~director of the department~~ *Legislative Analyst's Office* to conduct a study and submit to the Legislature *and the department* by July 1, 2017, a report identifying, exploring, and addressing occupational licensing requirements that create unnecessary barriers to labor market entry or mobility. *The bill would repeal this requirement on January 1, 2021.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 312.3 is added to the Business and
2 Professions Code, to read:

3 312.3. (a) ~~The director~~ *Legislative Analyst's Office* shall
4 conduct a study and submit to the Legislature *and the Department*
5 *of Consumer Affairs* by July 1, 2017, a report identifying,
6 exploring, and addressing areas where occupational licensing
7 requirements create an unnecessary barrier to labor market entry
8 or labor mobility, particularly for dislocated workers, individuals
9 who have moved to California from another state, transitioning
10 service members, and military spouses.

11 (b) (1) The report to be submitted pursuant to subdivision (a)
12 shall be submitted in compliance with Section 9795 of the
13 Government Code.

14 (2) *Pursuant to Section 10231.5 of the Government Code, this*
15 *section is repealed on January 1, 2021.*

O

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2853

Introduced by Assembly Member Gatto

February 19, 2016

An act to amend Section 6253 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2853, as amended, Gatto. Public records.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure. The act prohibits limitations on access to a public record based upon the purpose for which the record is being requested if the record is otherwise subject to disclosure, authorizes public agencies to adopt requirements for themselves that allow for faster, more efficient, or greater access to records, and requires local agencies that voluntarily post public records on an open data Internet Resource, as defined, to post those public records in an open format that meets specified criteria.

This bill would authorize a public agency that posts a public record on its Internet Web site to *first* refer a person that requests to inspect or obtain a copy of the public record to the public agency's Internet Web site where the public record is posted.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public

officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

To the extent that this bill would authorize additional local agency expenditures in complying with the California Public Records Act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6253 of the Government Code is amended
2 to read:

3 6253. (a) Public records are open to inspection at all times
4 during the office hours of the state or local agency and every person
5 has a right to inspect any public record, except as hereafter
6 provided. Any reasonably segregable portion of a record shall be
7 available for inspection by any person requesting the record after
8 deletion of the portions that are exempted by law.

9 (b) Except with respect to public records exempt from disclosure
10 by express provisions of law, each state or local agency, upon a
11 request for a copy of records that reasonably describes an
12 identifiable record or records, shall make the records promptly
13 available to any person upon payment of fees covering direct costs
14 of duplication, or a statutory fee if applicable. Upon request, an
15 exact copy shall be provided unless impracticable to do so.

16 (c) Each agency, upon a request for a copy of records, shall,
17 within 10 days from receipt of the request, determine whether the
18 request, in whole or in part, seeks copies of disclosable public
19 records in the possession of the agency and shall promptly notify
20 the person making the request of the determination and the reasons
21 therefor. In unusual circumstances, the time limit prescribed in
22 this section may be extended by written notice by the head of the
23 agency or his or her designee to the person making the request,

1 setting forth the reasons for the extension and the date on which
2 a determination is expected to be dispatched. No notice shall
3 specify a date that would result in an extension for more than 14
4 days. When the agency dispatches the determination, and if the
5 agency determines that the request seeks disclosable public records,
6 the agency shall state the estimated date and time when the records
7 will be made available. As used in this section, “unusual
8 circumstances” means the following, but only to the extent
9 reasonably necessary to the proper processing of the particular
10 request:

11 (1) The need to search for and collect the requested records
12 from field facilities or other establishments that are separate from
13 the office processing the request.

14 (2) The need to search for, collect, and appropriately examine
15 a voluminous amount of separate and distinct records that are
16 demanded in a single request.

17 (3) The need for consultation, which shall be conducted with
18 all practicable speed, with another agency having substantial
19 interest in the determination of the request or among two or more
20 components of the agency having substantial subject matter interest
21 therein.

22 (4) The need to compile data, to write programming language
23 or a computer program, or to construct a computer report to extract
24 data.

25 (d) Nothing in this chapter shall be construed to permit an
26 agency to delay or obstruct the inspection or copying of public
27 records. The notification of denial of any request for records
28 required by Section 6255 shall set forth the names and titles or
29 positions of each person responsible for the denial.

30 (e) Except as otherwise prohibited by law, a state or local agency
31 may adopt requirements for itself that allow for faster, more
32 efficient, or greater access to records than prescribed by the
33 minimum standards set forth in this chapter.

34 ~~(f) Notwithstanding subdivisions (a) through (e), inclusive, if~~
35 ~~a person requests a public record under this act that the public~~
36 ~~agency has posted on the public agency’s Internet Web site, the~~
37 ~~public agency may comply with the requirements of this act by~~
38 ~~referring that person to public agency’s Internet Web site where~~
39 ~~the information is posted.~~

1 (f) A public agency may comply with subdivision (a) by posting
2 any public record on its Internet Web site and, in response to a
3 request for a public record listed on the Internet Web site, referring
4 the person to that Internet Web site where the public record is
5 posted. However, if after the agency refers the person to the
6 Internet Web site, the person requesting the record requests a copy
7 of the record due to an inability to access or reproduce the public
8 record from the Internet Web site, the agency shall, within 10 days,
9 prepare a copy of the public record pursuant to subdivision (b),
10 and promptly notify the person of the availability of the public
11 record.

12 SEC. 2. The Legislature finds and declares that Section 1 of
13 this act, which amends Section 6253 of the Government Code,
14 imposes a limitation on the public's right of access to the meetings
15 of public bodies or the writings of public officials and agencies
16 within the meaning of Section 3 of Article I of the California
17 Constitution. Pursuant to that constitutional provision, the
18 Legislature makes the following findings to demonstrate the interest
19 protected by this limitation and the need for protecting that interest:

20 The state has a very strong interest in ensuring both the
21 transparency of, and efficient use of limited resources by, public
22 agencies. In order to protect this interest, it is necessary to allow
23 public agencies that have already increased the public's access to
24 public records by posting public records on the public agencies'
25 Internet Web sites to refer requests for posted public records to
26 these Internet Web sites.

27 SEC. 3. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district under this act would result from a legislative mandate that
31 is within the scope of paragraph (7) of subdivision (b) of Section
32 3 of Article I of the California Constitution.

California Board of Accountancy
 2000 Evergreen Street, Suite 250 Sacramento, CA 95815-3832
 P (916) 263-3680 F (916) 263-3675 | www.cba.ca.gov



MEMORANDUM

DATE	May 18, 2016
TO	CBA Members
FROM	Nooshin Movassaghi Legislative Analyst
SUBJECT	Possible Language to Consider for Assembly Bill 2853 (Gatto)

The CBA took a Watch position on Assembly Bill (AB) 2853 at its March 2016 meeting. This bill was substantially amended and the updated language has been provided in Attachment 4.

This bill previously amended the term “public record,” for purposes of the California Public Records Act, to include those writings kept on a private cell phone or other electronic device of an elected official or employee of a public agency if those records relate to the public’s business.

The amendments deleted the provisions regarding cell phones, and added the following:

- Authorize a public agency to post a public record on its Internet website and refer a person that requests public records to the public agency’s Internet website where the public record is posted.
- If, after the agency refers the person to the Internet website, the person requesting the record requests a copy of the record due to an inability to access or reproduce the one online, the agency shall, within 10 days, prepare a copy of the public record and promptly notify the person of the availability of the public record.

If the CBA wishes to change its Watch position to a Support if Amended position on AB 2853, legal counsel suggests the following amendments:

(f)... However, if after the agency refers the person to the Internet Web site, the person requesting the record requests a copy of the record due to an inability to access or reproduce the public record from the Internet Web site, the agency shall within 10 days notify the person of the availability of the public record and make the record promptly available upon payment of fees pursuant to subdivision (b)..”

**DEPARTMENT OF CONSUMER AFFAIRS**

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



CBA Agenda Item IX.C.2.B.

Proposed Amendment to Assembly Bill 2853

(f)... However, if after the agency refers the person to the Internet Web site, the person requesting the record requests a copy of the record due to an inability to access or reproduce the public record from the Internet Web site, the agency shall within 10 days notify the person of the availability of the public record and make the record promptly available upon payment of fees pursuant to subdivision (b)..”

**CALIFORNIA BOARD OF ACCOUNTANCY
LEGISLATIVE ANALYSIS
SB 1195**

Subject: Professions and vocations: board actions: competitive impact.	Author: Hill
Version: April 6, 2016	Sponsor: Author
Status: Amended	

Summary

Senate Bill (SB) 1195 (**Attachment 1**) would grant authority to the Director of the Department of Consumer Affairs (DCA) to review a decision of a board within the DCA to determine whether it unreasonably restrains trade. Furthermore, it grants the Director the authority to approve, disapprove, or modify the board decision or action, as specified. SB 1195 would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board.

Background

In February 2015, the U.S. Supreme Court rendered a decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* (*North Carolina decision*) that caused licensing boards across the nation to evaluate their structure and how they are making policy decisions affecting market participation. The court held that a state board on which a “controlling number” of decision makers are active market participants in the occupation which the board regulates, must satisfy “active supervision” requirements to get antitrust state-action immunity.

This case prompted California Senator Jerry Hill to request an opinion from the Attorney General (AG) as to what constitutes “active state supervision” of state licensing boards, and how to guard against antitrust liability for board members (**Attachment 1**). In short, the AG’s opinion stated the following:

“Active state supervision” requires a state official to review the substance of a regulatory decision made by a state licensing board, in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated, and must have and exercise the power to approve, modify, or disapprove the decision.

A state board on which a “controlling number” of decision makers are active market participants in the occupation which the board regulates must satisfy active supervision requirements to get antitrust state-action immunity.

The AG pointed out that the U.S. Supreme Court did not use the term “majority;” it used “controlling number.” There are several unresolved questions regarding how changing the board composition would impact antitrust liability. As long as these questions remain unresolved, radical changes to the board make-up would likely create new challenges, with no promise of bolstering state-action immunity.

With regard to options for increasing state supervision of board actions, the AG suggested the powers of the Director of the DCA could be expanded to make review of anti-competitive board decisions mandatory, or to make the Director's review available upon the request of a board. Moreover, statutory changes would need to be considered to prevent the Director's disapproval from being overridden by the board pursuant to Business and Professions Code (BPC) section 313.1(e)(3), because such an override would nullify the “active supervision” and the benefit of state-action immunity gained by the Director’s review.

According to the author, SB 1195 is necessary to make changes to the authority of the Director of DCA and the Office of Administrative Law (OAL) to assure compliance with the *North Carolina* decision. According to DCA, training and guidance has been proactively offered to the various entities, addressing the “active state supervision” requirement from the *North Carolina* decision.

Before this bill was introduced, the Director of DCA discussed key concepts with all boards’ Executive Officers and Presidents, and followed it up with a memorandum (**Attachment 3**). Although the Governor’s Office has not taken a formal position, based on the Director’s proactive communications on the key concepts, it may indicate support from the Administration.

Analysis

Business Professions Code (BPC) section 109 – Finality of Board decisions

Currently the decisions of any of the boards within the DCA, are not subject to review by the Director and are final. The Director may intervene and initiate an investigation of allegations of misconduct during any part of an examination administered by the board or during an investigation by the Division of Investigation with probable cause to believe that the conduct or activity of a board, or its members or employees constitutes a violation of criminal law.

SB 1195 would authorize the Director of DCA, upon his or her own initiative, and require the Director, upon the request of a consumer or licensee, to review a decision or other action of a board within DCA to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action. Furthermore, SB 1195 would authorize the Director to use the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. This bill would require the Director to post on the DCA’s Internet website his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee.

Impact on CBA

This provision would authorize the Director to disapprove any decision or action of the California Board of Accountancy (CBA).

BPC section 116 – Director’s audit of investigation

Current law allows the Director to audit and review the Medical Board of California, allied health professional boards, and the California Podiatry Medicine’s disciplinary cases.

The bill would allow the Director to audit, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases and other investigations of any board or bureau within DCA. Commencing on March 1, 2017, SB 1195 would require the Director to annually report to the Chairs of Senate and Assembly Business and Professions Committees, regarding the Director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation.

Impact on CBA

This provision would allow the Director to audit any CBA complaint, case dismissal, or investigation.

BPC section 313.1 – Rules and Regulations approval of Director

Currently, the Director shall be notified and provided a full opportunity to review any regulation relating to examinations and qualifications for licensure and fee changes proposed by any board within the DCA. If the Director disapproves a regulation, it shall have no force or effect.

This bill would require the Director to review and approve any regulation promulgated by a board within the department. Furthermore, SB 1195 would authorize the Director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect. The bill would prohibit any rule or regulation from having any force or effect if the Director does not approve the regulation because it has an impermissible anticompetitive effect.

Impact on CBA

This bill would require every CBA regulation to undergo the Director’s review and approval before submission to OAL. In addition, it appears the Director would be able to amend a proposal to remove any anticompetitive effect or disapprove a regulation for that reason. The regulation would have no effect, if the Director disapproves it.

Government Code 825 – Public entity claims

Currently, if an employee of a public entity requests the public entity to defend him or her against any claim or action against him or her for work related injury, the public entity shall pay the settlement.

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SB 1195 would require a public entity to pay for a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board.

Impact on CBA

This provision would require the CBA to pay a judgment or settlement for a treble damage antitrust award against a CBA member.

Government Code section 11346.5 – Regulation

Currently the notice of a regulation should include specific information including date and time of the regulatory hearing, the authority, an informative digest, and a fiscal analysis.

If the regulatory action is submitted by a state board on which a controlling number of decision makers are active market participants in the market the board regulates, SB 1195 would additionally require the notice of proposed regulation to include a statement that the adopting agency has evaluated the impact of the proposed regulation on competition, and that it furthers a state law to restrain competition.

Impact on CBA

This provision may apply to the CBA, but is yet to be determined due to the unresolved question regarding the meaning of “controlling number.”

Government Code section 11349 – Definitions

This bill would add the definition for “competitive impact” to the Government Code. “Competitive impact” would mean that the record of the rulemaking proceeding or other documentation demonstrates that the regulation is authorized by a state law, that the regulation furthers the public protection mission of the state agency, and that the impact on competition is justified in light of the applicable regulatory rationale for the regulation.

Impact on CBA

This provision would require each CBA rulemaking packet to demonstrate that the proposed regulation has a justified impact on competition. The CBA already demonstrates authority by state law and that it protects the public.

Government Code section 11349.1

Currently, the OAL reviews all regulations pursuant to the procedures in the California Code of Regulations.

SB 1195 would require OAL to review all regulations submitted by a state board, on which a controlling number of decision makers are active market participants in the market the board regulates, for competitive impact. This bill would add that OAL shall return any regulations if it decided that the record of the rulemaking proceeding or other documentation for the proposed regulation does not demonstrate that the regulation is

authorized by a state law, that the regulation does not further the public protection mission of the state agency, or that the impact on competition is not justified in light of the applicable regulatory rationale for the regulation.

Impact on CBA

This provision may apply to the CBA, but is yet to be determined due to the unresolved question regarding the meaning of “controlling number.”

Furthermore, OAL may use the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact, and do all of the following:

1. If DCA issued a written decision (pursuant to BPC section 109(c)), OAL should review and consider the decision and all supporting documentation in the rulemaking file.
2. Consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits.
3. Provide a written opinion setting forth OAL’s findings and substantive conclusions, and whether rejection or modification of the proposed regulation is necessary to ensure that restraints of trade are related to and advance the public policy underlying the applicable regulatory rationale.

According to the author’s office (**Attachment 4**), this bill is necessary to make changes to the authority of the Director of the DCA, and the OAL, to assure compliance with the *North Carolina* decision. The author’s office has indicated to staff that he will continue to work with the opposition and the proponents of the bill to ensure state oversight of board actions to avoid antitrust lawsuits.

Staff obtained copies of two letters of opposition regarding this bill, which were sent to the author. The first letter (**Attachment 5**), from the California Society of Certified Public Accountants (CalCPA), states that SB 1195 is unnecessarily overreaching and allows for too much intervention opportunity by the Director of DCA over licensing boards. The second letter (**Attachment 6**), from the law firm Nielsen Merksamer, which represents CalCPA, the California Pharmacists Association, and the California Psychiatric Association, states that the additional authority to the Director of DCA vests too much discretion in the position of the Director, and that this authority presents the risk of less than deliberative processes for decisions, a lack of transparency, and the potential for politicization.

As the bill was just amended on April 6, 2016, at the time of this analysis, only one DCA board had taken a position on SB 1195. The California Board of Registered Nursing voted to oppose SB 1195. Staff will provide additional information at the CBA’s May 2016 meeting.

On April 18, 2016, staff attended the Senate Business and Profession Committee’s hearing on SB 1195. Melinda McClain, Deputy Director of Legislation for DCA, and

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Ed Howard, Center for Public Interest Law (CPIL), testified in support of the bill. DCA is only allowed to express a position on a bill with the approval of the Governor. A representative from the California Veterinary Medical Association testified with a support if amended position. Jim Gross representing CalCPA, the California Pharmacists Association, and the California Psychiatric Association testified on an oppose unless amended position.

Fiscal Estimate

This bill may have a fiscal impact.

Recommendation

Staff does not have a recommendation on this bill; however, opposing SB 1195 may not be looked at favorably by the administration who appears to support the measure. However, should the CBA wish to take a position, a Watch position may be the most appropriate position at this time.

Support/Opposition

Support: Center for Public Interest Law (**Attachment 7**)
University of California – Davis School of Veterinary Medicine

Opposition: CalCPA
California Pharmacists Association
California Psychiatric Association
California Board of Registered Nurses

Effective/Operative Date

January 1, 2017

Related Bills

None.

Attachments

1. Attorney General's opinion
2. SB 1195
3. Memorandum from DCA Director Awet Kidane, "*North Carolina Board of Dental Examiners v. Federal Trade Commission: Policy Concepts*," March 25, 2016
4. Senate Business and Professions Bill Analysis
5. CalCPA Opposition Letter
6. Nielsen Merksamer Opposition Letter
7. Center for Public Interest Law Support Letter

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 15-402
	:	
of	:	September 10, 2015
	:	
KAMALA D. HARRIS	:	
Attorney General	:	
	:	
SUSAN DUNCAN LEE	:	
Deputy Attorney General	:	
	:	

THE HONORABLE JERRY HILL, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

What constitutes “active state supervision” of a state licensing board for purposes of the state action immunity doctrine in antitrust actions, and what measures might be taken to guard against antitrust liability for board members?

CONCLUSIONS

“Active state supervision” requires a state official to review the substance of a regulatory decision made by a state licensing board, in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated, and must have and exercise the power to approve, modify, or disapprove the decision.

Measures that might be taken to guard against antitrust liability for board members include changing the composition of boards, adding lines of supervision by state officials, and providing board members with legal indemnification and antitrust training.

ANALYSIS

In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*,¹ the Supreme Court of the United States established a new standard for determining whether a state licensing board is entitled to immunity from antitrust actions.

Immunity is important to state actors not only because it shields them from adverse judgments, but because it shields them from having to go through litigation. When immunity is well established, most people are deterred from filing a suit at all. If a suit is filed, the state can move for summary disposition of the case, often before the discovery process begins. This saves the state a great deal of time and money, and it relieves employees (such as board members) of the stresses and burdens that inevitably go along with being sued. This freedom from suit clears a safe space for government officials and employees to perform their duties and to exercise their discretion without constant fear of litigation. Indeed, allowing government actors freedom to exercise discretion is one of the fundamental justifications underlying immunity doctrines.²

Before *North Carolina Dental* was decided, most state licensing boards operated under the assumption that they were protected from antitrust suits under the state action immunity doctrine. In light of the decision, many states—including California—are reassessing the structures and operations of their state licensing boards with a view to determining whether changes should be made to reduce the risk of antitrust claims. This opinion examines the legal requirements for state supervision under the *North Carolina Dental* decision, and identifies a variety of measures that the state Legislature might consider taking in response to the decision.

¹ *North Carolina State Bd. of Dental Examiners v. F. T. C.* (2015) ___ U.S. ___, 135 S. Ct. 1101 (*North Carolina Dental*).

² See *Mitchell v. Forsyth* (1985) 472 U.S. 511, 526; *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 819.

I. *North Carolina Dental* Established a New Immunity Standard for State Licensing Boards

A. The *North Carolina Dental* Decision

The North Carolina Board of Dental Examiners was established under North Carolina law and charged with administering a licensing system for dentists. A majority of the members of the board are themselves practicing dentists. North Carolina statutes delegated authority to the dental board to regulate the practice of dentistry, but did not expressly provide that teeth-whitening was within the scope of the practice of dentistry.

Following complaints by dentists that non-dentists were performing teeth-whitening services for low prices, the dental board conducted an investigation. The board subsequently issued cease-and-desist letters to dozens of teeth-whitening outfits, as well as to some owners of shopping malls where teeth-whiteners operated. The effect on the teeth-whitening market in North Carolina was dramatic, and the Federal Trade Commission took action.

In defense to antitrust charges, the dental board argued that, as a state agency, it was immune from liability under the federal antitrust laws. The Supreme Court rejected that argument, holding that a state board on which a controlling number of decision makers are active market participants must show that it is subject to “active supervision” in order to claim immunity.³

B. State Action Immunity Doctrine Before *North Carolina Dental*

The Sherman Antitrust Act of 1890⁴ was enacted to prevent anticompetitive economic practices such as the creation of monopolies or restraints of trade. The terms of the Sherman Act are broad, and do not expressly exempt government entities, but the Supreme Court has long since ruled that federal principles of dual sovereignty imply that federal antitrust laws do not apply to the actions of states, even if those actions are anticompetitive.⁵

This immunity of states from federal antitrust lawsuits is known as the “state action doctrine.”⁶ The state action doctrine, which was developed by the Supreme Court

³ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114.

⁴ 15 U.S.C. §§ 1, 2.

⁵ *Parker v. Brown* (1943) 317 U.S. 341, 350-351.

⁶ It is important to note that the phrase “state action” in this context means something

in *Parker v. Brown*,⁷ establishes three tiers of decision makers, with different thresholds for immunity in each tier.

In the top tier, with the greatest immunity, is the state itself: the sovereign acts of state governments are absolutely immune from antitrust challenge.⁸ Absolute immunity extends, at a minimum, to the state Legislature, the Governor, and the state's Supreme Court.

In the second tier are subordinate state agencies,⁹ such as executive departments and administrative agencies with statewide jurisdiction. State agencies are immune from antitrust challenge if their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition.¹⁰ A state policy is sufficiently clear when displacement of competition is the "inherent, logical, or ordinary result" of the authority delegated by the state legislature.¹¹

The third tier includes private parties acting on behalf of a state, such as the members of a state-created professional licensing board. Private parties may enjoy state action immunity when two conditions are met: (1) their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition, and (2) their conduct is "actively supervised" by the state.¹² The

very different from "state action" for purposes of analysis of a civil rights violation under section 1983 of title 42 of the United States Code. Under section 1983, *liability* attaches to "state action," which may cover even the inadvertent or unilateral act of a state official not acting pursuant to state policy. In the antitrust context, a conclusion that a policy or action amounts to "state action" results in *immunity* from suit.

⁷ *Parker v. Brown*, *supra*, 317 U.S. 341.

⁸ *Hoover v. Ronwin* (1984) 466 U.S. 558, 574, 579-580.

⁹ Distinguishing the state itself from subordinate state agencies has sometimes proven difficult. Compare the majority opinion in *Hoover v. Ronwin*, *supra*, 466 U.S. at p. 581 with dissenting opinion of Stevens, J., at pp. 588-589. (See *Costco v. Maleng* (9th Cir. 2008) 522 F.3d 874, 887, *subseq. hrg.* 538 F.3d 1128; *Charley's Taxi Radio Dispatch Corp. v. SIDA of Haw., Inc.* (9th Cir. 1987) 810 F.2d 869, 875.)

¹⁰ See *Town of Hallie v. City of Eau Claire* (1985) 471 U.S. 34, 39.

¹¹ *F.T.C. v. Phoebe Putney Health Systems, Inc.* (2013) ___ U.S. ___, 133 S.Ct. 1003, 1013; see also *Southern Motor Carriers Rate Conference, Inc. v. U.S.* (1985) 471 U.S. 48, 57 (state policy need not compel specific anticompetitive effect).

¹² *Cal. Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.* (1980) 445 U.S. 97, 105 (*Midcal*).

fundamental purpose of the supervision requirement is to shelter only those private anticompetitive acts that the state approves as actually furthering its regulatory policies.¹³ To that end, the mere possibility of supervision—such as the existence of a regulatory structure that is not operative, or not resorted to—is not enough. “The active supervision prong . . . requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.”¹⁴

C. State Action Immunity Doctrine After *North Carolina Dental*

Until the Supreme Court decided *North Carolina Dental*, it was widely believed that most professional licensing boards would fall within the second tier of state action immunity, requiring a clear and affirmative policy, but not active state supervision of every anticompetitive decision. In California in particular, there were good arguments that professional licensing boards¹⁵ were subordinate agencies of the state: they are formal, ongoing bodies created pursuant to state law; they are housed within the Department of Consumer Affairs and operate under the Consumer Affairs Director’s broad powers of investigation and control; they are subject to periodic sunset review by the Legislature, to rule-making review under the Administrative Procedure Act, and to administrative and judicial review of disciplinary decisions; their members are appointed by state officials, and include increasingly large numbers of public (non-professional) members; their meetings and records are subject to open-government laws and to strong prohibitions on conflicts of interest; and their enabling statutes generally provide well-guided discretion to make decisions affecting the professional markets that the boards regulate.¹⁶

Those arguments are now foreclosed, however, by *North Carolina Dental*. There, the Court squarely held, for the first time, that “a state board on which a controlling

¹³ *Patrick v. Burget* (1988) 486 U.S. 94, 100-101.

¹⁴ *Ibid.*

¹⁵ California’s Department of Consumer Affairs includes some 25 professional regulatory boards that establish minimum qualifications and levels of competency for licensure in various professions, including accountancy, acupuncture, architecture, medicine, nursing, structural pest control, and veterinary medicine—to name just a few. (See http://www.dca.gov/about_ca/entities.shtml.)

¹⁶ Cf. 1A Areeda & Hovenkamp, *supra*, ¶ 227, p. 208 (what matters is not what the body is called, but its structure, membership, authority, openness to the public, exposure to ongoing review, etc.).

number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity."¹⁷ The effect of *North Carolina Dental* is to put professional licensing boards "on which a controlling number of decision makers are active market participants" in the third tier of state-action immunity. That is, they are immune from antitrust actions as long as they act pursuant to clearly articulated state policy to replace competition with regulation of the profession, *and* their decisions are actively supervised by the state.

Thus arises the question presented here: What constitutes "active state supervision"?¹⁸

D. Legal Standards for Active State Supervision

The active supervision requirement arises from the concern that, when active market participants are involved in regulating their own field, "there is a real danger" that they will act to further their own interests, rather than those of consumers or of the state.¹⁹ The purpose of the requirement is to ensure that state action immunity is afforded to private parties only when their actions actually further the state's policies.²⁰

There is no bright-line test for determining what constitutes active supervision of a professional licensing board: the standard is "flexible and context-dependent."²¹ Sufficient supervision "need not entail day-to-day involvement" in the board's operations or "micromanagement of its every decision."²² Instead, the question is whether the review mechanisms that are in place "provide 'realistic assurance'" that the anticompetitive effects of a board's actions promote state policy, rather than the board members' private interests.²³

¹⁷ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114; *Midcal*, *supra*, 445 U.S. at p. 105.

¹⁸ Questions about whether the State's anticompetitive policies are adequately articulated are beyond the scope of this Opinion.

¹⁹ *Patrick v. Burget*, *supra*, 486 U.S. at p. 100, citing *Town of Hallie v. City of Eau Claire*, *supra*, 471 U.S. at p. 47; see *id.* at p. 45 ("A private party . . . may be presumed to be acting primarily on his or its own behalf").

²⁰ *Patrick v. Burget*, *supra*, 486 U.S. at pp. 100-101.

²¹ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1116.

²² *Ibid.*

²³ *Ibid.*

The *North Carolina Dental* opinion and pre-existing authorities allow us to identify “a few constant requirements of active supervision”:²⁴

- The state supervisor who reviews a decision must have the power to reverse or modify the decision.²⁵
- The “mere potential” for supervision is not an adequate substitute for supervision.²⁶
- When a state supervisor reviews a decision, he or she must review the substance of the decision, not just the procedures followed to reach it.²⁷
- The state supervisor must not be an active market participant.²⁸

Keeping these requirements in mind may help readers evaluate whether California law already provides adequate supervision for professional licensing boards, or whether new or stronger measures are desirable.

II. Threshold Considerations for Assessing Potential Responses to *North Carolina Dental*

There are a number of different measures that the Legislature might consider in response to the *North Carolina Dental* decision. We will describe a variety of these, along with some of their potential advantages or disadvantages. Before moving on to those options, however, we should put the question of immunity into proper perspective.

²⁴ *Id.* at pp. 1116-1117.

²⁵ *Ibid.*

²⁶ *Id.* at p. 1116, citing *F.T.C. v. Ticor Title Ins. Co.* (1992) 504 U.S. 621, 638. For example, a passive or negative-option review process, in which an action is considered approved as long as the state supervisor raises no objection to it, may be considered inadequate in some circumstances. (*Ibid.*)

²⁷ *Ibid.*, citing *Patrick v. Burget, supra*, 486 U.S. at pp. 102-103. In most cases, there should be some evidence that the state supervisor considered the particular circumstances of the action before making a decision. Ideally, there should be a factual record and a written decision showing that there has been an assessment of the action’s potential impact on the market, and whether the action furthers state policy. (See *In the Matter of Indiana Household Moves and Warehousemen, Inc.* (2008) 135 F.T.C. 535, 555-557; see also Federal Trade Commission, Report of the State Action Task Force (2003) at p. 54.)

²⁸ *North Carolina Dental, supra*, 135 S.Ct. at pp. 1116-1117.

There are two important things keep in mind: (1) the loss of immunity, if it is lost, does not mean that an antitrust violation has been committed, and (2) even when board members participate in regulating the markets they compete in, many—if not most—of their actions do not implicate the federal antitrust laws.

In the context of regulating professions, “market-sensitive” decisions (that is, the kinds of decisions that are most likely to be open to antitrust scrutiny) are those that create barriers to market participation, such as rules or enforcement actions regulating the scope of unlicensed practice; licensing requirements imposing heavy burdens on applicants; marketing programs; restrictions on advertising; restrictions on competitive bidding; restrictions on commercial dealings with suppliers and other third parties; and price regulation, including restrictions on discounts.

On the other hand, we believe that there are broad areas of operation where board members can act with reasonable confidence—especially once they and their state-official contacts have been taught to recognize actual antitrust issues, and to treat those issues specially. Broadly speaking, promulgation of regulations is a fairly safe area for board members, because of the public notice, written justification, Director review, and review by the Office of Administrative Law as required by the Administrative Procedure Act. Also, broadly speaking, disciplinary decisions are another fairly safe area because of due process procedures; participation of state actors such as board executive officers, investigators, prosecutors, and administrative law judges; and availability of administrative mandamus review.

We are not saying that the procedures that attend these quasi-legislative and quasi-judicial functions make the licensing boards altogether immune from antitrust claims. Nor are we saying that rule-making and disciplinary actions are per se immune from antitrust laws. What we are saying is that, assuming a board identifies its market-sensitive decisions and gets active state supervision for those, then ordinary rule-making and discipline (faithfully carried out under the applicable rules) may be regarded as relatively safe harbors for board members to operate in. It may require some education and experience for board members to understand the difference between market-sensitive and “ordinary” actions, but a few examples may bring in some light.

North Carolina Dental presents a perfect example of a market-sensitive action. There, the dental board decided to, and actually succeeded in, driving non-dentist teeth-whitening service providers out of the market, even though nothing in North Carolina’s laws specified that teeth-whitening constituted the illegal practice of dentistry. Counter-examples—instances where no antitrust violation occurs—are far more plentiful. For example, a regulatory board may legitimately make rules or impose discipline to prohibit license-holders from engaging in fraudulent business practices (such as untruthful or

deceptive advertising) without violating antitrust laws.²⁹ As well, suspending the license of an individual license-holder for violating the standards of the profession is a reasonable restraint and has virtually no effect on a large market, and therefore would not violate antitrust laws.³⁰

Another area where board members can feel safe is in carrying out the actions required by a detailed anticompetitive statutory scheme.³¹ For example, a state law prohibiting certain kinds of advertising or requiring certain fees may be enforced without need for substantial judgment or deliberation by the board. Such detailed legislation leaves nothing for the state to supervise, and thus it may be said that the legislation itself satisfies the supervision requirement.³²

Finally, some actions will not be antitrust violations because their effects are, in fact, pro-competitive rather than anti-competitive. For instance, the adoption of safety standards that are based on objective expert judgments have been found to be pro-competitive.³³ Efficiency measures taken for the benefit of consumers, such as making information available to the purchasers of competing products, or spreading development costs to reduce per-unit prices, have been held to be pro-competitive because they are pro-consumer.³⁴

III. Potential Measures for Preserving State Action Immunity

A. Changes to the Composition of Boards

The *North Carolina Dental* decision turns on the principle that a state board is a group of private actors, not a subordinate state agency, when “a controlling number of decisionmakers are active market participants in the occupation the board regulates.”³⁵

²⁹ See generally *California Dental Assn. v. F.T.C.* (1999) 526 U.S. 756.

³⁰ See *Oksanen v. Page Memorial Hospital* (4th Cir. 1999) 945 F.2d 696 (*en banc*).

³¹ See *324 Liquor Corp. v. Duffy* (1987) 479 U.S. 335, 344, fn. 6.

³² 1A Areeda & Hovenkamp, *Antitrust Law, supra*, ¶ 221, at p. 66; ¶ 222, at pp. 67, 76.

³³ See *Allied Tube & Conduit Corp. v. Indian Head, Inc.* (1988) 486 U.S. 492, 500-501.

³⁴ *Broadcom Corp. v. Qualcomm Inc.* (3rd Cir. 2007) 501 F.3d 297, 308-309; see generally Bus. & Prof. Code, § 301.

³⁵ 135 S.Ct. at p. 1114.

This ruling brings the composition of boards into the spotlight. While many boards in California currently require a majority of public members, it is still the norm for professional members to outnumber public members on boards that regulate healing-arts professions. In addition, delays in identifying suitable public-member candidates and in filling public seats can result in de facto market-participant majorities.

In the wake of *North Carolina Dental*, many observers' first impulse was to assume that reforming the composition of professional boards would be the best resolution, both for state actors and for consumer interests. Upon reflection, however, it is not obvious that sweeping changes to board composition would be the most effective solution.³⁶

Even if the Legislature were inclined to decrease the number of market-participant board members, the current state of the law does not allow us to project accurately how many market-participant members is too many. This is a question that was not resolved by the *North Carolina Dental* decision, as the dissenting opinion points out:

What is a “controlling number”? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circumstances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?³⁷

Some observers believe it is safe to assume that the *North Carolina Dental* standard would be satisfied if public members constituted a majority of a board. The

³⁶ Most observers believe that there are real advantages in staffing boards with professionals in the field. The combination of technical expertise, practiced judgment, and orientation to prevailing ethical norms is probably impossible to replicate on a board composed entirely of public members. Public confidence must also be considered. Many consumers would no doubt share the sentiments expressed by Justice Breyer during oral argument in the *North Carolina Dental* case: “[W]hat the State says is: We would like this group of brain surgeons to decide who can practice brain surgery in this State. I don’t want a group of bureaucrats deciding that. I would like brain surgeons to decide that.” (*North Carolina Dental*, *supra*, transcript of oral argument p. 31, available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/13-534_16h1.pdf (hereafter, Transcript).)

³⁷ *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J).

obvious rejoinder to that argument is that the Court pointedly did not use the term “majority;” it used “controlling number.” More cautious observers have suggested that “controlling number” should be taken to mean the majority of a quorum, at least until the courts give more guidance on the matter.

North Carolina Dental leaves open other questions about board composition as well. One of these is: Who is an “active market participant”?³⁸ Would a retired member of the profession no longer be a participant of the market? Would withdrawal from practice during a board member’s term of service suffice? These questions were discussed at oral argument,³⁹ but were not resolved. Also left open is the scope of the market in which a member may not participate while serving on the board.⁴⁰

Over the past four decades, California has moved decisively to expand public membership on licensing boards.⁴¹ The change is generally agreed to be a salutary one for consumers, and for underserved communities in particular.⁴² There are many good reasons to consider continuing the trend to increase public membership on licensing boards—but we believe a desire to ensure immunity for board members should not be the decisive factor. As long as the legal questions raised by *North Carolina Dental* remain unresolved, radical changes to board composition are likely to create a whole new set of policy and practical challenges, with no guarantee of resolving the immunity problem.

B. Some Mechanisms for Increasing State Supervision

Observers have proposed a variety of mechanisms for building more state oversight into licensing boards’ decision-making processes. In considering these alternatives, it may be helpful to bear in mind that licensing boards perform a variety of

³⁸ *Ibid.*

³⁹ Transcript, *supra*, at p. 31.

⁴⁰ *North Carolina Dental, supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J). Some observers have suggested that professionals from one practice area might be appointed to serve on the board regulating another practice area, in order to bring their professional expertise to bear in markets where they are not actively competing.

⁴¹ See Center for Public Interest Law, *A Guide to California’s Health Care Licensing Boards* (July 2009) at pp. 1-2; Shimberg, *Occupational Licensing: A Public Perspective* (1982) at pp. 163-165.

⁴² See Center for Public Interest Law, *supra*, at pp. 15-17; Shimberg, *supra*, at pp. 175-179.

distinct functions, and that different supervisory structures may be appropriate for different functions.

For example, boards may develop and enforce standards for licensure; receive, track, and assess trends in consumer complaints; perform investigations and support administrative and criminal prosecutions; adjudicate complaints and enforce disciplinary measures; propose regulations and shepherd them through the regulatory process; perform consumer education; and more. Some of these functions are administrative in nature, some are quasi-judicial, and some are quasi-legislative. Boards' quasi-judicial and quasi-legislative functions, in particular, are already well supported by due process safeguards and other forms of state supervision (such as vertical prosecutions, administrative mandamus procedures, and public notice and scrutiny through the Administrative Procedure Act). Further, some functions are less likely to have antitrust implications than others: decisions affecting only a single license or licensee in a large market will rarely have an anticompetitive effect within the meaning of the Sherman Act. For these reasons, it is worth considering whether it is less urgent, or not necessary at all, to impose additional levels of supervision with respect to certain functions.

Ideas for providing state oversight include the concept of a superagency, such as a stand-alone office, or a committee within a larger agency, which has full responsibility for reviewing board actions *de novo*. Under such a system, the boards could be permitted to carry on with their business as usual, except that they would be required to refer each of their decisions (or some subset of decisions) to the superagency for its review. The superagency could review each action file submitted by the board, review the record and decision in light of the state's articulated regulatory policies, and then issue its own decision approving, modifying, or vetoing the board's action.

Another concept is to modify the powers of the boards themselves, so that all of their functions (or some subset of functions) would be advisory only. Under such a system, the boards would not take formal actions, but would produce a record and a recommendation for action, perhaps with proposed findings and conclusions. The recommendation file would then be submitted to a supervising state agency for its further consideration and formal action, if any.

Depending on the particular powers and procedures of each system, either could be tailored to encourage the development of written records to demonstrate executive discretion; access to administrative mandamus procedures for appeal of decisions; and the development of expertise and collaboration among reviewers, as well as between the reviewers and the boards that they review. Under any system, care should be taken to structure review functions so as to avoid unnecessary duplication or conflicts with other agencies and departments, and to minimize the development of super-policies not

adequately tailored to individual professions and markets. To prevent the development of “rubber-stamp” decisions, any acceptable system must be designed and sufficiently staffed to enable plenary review of board actions or recommendations at the individual transactional level.

As it stands, California is in a relatively advantageous position to create these kinds of mechanisms for active supervision of licensing boards. With the boards centrally housed within the Department of Consumer Affairs (an “umbrella agency”), there already exists an organization with good knowledge and experience of board operations, and with working lines of communication and accountability. It is worth exploring whether existing resources and minimal adjustments to procedures and outlooks might be converted to lines of active supervision, at least for the boards’ most market-sensitive actions.

Moreover, the Business and Professions Code already demonstrates an intention that the Department of Consumer Affairs will protect consumer interests as a means of promoting “the fair and efficient functioning of the free enterprise market economy” by educating consumers, suppressing deceptive and fraudulent practices, fostering competition, and representing consumer interests at all levels of government.⁴³ The free-market and consumer-oriented principles underlying *North Carolina Dental* are nothing new to California, and no bureaucratic paradigms need to be radically shifted as a result.

The Business and Professions Code also gives broad powers to the Director of Consumer Affairs (and his or her designees)⁴⁴ to protect the interests of consumers at every level.⁴⁵ The Director has power to investigate the work of the boards and to obtain their data and records;⁴⁶ to investigate alleged misconduct in licensing examinations and qualifications reviews;⁴⁷ to require reports;⁴⁸ to receive consumer complaints⁴⁹ and to initiate audits and reviews of disciplinary cases and complaints about licensees.⁵⁰

⁴³ Bus. & Prof. Code, § 301.

⁴⁴ Bus. & Prof. Code, §§ 10, 305.

⁴⁵ See Bus. & Prof. Code, § 310.

⁴⁶ Bus. & Prof. Code, § 153.

⁴⁷ Bus. & Prof. Code, § 109.

⁴⁸ Bus. & Prof. Code, § 127.

⁴⁹ Bus. & Prof. Code, § 325.

⁵⁰ Bus. & Prof. Code, § 116.

In addition, the Director must be provided a full opportunity to review all proposed rules and regulations (except those relating to examinations and licensure qualifications) before they are filed with the Office of Administrative Law, and the Director may disapprove any proposed regulation on the ground that it is injurious to the public.⁵¹ Whenever the Director (or his or her designee) actually exercises one of these powers to reach a substantive conclusion as to whether a board's action furthers an affirmative state policy, then it is safe to say that the active supervision requirement has been met.⁵²

It is worth considering whether the Director's powers should be amended to make review of certain board decisions mandatory as a matter of course, or to make the Director's review available upon the request of a board. It is also worth considering whether certain existing limitations on the Director's powers should be removed or modified. For example, the Director may investigate allegations of misconduct in examinations or qualification reviews, but the Director currently does not appear to have power to review board decisions in those areas, or to review proposed rules in those areas.⁵³ In addition, the Director's power to initiate audits and reviews appears to be limited to disciplinary cases and complaints about licensees.⁵⁴ If the Director's initiative is in fact so limited, it is worth considering whether that limitation continues to make sense. Finally, while the Director must be given a full opportunity to review most proposed regulations, the Director's disapproval may be overridden by a unanimous vote of the board.⁵⁵ It is worth considering whether the provision for an override maintains its utility, given that such an override would nullify any "active supervision" and concomitant immunity that would have been gained by the Director's review.⁵⁶

⁵¹ Bus. & Prof. Code, § 313.1.

⁵² Although a written statement of decision is not specifically required by existing legal standards, developing a practice of creating an evidentiary record and statement of decision would be valuable for many reasons, not the least of which would be the ability to proffer the documents to a court in support of a motion asserting state action immunity.

⁵³ Bus. & Prof. Code, §§ 109, 313.1.

⁵⁴ Bus. & Prof. Code, § 116.

⁵⁵ Bus. & Prof. Code, § 313.1.

⁵⁶ Even with an override, proposed regulations are still subject to review by the Office of Administrative Law.

C. Legislation Granting Immunity

From time to time, states have enacted laws expressly granting immunity from antitrust laws to political subdivisions, usually with respect to a specific market.⁵⁷ However, a statute purporting to grant immunity to private persons, such as licensing board members, would be of doubtful validity. Such a statute might be regarded as providing adequate authorization for anticompetitive activity, but active state supervision would probably still be required to give effect to the intended immunity. What is quite clear is that a state cannot grant blanket immunity by fiat. “[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful”⁵⁸

IV. Indemnification of Board Members

So far we have focused entirely on the concept of immunity, and how to preserve it. But immunity is not the only way to protect state employees from the costs of suit, or to provide the reassurance necessary to secure their willingness and ability to perform their duties. Indemnification can also go a long way toward providing board members the protection they need to do their jobs. It is important for policy makers to keep this in mind in weighing the costs of creating supervision structures adequate to ensure blanket state action immunity for board members. If the costs of implementing a given supervisory structure are especially high, it makes sense to consider whether immunity is an absolute necessity, or whether indemnification (with or without additional risk-management measures such as training or reporting) is an adequate alternative.

As the law currently stands, the state has a duty to defend and indemnify members of licensing boards against antitrust litigation to the same extent, and subject to the same exceptions, that it defends and indemnifies state officers and employees in general civil litigation. The duty to defend and indemnify is governed by the Government Claims Act.⁵⁹ For purposes of the Act, the term “employee” includes officers and uncompensated servants.⁶⁰ We have repeatedly determined that members of a board,

⁵⁷ See 1A Areeda & Hovenkamp, *Antitrust Law*, *supra*, 225, at pp. 135-137; e.g. *AI Ambulance Service, Inc. v. County of Monterey* (9th Cir. 1996) 90 F.3d 333, 335 (discussing Health & Saf. Code, § 1797.6).

⁵⁸ *Parker v. Brown*, *supra*, 317 U.S. at 351.

⁵⁹ Gov. Code, §§ 810-996.6.

⁶⁰ See Gov. Code § 810.2.

commission, or similar body established by statute are employees entitled to defense and indemnification.⁶¹

A. Duty to Defend

Public employees are generally entitled to have their employer provide for the defense of any civil action “on account of an act or omission in the scope” of employment.⁶² A public entity may refuse to provide a defense in specified circumstances, including where the employee acted due to “actual fraud, corruption, or actual malice.”⁶³ The duty to defend contains no exception for antitrust violations.⁶⁴ Further, violations of antitrust laws do not inherently entail the sort of egregious behavior that would amount to fraud, corruption, or actual malice under state law. There would therefore be no basis to refuse to defend an employee on the bare allegation that he or she violated antitrust laws.

B. Duty to Indemnify

The Government Claims Act provides that when a public employee properly requests the employer to defend a claim, and reasonably cooperates in the defense, “the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.”⁶⁵ In general, the government is liable for an injury proximately caused by an act within the scope of employment,⁶⁶ but is not liable for punitive damages.⁶⁷

One of the possible remedies for an antitrust violation is an award of treble damages to a person whose business or property has been injured by the violation.⁶⁸ This raises a question whether a treble damages award equates to an award of punitive damages within the meaning of the Government Claims Act. Although the answer is not

⁶¹ E.g., 81 Ops.Cal.Atty.Gen. 199, 200 (1998); 57 Ops.Cal.Atty.Gen. 358, 361 (1974).

⁶² Gov. Code, § 995.

⁶³ Gov. Code, § 995.2, subd. (a).

⁶⁴ Cf. *Mt. Hawley Insurance Co. v. Lopez* (2013) 215 Cal.App.4th 1385 (discussing Ins. Code, § 533.5).

⁶⁵ Gov. Code, § 825, subd. (a).

⁶⁶ Gov. Code, § 815.2.

⁶⁷ Gov. Code, § 818.

⁶⁸ 15 U.S.C. § 15(a).

entirely certain, we believe that antitrust treble damages do *not* equate to punitive damages.

The purposes of treble damage awards are to deter anticompetitive behavior and to encourage private enforcement of antitrust laws.⁶⁹ And, an award of treble damages is automatic once an antitrust violation is proved.⁷⁰ In contrast, punitive damages are “uniquely justified by and proportioned to the actor’s particular reprehensible conduct as well as that person or entity’s net worth . . . in order to adequately make the award ‘sting’”⁷¹ Also, punitive damages in California must be premised on a specific finding of malice, fraud, or oppression.⁷² In our view, the lack of a malice or fraud element in an antitrust claim, and the immateriality of a defendant’s particular conduct or net worth to the treble damage calculation, puts antitrust treble damages outside the Government Claims Act’s definition of punitive damages.⁷³

C. Possible Improvements to Indemnification Scheme

As set out above, state law provides for the defense and indemnification of board members to the same extent as other state employees. This should go a long way toward reassuring board members and potential board members that they will not be exposed to undue risk if they act reasonably and in good faith. This reassurance cannot be complete, however, as long as board members face significant uncertainty about how much litigation they may have to face, or about the status of treble damage awards.

Uncertainty about the legal status of treble damage awards could be reduced significantly by amending state law to specify that treble damage antitrust awards are not punitive damages within the meaning of the Government Claims Act. This would put them on the same footing as general damages awards, and thereby remove any uncertainty as to whether the state would provide indemnification for them.⁷⁴

⁶⁹ *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 783-784 (individual right to treble damages is “incidental and subordinate” to purposes of deterrence and vigorous enforcement).

⁷⁰ 15 U.S.C. § 15(a).

⁷¹ *Piscitelli v. Friedenber*g (2001) 87 Cal.App.4th 953, 981-982.

⁷² Civ. Code, §§ 818, 3294.

⁷³ If treble damages awards were construed as constituting punitive damages, the state would still have the option of paying them under Government Code section 825.

⁷⁴ Ideally, treble damages should not be available at all against public entities and public officials. Since properly articulated and supervised anticompetitive behavior is

As a complement to indemnification, the potential for board member liability may be greatly reduced by introducing antitrust concepts to the required training and orientation programs that the Department of Consumer Affairs provides to new board members.⁷⁵ When board members share an awareness of the sensitivity of certain kinds of actions, they will be in a much better position to seek advice and review (that is, active supervision) from appropriate officials. They will also be far better prepared to assemble evidence and to articulate reasons for the decisions they make in market-sensitive areas. With training and practice, boards can be expected to become as proficient in making and demonstrating sound market decisions, and ensuring proper review of those decisions, as they are now in making and defending sound regulatory and disciplinary decisions.

V. Conclusions

North Carolina Dental has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

Whatever the chosen response may be, the state can be assured that *North Carolina Dental*'s "active state supervision" requirement is satisfied when a non-market-

permitted to the state and its agents, the deterrent purpose of treble damages does not hold in the public arena. Further, when a state indemnifies board members, treble damages go not against the board members but against public coffers. "It is a grave act to make governmental units potentially liable for massive treble damages when, however 'proprietary' some of their activities may seem, they have fundamental responsibilities to their citizens for the provision of life-sustaining services such as police and fire protection." (*City of Lafayette, La. v. Louisiana Power & Light Co.* (1978) 435 U.S. 389, 442 (dis. opn. of Blackmun, J).)

In response to concerns about the possibility of treble damage awards against municipalities, Congress passed the Local Government Antitrust Act (15 U.S.C. §§ 34-36), which provides that local governments and their officers and employees cannot be held liable for treble damages, compensatory damages, or attorney's fees. (See H.R. Rep. No. 965, 2nd Sess., p. 11 (1984).) For an argument that punitive sanctions should never be levied against public bodies and officers under the Sherman Act, see 1A Areeda & Hovenkamp, *supra*, ¶ 228, at pp. 214-226. Unfortunately, because treble damages are a product of federal statute, this problem is not susceptible of a solution by state legislation.

⁷⁵ Bus. & Prof. Code, § 453.

participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies.

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL

No. 1195

Introduced by Senator Hill

February 18, 2016

An act to amend Sections ~~4800 and 4804.5~~ of 109, 116, 153, 307, 313.1, 2708, 4800, 4804.5, 4825.1, 4830, and 4846.5 of, and to add Sections 4826.3, 4826.5, 4826.7, 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections 825, 11346.5, 11349, and 11349.1 of the Government Code, relating to ~~healing arts~~; professional regulation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Hill. ~~Veterinary Medical Board: executive officer.~~ *Professions and vocations: board actions: competitive impact.*

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction. Existing law makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of Consumer Affairs. Existing law authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case. Existing law requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or monitoring and evaluation. Existing law authorizes the director to contract for services of experts and consultants where necessary.

Existing law requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. Existing law prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified.

This bill would instead authorize the director, upon his or her own initiative, and require the director, upon the request of a consumer or licensee, to review a decision or other action, except as specified, of a board within the department to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified. The bill would require the director to post on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee. The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specified committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect. The bill would prohibit any rule or regulation from having any force or effect if the director does not approve the regulation because it has an impermissible anticompetitive effect.

(2) Existing law, until January 1, 2018, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing, which is within the Department of Consumer Affairs, and requires the board to appoint an executive officer who is a nurse currently licensed by the board.

This bill would instead prohibit the executive officer from being a licensee of the board.

~~The~~

(3) *The Veterinary Medicine Practice Act provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer, as specified. Existing law repeals the provisions establishing the board and authorizing the board to appoint an executive officer as of January 1, 2017. That act exempts certain persons from the requirements of the act, including a veterinarian employed by the University of California or the Western University of Health Sciences while engaged in the performance of specified duties. That act requires all premises where veterinary medicine, dentistry, and surgery is being practiced to register with the board. That act requires all fees collected on behalf of the board to be deposited into the Veterinary Medical Board Contingent Fund, which continuously appropriates fees deposited into the fund. That act makes a violation of any provision of the act punishable as a misdemeanor.*

This bill would extend the operation of the board and the authorization of the board to appoint an executive officer to January 1, 2021. *The bill would authorize a veterinarian and registered veterinary technician who is under the direct supervision of a veterinarian with a current and active license to compound a drug for anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board, as specified. The bill would authorize the California State Board of Pharmacy and the board to ensure compliance with these requirements. The bill would instead require veterinarians engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences while engaged in the performance of specified duties to be licensed as a veterinarian in the state or hold a university license issued by the board. The bill would require an applicant for a university license to meet certain requirements, including that the applicant passes a specified exam. The bill would also prohibit a premise registration that is not renewed within 5 years after its expiration from being renewed, restored, reissued, or reinstated; however, the bill would authorize a new premise registration to be issued to an applicant if no fact, circumstance, or condition exists that would justify the revocation or suspension of the registration if the registration was issued and if specified fees are paid. By requiring*

additional persons to be licensed and pay certain fees that would go into a continuously appropriated fund, this bill would make an appropriation. By requiring additional persons to be licensed under the act that were previously exempt, this bill would expand the definition of an existing crime and would, therefore, result in a state-mandated local program.

(4) Existing law, except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action.

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board.

(5) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. That act requires the review by the office to follow certain standards, including, among others, necessity, as defined. That act requires an agency proposing to adopt, amend, or repeal a regulation to prepare a notice to the public that includes specified information, including reference to the authority under which the regulation is proposed.

This bill would add competitive impact, as defined, as an additional standard for the office to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits. The bill would authorize the office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. The bill would require state boards on which a controlling number of decisionmakers are active market participants

in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 109 of the Business and Professions Code
2 *is amended to read:*

3 ~~109. (a) The decisions of any of the boards comprising the~~
4 ~~department with respect to setting standards, conducting~~
5 ~~examinations, passing candidates, and revoking licenses, are not~~
6 ~~subject to review by the director, but are final within the limits~~
7 ~~provided by this code which are applicable to the particular board,~~
8 ~~except as provided in this section.~~

9 ~~(b)~~

10 109. (a) The director may initiate an investigation of any
11 allegations of misconduct in the preparation, administration, or
12 scoring of an examination which is administered by a board, or in
13 the review of qualifications which are a part of the licensing process
14 of any board. A request for investigation shall be made by the
15 director to the Division of Investigation through the chief of the
16 division or to any law enforcement agency in the jurisdiction where
17 the alleged misconduct occurred.

18 ~~(c)~~

19 (b) (1) The director may intervene in any matter of any board
20 where an investigation by the Division of Investigation discloses
21 probable cause to believe that the conduct or activity of a board,
22 or its members or employees constitutes a violation of criminal
23 law.

24 ~~The~~

1 (2) ~~The term “intervene,” as used in paragraph (c) of this section~~
2 (1) may include, but is not limited to, an application for a
3 restraining order or injunctive relief as specified in Section 123.5,
4 or a referral or request for criminal prosecution. For purposes of
5 this section, the director shall be deemed to have standing under
6 Section 123.5 and shall seek representation of the Attorney
7 General, or other appropriate counsel in the event of a conflict in
8 pursuing that action.

9 (c) *The director may, upon his or her own initiative, and shall,*
10 *upon request by a consumer or licensee, review any board decision*
11 *or other action to determine whether it unreasonably restrains*
12 *trade. Such a review shall proceed as follows:*

13 (1) *The director shall assess whether the action or decision*
14 *reflects a clearly articulated and affirmatively expressed state law.*
15 *If the director determines that the action or decision does not*
16 *reflect a clearly articulated and affirmatively expressed state law,*
17 *the director shall disapprove the board action or decision and it*
18 *shall not go into effect.*

19 (2) *If the action or decision is a reflection of clearly articulated*
20 *and affirmatively expressed state law, the director shall assess*
21 *whether the action or decision was the result of the board’s*
22 *exercise of ministerial or discretionary judgment. If the director*
23 *finds no exercise of discretionary judgment, but merely the direct*
24 *application of statutory or constitutional provisions, the director*
25 *shall close the investigation and review of the board action or*
26 *decision.*

27 (3) *If the director concludes under paragraph (2) that the board*
28 *exercised discretionary judgment, the director shall review the*
29 *board action or decision as follows:*

30 (A) *The director shall conduct a full review of the board action*
31 *or decision using all relevant facts, data, market conditions, public*
32 *comment, studies, or other documentary evidence pertaining to*
33 *the market impacted by the board’s action or decision and*
34 *determine whether the anticompetitive effects of the action or*
35 *decision are clearly outweighed by the benefit to the public. The*
36 *director may seek, designate, employ, or contract for the services*
37 *of independent antitrust or economic experts pursuant to Section*
38 *307. These experts shall not be active participants in the market*
39 *affected by the board action or decision.*

1 (B) If the board action or decision was not previously subject
2 to a public comment period, the director shall release the subject
3 matter of his or her investigation for a 30-day public comment
4 period and shall consider all comments received.

5 (C) If the director determines that the action or decision furthers
6 the public protection mission of the board and the impact on
7 competition is justified, the director may approve the action or
8 decision.

9 (D) If the director determines that the action furthers the public
10 protection mission of the board and the impact on competition is
11 justified, the director may approve the action or decision. If the
12 director finds the action or decision does not further the public
13 protection mission of the board or finds that the action or decision
14 is not justified, the director shall either refuse to approve it or
15 shall modify the action or decision to ensure that any restraints
16 of trade are related to, and advance, clearly articulated state law
17 or public policy.

18 (4) The director shall issue, and post on the department's
19 Internet Web site, his or her final written decision approving,
20 modifying, or disapproving the action or decision with an
21 explanation of the reasons and rationale behind the director's
22 decision within 90 days from receipt of the request from a
23 consumer or licensee. Notwithstanding any other law, the decision
24 of the director shall be final, except if the state or federal
25 constitution requires an appeal of the director's decision.

26 (d) The review set forth in paragraph (3) of subdivision (c) shall
27 not apply when an individual seeks review of disciplinary or other
28 action pertaining solely to that individual.

29 (e) The director shall report to the Chairs of the Senate Business,
30 Professions, and Economic Development Committee and the
31 Assembly Business and Professions Committee annually,
32 commencing March 1, 2017, regarding his or her disapprovals,
33 modifications, or findings from any audit, review, or monitoring
34 and evaluation conducted pursuant to this section. That report
35 shall be submitted in compliance with Section 9795 of the
36 Government Code.

37 (f) If the director has already reviewed a board action or
38 decision pursuant to this section or Section 313.1, the director
39 shall not review that action or decision again.

1 (g) *This section shall not be construed to affect, impede, or*
2 *delay any disciplinary actions of any board.*

3 *SEC. 2. Section 116 of the Business and Professions Code is*
4 *amended to read:*

5 116. (a) The director may audit and review, upon his or her
6 own initiative, or upon the request of a consumer or licensee,
7 inquiries and complaints regarding licensees, dismissals of
8 disciplinary cases, the opening, conduct, or closure of
9 investigations, informal conferences, and discipline short of formal
10 accusation by ~~the Medical Board of California, the allied health~~
11 ~~professional boards, and the California Board of Podiatric~~
12 ~~Medicine. The director may make recommendations for changes~~
13 ~~to the disciplinary system to the appropriate board, the Legislature,~~
14 ~~or both.~~ *any board or bureau within the department.*

15 (b) The director shall report to the ~~Chairpersons~~ *Chairs* of the
16 ~~Senate Business and Professions~~ *Business, Professions, and*
17 *Economic Development* Committee and the ~~Assembly Health~~
18 *Business and Professions* Committee annually, commencing March
19 1, ~~1995,~~ 2017, regarding his or her findings from any audit, review,
20 or monitoring and evaluation conducted pursuant to this section.
21 *This report shall be submitted in compliance with Section 9795 of*
22 *the Government Code.*

23 *SEC. 3. Section 153 of the Business and Professions Code is*
24 *amended to read:*

25 153. The director may investigate the work of the several
26 boards in his department and may obtain a copy of all records and
27 full and complete data in all official matters in possession of the
28 boards, their members, officers, or ~~employees, other than~~
29 ~~examination questions prior to submission to applicants at~~
30 ~~scheduled examinations.~~ *employees.*

31 *SEC. 4. Section 307 of the Business and Professions Code is*
32 *amended to read:*

33 307. The director may contract for the services of experts and
34 consultants where necessary to carry out ~~the provisions of this~~
35 chapter and may provide compensation and reimbursement of
36 expenses for ~~such~~ *those* experts and consultants in accordance with
37 state law.

38 *SEC. 5. Section 313.1 of the Business and Professions Code*
39 *is amended to read:*

1 313.1. (a) Notwithstanding any other ~~provision~~ of law to the
2 contrary, no rule or ~~regulation, except those relating to~~
3 ~~examinations and qualifications for licensure, regulation~~ and no
4 fee change proposed or promulgated by any of the boards,
5 commissions, or committees within the department, shall take
6 effect pending compliance with this section.

7 (b) The director shall be formally notified of and shall ~~be~~
8 ~~provided a full opportunity to review, in accordance with the~~
9 requirements of Article 5 (commencing with Section 11346) of
10 Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government
11 Code, *the requirements in subdivision (c) of Section 109*, and this
12 section, all of the following:

13 (1) All notices of proposed action, any modifications and
14 supplements thereto, and the text of proposed regulations.

15 (2) Any notices of sufficiently related changes to regulations
16 previously noticed to the public, and the text of proposed
17 regulations showing modifications to the text.

18 (3) Final rulemaking records.

19 (4) *All relevant facts, data, public comments, market conditions,*
20 *studies, or other documentary evidence pertaining to the market*
21 *impacted by the proposed regulation. This information shall be*
22 *included in the written decision of the director required under*
23 *paragraph (4) of subdivision (c) of Section 109.*

24 (c) The submission of all notices and final rulemaking records
25 to the director and the ~~completion of the director's review,~~
26 *approval*, as authorized by this section, shall be a precondition to
27 the filing of any rule or regulation with the Office of Administrative
28 Law. The Office of Administrative Law shall have no jurisdiction
29 to review a rule or regulation subject to this section until after the
30 ~~completion of the director's review and only then if the director~~
31 ~~has not disapproved it.~~ *approval*. The filing of any document with
32 the Office of Administrative Law shall be accompanied by a
33 certification that the board, commission, or committee has complied
34 with the requirements of this section.

35 (d) Following the receipt of any final rulemaking record subject
36 to subdivision (a), the director shall have the authority for a period
37 of 30 days to *approve a proposed rule or regulation or disapprove*
38 *a proposed rule or regulation on the ground that it is injurious to*
39 *the public health, safety, or ~~welfare.~~ welfare, or has an*
40 *impermissible anticompetitive effect. The director may modify a*

1 rule or regulation as a condition of approval. Any modifications
2 to regulations by the director shall be subject to a 30-day public
3 comment period before the director issues a final decision
4 regarding the modified regulation. If the director does not approve
5 the rule or regulation within the 30-day period, the rule or
6 regulation shall not be submitted to the Office of Administrative
7 Law and the rule or regulation shall have no effect.

8 (e) Final rulemaking records shall be filed with the director
9 within the one-year notice period specified in Section 11346.4 of
10 the Government Code. If necessary for compliance with this
11 section, the one-year notice period may be extended, as specified
12 by this subdivision.

13 (1) In the event that the one-year notice period lapses during
14 the director's 30-day review period, or within 60 days following
15 the notice of the director's disapproval, it may be extended for a
16 maximum of 90 days.

17 (2) If the director approves the final rulemaking record or
18 declines to take action on it within 30 days, record, the board,
19 commission, or committee shall have five days from the receipt
20 of the record from the director within which to file it with the
21 Office of Administrative Law.

22 (3) If the director disapproves a rule or regulation, it shall have
23 no force or effect unless, within 60 days of the notice of
24 disapproval, (A) the disapproval is overridden by a unanimous
25 vote of the members of the board, commission, or committee, and
26 (B) the board, commission, or committee files the final rulemaking
27 record with the Office of Administrative Law in compliance with
28 this section and the procedures required by Chapter 3.5
29 (commencing with Section 11340) of Part 1 of Division 3 of Title
30 2 of the Government Code. *This paragraph shall not apply to any*
31 *decision disapproved by the director under subdivision (c) of*
32 *Section 109.*

33 (f) ~~Nothing in this~~ This section shall *not* be construed to prohibit
34 the director from affirmatively approving a proposed rule,
35 regulation, or fee change at any time within the 30-day period after
36 it has been submitted to him or her, in which event it shall become
37 effective upon compliance with this section and the procedures
38 required by Chapter 3.5 (commencing with Section 11340) of Part
39 1 of Division 3 of Title 2 of the Government Code.

1 *SEC. 6. Section 2708 of the Business and Professions Code is*
2 *amended to read:*

3 2708. (a) The board shall appoint an executive officer who
4 shall perform the duties delegated by the board and who shall be
5 responsible to it for the accomplishment of those duties.

6 (b) The executive officer shall *not* be a ~~nurse currently licensed~~
7 *licensee* under this chapter and shall possess other qualifications
8 as determined by the board.

9 (c) The executive officer shall not be a member of the board.

10 (d) This section shall remain in effect only until January 1, 2018,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2018, deletes or extends that date.

13 ~~SECTION 1.~~

14 *SEC. 7. Section 4800 of the Business and Professions Code is*
15 *amended to read:*

16 4800. (a) There is in the Department of Consumer Affairs a
17 Veterinary Medical Board in which the administration of this
18 chapter is vested. The board consists of the following members:

19 (1) Four licensed veterinarians.

20 (2) One registered veterinary technician.

21 (3) Three public members.

22 (b) This section shall remain in effect only until January 1, 2021,
23 and as of that date is repealed.

24 (c) Notwithstanding any other law, the repeal of this section
25 renders the board subject to review by the appropriate policy
26 committees of the Legislature. However, the review of the board
27 shall be limited to those issues identified by the appropriate policy
28 committees of the Legislature and shall not involve the preparation
29 or submission of a sunset review document or evaluative
30 questionnaire.

31 ~~SEC. 2.~~

32 *SEC. 8. Section 4804.5 of the Business and Professions Code*
33 *is amended to read:*

34 4804.5. (a) The board may appoint a person exempt from civil
35 service who shall be designated as an executive officer and who
36 shall exercise the powers and perform the duties delegated by the
37 board and vested in him or her by this chapter.

38 (b) This section shall remain in effect only until January 1, 2021,
39 and as of that date is repealed.

1 *SEC. 9. Section 4825.1 of the Business and Professions Code*
2 *is amended to read:*

3 4825.1. These definitions shall govern the construction of this
4 chapter as it applies to veterinary medicine.

5 (a) “Diagnosis” means the act or process of identifying or
6 determining the health status of an animal through examination
7 and the opinion derived from that examination.

8 (b) “Animal” means any member of the animal kingdom other
9 than humans, and includes fowl, fish, and reptiles, wild or
10 domestic, whether living or dead.

11 (c) “Food animal” means any animal that is raised for the
12 production of an edible product intended for consumption by
13 humans. The edible product includes, but is not limited to, milk,
14 meat, and eggs. Food animal includes, but is not limited to, cattle
15 (beef or dairy), swine, sheep, poultry, fish, and amphibian species.

16 (d) “Livestock” includes all animals, poultry, aquatic and
17 amphibian species that are raised, kept, or used for profit. It does
18 not include those species that are usually kept as pets such as dogs,
19 cats, and pet birds, or companion animals, including equines.

20 (e) “Compounding,” for the purposes of veterinary medicine,
21 shall have the same meaning given in Section 1735 of Title 16 of
22 the California Code of Regulations, except that every reference
23 therein to “pharmacy” and “pharmacist” shall be replaced with
24 “veterinary premises” and “veterinarian,” and except that only
25 a licensed veterinarian or a licensed registered veterinarian
26 technician under direct supervision of a veterinarian may perform
27 compounding and shall not delegate to or supervise any part of
28 the performance of compounding by any other person.

29 *SEC. 10. Section 4826.3 is added to the Business and*
30 *Professions Code, to read:*

31 4826.3. (a) *Notwithstanding Section 4051, a veterinarian or*
32 *registered veterinarian technician under the direct supervision of*
33 *a veterinarian with a current and active license may compound a*
34 *drug for anesthesia, the prevention, cure, or relief of a wound,*
35 *fracture, bodily injury, or disease of an animal in a premises*
36 *currently and actively registered with the board and only under*
37 *the following conditions:*

38 (1) *Where there is no FDA-approved animal or human drug*
39 *that can be used as labeled or in an appropriate extralabel manner*

1 *to properly treat the disease, symptom, or condition for which the*
2 *drug is being prescribed.*

3 *(2) Where the compounded drug is not available from a*
4 *compounding pharmacy, outsourcing facility, or other*
5 *compounding supplier in a dosage form and concentration to*
6 *appropriately treat the disease, symptom, or condition for which*
7 *the drug is being prescribed.*

8 *(3) Where the need and prescription for the compounded*
9 *medication has arisen within an established*
10 *veterinarian-client-patient relationship as a means to treat a*
11 *specific occurrence of a disease, symptom, or condition observed*
12 *and diagnosed by the veterinarian in a specific animal that*
13 *threatens the health of the animal or will cause suffering or death*
14 *if left untreated.*

15 *(4) Where the quantity compounded does not exceed a quantity*
16 *demonstrably needed to treat a patient with which the veterinarian*
17 *has a current veterinarian-client-patient relationship.*

18 *(5) Except as specified in subdivision (c), where the compound*
19 *is prepared only with commercially available FDA-approved*
20 *animal or human drugs as active ingredients.*

21 *(b) A compounded veterinary drug may be prepared from an*
22 *FDA-approved animal or human drug for extralabel use only when*
23 *there is no approved animal or human drug that, when used as*
24 *labeled or in an appropriate extralabel manner will, in the*
25 *available dosage form and concentration, treat the disease,*
26 *symptom, or condition. Compounding from an approved human*
27 *drug for use in food-producing animals is not permitted if an*
28 *approved animal drug can be used for compounding.*

29 *(c) A compounded veterinary drug may be prepared from bulk*
30 *drug substances only when:*

31 *(1) The drug is compounded and dispensed by the veterinarian*
32 *to treat an individually identified animal patient under his or her*
33 *care.*

34 *(2) The drug is not intended for use in food-producing animals.*

35 *(3) If the drug contains a bulk drug substance that is a*
36 *component of any marketed FDA-approved animal or human drug,*
37 *there is a change between the compounded drug and the*
38 *comparable marketed drug made for an individually identified*
39 *animal patient that produces a clinical difference for that*
40 *individually identified animal patient, as determined by the*

1 veterinarian prescribing the compounded drug for his or her
2 patient.

3 (4) There are no FDA-approved animal or human drugs that
4 can be used as labeled or in an appropriate extralabel manner to
5 properly treat the disease, symptom, or condition for which the
6 drug is being prescribed.

7 (5) All bulk drug substances used in compounding are
8 manufactured by an establishment registered under Section 360
9 of Title 21 of the United States Code and are accompanied by a
10 valid certificate of analysis.

11 (6) The drug is not sold or transferred by the veterinarian
12 compounding the drug, except that the veterinarian shall be
13 permitted to administer the drug to a patient under his or her care
14 or dispense it to the owner or caretaker of an animal under his or
15 her care.

16 (7) Within 15 days of becoming aware of any product defect or
17 serious adverse event associated with any drug compounded by
18 the veterinarian from bulk drug substances, the veterinarian shall
19 report it to the federal Food and Drug Administration on Form
20 FDA 1932a.

21 (8) In addition to any other requirements, the label of any
22 veterinary drug compounded from bulk drug substances shall
23 indicate the species of the intended animal patient, the name of
24 the animal patient, and the name of the owner or caretaker of the
25 patient.

26 (d) Each compounded veterinary drug preparation shall meet
27 the labeling requirements of Section 4076 and Sections 1707.5
28 and 1735.4 of Title 16 of the California Code of Regulations, except
29 that every reference therein to “pharmacy” and “pharmacist”
30 shall be replaced by “veterinary premises” and “veterinarian,”
31 and any reference to “patient” shall be understood to refer to the
32 animal patient. In addition, each label on a compounded veterinary
33 drug preparation shall include withdrawal and holding times, if
34 needed, and the disease, symptom, or condition for which the drug
35 is being prescribed. Any compounded veterinary drug preparation
36 that is intended to be sterile, including for injection, administration
37 into the eye, or inhalation, shall in addition meet the labeling
38 requirements of Section 1751.2 of Title 16 of the California Code
39 of Regulations, except that every reference therein to “pharmacy”
40 and “pharmacist” shall be replaced by “veterinary premises” and

1 “veterinarian,” and any reference to “patient” shall be understood
2 to refer to the animal patient.

3 (e) Any veterinarian, registered veterinarian technician who is
4 under the direct supervision of a veterinarian, and veterinary
5 premises engaged in compounding shall meet the compounding
6 requirements for pharmacies and pharmacists stated by the
7 provisions of Article 4.5 (commencing with Section 1735) of Title
8 16 of the California Code of Regulations, except that every
9 reference therein to “pharmacy” and “pharmacist” shall be
10 replaced by “veterinary premises” and “veterinarian,” and any
11 reference to “patient” shall be understood to refer to the animal
12 patient:

13 (1) Section 1735.1 of Title 16 of the California Code of
14 Regulations.

15 (2) Subdivisions (d),(e), (f), (g), (h), (i), (j), (k), and (l) of Section
16 1735.2 of Title 16 of the California Code of Regulations.

17 (3) Section 1735.3 of Title 16 of the California Code of
18 Regulations, except that only a licensed veterinarian or registered
19 veterinarian technician may perform compounding and shall not
20 delegate to or supervise any part of the performance of
21 compounding by any other person.

22 (4) Section 1735.4 of Title 16 of the California Code of
23 Regulations.

24 (5) Section 1735.5 of Title 16 of the California Code of
25 Regulations.

26 (6) Section 1735.6 of Title 16 of the California Code of
27 Regulations.

28 (7) Section 1735.7 of Title 16 of the California Code of
29 Regulations.

30 (8) Section 1735.8 of Title 16 of the California Code of
31 Regulations.

32 (f) Any veterinarian, registered veterinarian technician under
33 the direct supervision of a veterinarian, and veterinary premises
34 engaged in sterile compounding shall meet the sterile compounding
35 requirements for pharmacies and pharmacists under Article 7
36 (commencing with Section 1751) of Title 16 of the California Code
37 of Regulations, except that every reference therein to “pharmacy”
38 and “pharmacist” shall be replaced by “veterinary premises” and
39 “veterinarian,” and any reference to “patient” shall be understood
40 to refer to the animal patient.

1 (g) *The California State Board of Pharmacy shall have authority*
 2 *with the board to ensure compliance with this section and shall*
 3 *have the right to inspect any veterinary premises engaged in*
 4 *compounding, along with or separate from the board, to ensure*
 5 *compliance with this section. The board is specifically charged*
 6 *with enforcing this section with regard to its licensees.*

7 *SEC. 11. Section 4826.5 is added to the Business and*
 8 *Professions Code, to read:*

9 *4826.5. Failure by a licensed veterinarian, registered*
 10 *veterinarian technician, or veterinary premises to comply with the*
 11 *provisions of this article shall be deemed unprofessional conduct*
 12 *and constitute grounds for discipline.*

13 *SEC. 12. Section 4826.7 is added to the Business and*
 14 *Professions Code, to read:*

15 *4826.7. The board may adopt regulations to implement the*
 16 *provisions of this article.*

17 *SEC. 13. Section 4830 of the Business and Professions Code*
 18 *is amended to read:*

19 4830. (a) This chapter does not apply to:

20 (1) Veterinarians while serving in any armed branch of the
 21 military service of the United States or the United States
 22 Department of Agriculture while actually engaged and employed
 23 in their official capacity.

24 (2) Regularly licensed veterinarians in actual consultation from
 25 other states.

26 (3) Regularly licensed veterinarians actually called from other
 27 states to attend cases in this state, but who do not open an office
 28 or appoint a place to do business within this state.

29 ~~(4) Veterinarians employed by the University of California~~
 30 ~~while engaged in the performance of duties in connection with the~~
 31 ~~College of Agriculture, the Agricultural Experiment Station, the~~
 32 ~~School of Veterinary Medicine, or the agricultural extension work~~
 33 ~~of the university or employed by the Western University of Health~~
 34 ~~Sciences while engaged in the performance of duties in connection~~
 35 ~~with the College of Veterinary Medicine or the agricultural~~
 36 ~~extension work of the university.~~

37 ~~(5)~~

38 (4) Students in the School of Veterinary Medicine of the
 39 University of California or the College of Veterinary Medicine of
 40 the Western University of Health Sciences who participate in

1 diagnosis and treatment as part of their educational experience,
2 including those in off-campus educational programs under the
3 direct supervision of a licensed veterinarian in good standing, as
4 defined in paragraph (1) of subdivision (b) of Section 4848,
5 appointed by the University of California, Davis, or the Western
6 University of Health Sciences.

7 ~~(6)~~

8 (5) A veterinarian who is employed by the Meat and Poultry
9 Inspection Branch of the California Department of Food and
10 Agriculture while actually engaged and employed in his or her
11 official capacity. A person exempt under this paragraph shall not
12 otherwise engage in the practice of veterinary medicine unless he
13 or she is issued a license by the board.

14 ~~(7)~~

15 (6) Unlicensed personnel employed by the Department of Food
16 and Agriculture or the United States Department of Agriculture
17 when in the course of their duties they are directed by a veterinarian
18 supervisor to conduct an examination, obtain biological specimens,
19 apply biological tests, or administer medications or biological
20 products as part of government disease or condition monitoring,
21 investigation, control, or eradication activities.

22 (b) (1) For purposes of paragraph (3) of subdivision (a), a
23 regularly licensed veterinarian in good standing who is called from
24 another state by a law enforcement agency or animal control
25 agency, as defined in Section 31606 of the Food and Agricultural
26 Code, to attend to cases that are a part of an investigation of an
27 alleged violation of federal or state animal fighting or animal
28 cruelty laws within a single geographic location shall be exempt
29 from the licensing requirements of this chapter if the law
30 enforcement agency or animal control agency determines that it
31 is necessary to call the veterinarian in order for the agency or
32 officer to conduct the investigation in a timely, efficient, and
33 effective manner. In determining whether it is necessary to call a
34 veterinarian from another state, consideration shall be given to the
35 availability of veterinarians in this state to attend to these cases.
36 An agency, department, or officer that calls a veterinarian pursuant
37 to this subdivision shall notify the board of the investigation.

38 (2) Notwithstanding any other provision of this chapter, a
39 regularly licensed veterinarian in good standing who is called from
40 another state to attend to cases that are a part of an investigation

1 described in paragraph (1) may provide veterinary medical care
2 for animals that are affected by the investigation with a temporary
3 shelter facility, and the temporary shelter facility shall be exempt
4 from the registration requirement of Section 4853 if all of the
5 following conditions are met:

6 (A) The temporary shelter facility is established only for the
7 purpose of the investigation.

8 (B) The temporary shelter facility provides veterinary medical
9 care, shelter, food, and water only to animals that are affected by
10 the investigation.

11 (C) The temporary shelter facility complies with Section 4854.

12 (D) The temporary shelter facility exists for not more than 60
13 days, unless the law enforcement agency or animal control agency
14 determines that a longer period of time is necessary to complete
15 the investigation.

16 (E) Within 30 calendar days upon completion of the provision
17 of veterinary health care services at a temporary shelter facility
18 established pursuant to this section, the veterinarian called from
19 another state by a law enforcement agency or animal control agency
20 to attend to a case shall file a report with the board. The report
21 shall contain the date, place, type, and general description of the
22 care provided, along with a listing of the veterinary health care
23 practitioners who participated in providing that care.

24 (c) For purposes of paragraph (3) of subdivision (a), the board
25 may inspect temporary facilities established pursuant to this
26 section.

27 *SEC. 14. Section 4846.5 of the Business and Professions Code*
28 *is amended to read:*

29 4846.5. (a) Except as provided in this section, the board shall
30 issue renewal licenses only to those applicants that have completed
31 a minimum of 36 hours of continuing education in the preceding
32 two years.

33 (b) (1) Notwithstanding any other law, continuing education
34 hours shall be earned by attending courses relevant to veterinary
35 medicine and sponsored or cosponsored by any of the following:

36 (A) American Veterinary Medical Association (AVMA)
37 accredited veterinary medical colleges.

38 (B) Accredited colleges or universities offering programs
39 relevant to veterinary medicine.

40 (C) The American Veterinary Medical Association.

1 (D) American Veterinary Medical Association recognized
2 specialty or affiliated allied groups.

3 (E) American Veterinary Medical Association's affiliated state
4 veterinary medical associations.

5 (F) Nonprofit annual conferences established in conjunction
6 with state veterinary medical associations.

7 (G) Educational organizations affiliated with the American
8 Veterinary Medical Association or its state affiliated veterinary
9 medical associations.

10 (H) Local veterinary medical associations affiliated with the
11 California Veterinary Medical Association.

12 (I) Federal, state, or local government agencies.

13 (J) Providers accredited by the Accreditation Council for
14 Continuing Medical Education (ACCME) or approved by the
15 American Medical Association (AMA), providers recognized by
16 the American Dental Association Continuing Education
17 Recognition Program (ADA CERP), and AMA or ADA affiliated
18 state, local, and specialty organizations.

19 (2) Continuing education credits shall be granted to those
20 veterinarians taking self-study courses, which may include, but
21 are not limited to, reading journals, viewing video recordings, or
22 listening to audio recordings. The taking of these courses shall be
23 limited to no more than six hours biennially.

24 (3) The board may approve other continuing veterinary medical
25 education providers not specified in paragraph (1).

26 (A) The board has the authority to recognize national continuing
27 education approval bodies for the purpose of approving continuing
28 education providers not specified in paragraph (1).

29 (B) Applicants seeking continuing education provider approval
30 shall have the option of applying to the board or to a
31 board-recognized national approval body.

32 (4) For good cause, the board may adopt an order specifying,
33 on a prospective basis, that a provider of continuing veterinary
34 medical education authorized pursuant to paragraph (1) or (3) is
35 no longer an acceptable provider.

36 (5) Continuing education hours earned by attending courses
37 sponsored or cosponsored by those entities listed in paragraph (1)
38 between January 1, 2000, and January 1, 2001, shall be credited
39 toward a veterinarian's continuing education requirement under
40 this section.

1 (c) Every person renewing his or her license issued pursuant to
2 Section 4846.4, or any person applying for relicensure or for
3 reinstatement of his or her license to active status, shall submit
4 proof of compliance with this section to the board certifying that
5 he or she is in compliance with this section. Any false statement
6 submitted pursuant to this section shall be a violation subject to
7 Section 4831.

8 (d) This section shall not apply to a veterinarian's first license
9 renewal. This section shall apply only to second and subsequent
10 license renewals granted on or after January 1, 2002.

11 (e) The board shall have the right to audit the records of all
12 applicants to verify the completion of the continuing education
13 requirement. Applicants shall maintain records of completion of
14 required continuing education coursework for a period of four
15 years and shall make these records available to the board for
16 auditing purposes upon request. If the board, during this audit,
17 questions whether any course reported by the veterinarian satisfies
18 the continuing education requirement, the veterinarian shall provide
19 information to the board concerning the content of the course; the
20 name of its sponsor and cosponsor, if any; and specify the specific
21 curricula that was of benefit to the veterinarian.

22 (f) A veterinarian desiring an inactive license or to restore an
23 inactive license under Section 701 shall submit an application on
24 a form provided by the board. In order to restore an inactive license
25 to active status, the veterinarian shall have completed a minimum
26 of 36 hours of continuing education within the last two years
27 preceding application. The inactive license status of a veterinarian
28 shall not deprive the board of its authority to institute or continue
29 a disciplinary action against a licensee.

30 (g) Knowing misrepresentation of compliance with this article
31 by a veterinarian constitutes unprofessional conduct and grounds
32 for disciplinary action or for the issuance of a citation and the
33 imposition of a civil penalty pursuant to Section 4883.

34 (h) The board, in its discretion, may exempt from the continuing
35 education requirement any veterinarian who for reasons of health,
36 military service, or undue hardship cannot meet those requirements.
37 Applications for waivers shall be submitted on a form provided
38 by the board.

39 (i) The administration of this section may be funded through
40 professional license and continuing education provider fees. The

1 fees related to the administration of this section shall not exceed
2 the costs of administering the corresponding provisions of this
3 section.

4 (j) For those continuing education providers not listed in
5 paragraph (1) of subdivision (b), the board or its recognized
6 national approval agent shall establish criteria by which a provider
7 of continuing education shall be approved. The board shall initially
8 review and approve these criteria and may review the criteria as
9 needed. The board or its recognized agent shall monitor, maintain,
10 and manage related records and data. The board may impose an
11 application fee, not to exceed two hundred dollars (\$200)
12 biennially, for continuing education providers not listed in
13 paragraph (1) of subdivision (b).

14 (k) (1) ~~On or after~~ Beginning January 1, 2018, a licensed
15 veterinarian who renews his or her license shall complete a
16 minimum of one credit hour of continuing education on the
17 judicious use of medically important antimicrobial drugs every
18 four years as part of his or her continuing education requirements.

19 (2) For purposes of this subdivision, “medically important
20 antimicrobial drug” means an antimicrobial drug listed in Appendix
21 A of the federal Food and Drug Administration’s Guidance for
22 Industry #152, including critically important, highly important,
23 and important antimicrobial drugs, as that appendix may be
24 amended.

25 *SEC. 15. Section 4848.1 is added to the Business and*
26 *Professions Code, to read:*

27 *4848.1. (a) A veterinarian engaged in the practice of veterinary*
28 *medicine, as defined in Section 4826, employed by the University*
29 *of California while engaged in the performance of duties in*
30 *connection with the School of Veterinary Medicine or employed*
31 *by the Western University of Health Sciences while engaged in the*
32 *performance of duties in connection with the College of Veterinary*
33 *Medicine shall be licensed in California or shall hold a university*
34 *license issued by the board.*

35 *(b) An applicant is eligible to hold a university license if all of*
36 *the following are satisfied:*

37 *(1) The applicant is currently employed by the University of*
38 *California or Western University of Health Sciences as defined in*
39 *subdivision (a).*

1 (2) *Passes an examination concerning the statutes and*
2 *regulations of the Veterinary Medicine Practice Act, administered*
3 *by the board, pursuant to subparagraph (C) of paragraph (2) of*
4 *subdivision (a) of Section 4848.*

5 (3) *Successfully completes the approved educational curriculum*
6 *described in paragraph (5) of subdivision (b) of Section 4848 on*
7 *regionally specific and important diseases and conditions.*

8 (c) *A university license:*

9 (1) *Shall be numbered as described in Section 4847.*

10 (2) *Shall cease to be valid upon termination of employment by*
11 *the University of California or by the Western University of Health*
12 *Sciences.*

13 (3) *Shall be subject to the license renewal provisions in Section*
14 *4846.4.*

15 (4) *Shall be subject to denial, revocation, or suspension pursuant*
16 *to Sections 4875 and 4883.*

17 (d) *An individual who holds a University License is exempt from*
18 *satisfying the license renewal requirements of Section 4846.5.*

19 SEC. 16. *Section 4853.7 is added to the Business and*
20 *Professions Code, to read:*

21 4853.7. *A premise registration that is not renewed within five*
22 *years after its expiration may not be renewed and shall not be*
23 *restored, reissued, or reinstated thereafter. However, an*
24 *application for a new premise registration may be submitted and*
25 *obtained if both of the following conditions are met:*

26 (a) *No fact, circumstance, or condition exists that, if the premise*
27 *registration was issued, would justify its revocation or suspension.*

28 (b) *All of the fees that would be required for the initial premise*
29 *registration are paid at the time of application.*

30 SEC. 17. *Section 825 of the Government Code is amended to*
31 *read:*

32 825. (a) *Except as otherwise provided in this section, if an*
33 *employee or former employee of a public entity requests the public*
34 *entity to defend him or her against any claim or action against him*
35 *or her for an injury arising out of an act or omission occurring*
36 *within the scope of his or her employment as an employee of the*
37 *public entity and the request is made in writing not less than 10*
38 *days before the day of trial, and the employee or former employee*
39 *reasonably cooperates in good faith in the defense of the claim or*
40 *action, the public entity shall pay any judgment based thereon or*

1 any compromise or settlement of the claim or action to which the
2 public entity has agreed.

3 If the public entity conducts the defense of an employee or
4 former employee against any claim or action with his or her
5 reasonable good-faith cooperation, the public entity shall pay any
6 judgment based thereon or any compromise or settlement of the
7 claim or action to which the public entity has agreed. However,
8 where the public entity conducted the defense pursuant to an
9 agreement with the employee or former employee reserving the
10 rights of the public entity not to pay the judgment, compromise,
11 or settlement until it is established that the injury arose out of an
12 act or omission occurring within the scope of his or her
13 employment as an employee of the public entity, the public entity
14 is required to pay the judgment, compromise, or settlement only
15 if it is established that the injury arose out of an act or omission
16 occurring in the scope of his or her employment as an employee
17 of the public entity.

18 Nothing in this section authorizes a public entity to pay that part
19 of a claim or judgment that is for punitive or exemplary damages.

20 (b) Notwithstanding subdivision (a) or any other provision of
21 law, a public entity is authorized to pay that part of a judgment
22 that is for punitive or exemplary damages if the governing body
23 of that public entity, acting in its sole discretion except in cases
24 involving an entity of the state government, finds all of the
25 following:

26 (1) The judgment is based on an act or omission of an employee
27 or former employee acting within the course and scope of his or
28 her employment as an employee of the public entity.

29 (2) At the time of the act giving rise to the liability, the employee
30 or former employee acted, or failed to act, in good faith, without
31 actual malice and in the apparent best interests of the public entity.

32 (3) Payment of the claim or judgment would be in the best
33 interests of the public entity.

34 As used in this subdivision with respect to an entity of state
35 government, “a decision of the governing body” means the
36 approval of the Legislature for payment of that part of a judgment
37 that is for punitive damages or exemplary damages, upon
38 recommendation of the appointing power of the employee or
39 former employee, based upon the finding by the Legislature and
40 the appointing authority of the existence of the three conditions

1 for payment of a punitive or exemplary damages claim. The
2 provisions of subdivision (a) of Section 965.6 shall apply to the
3 payment of any claim pursuant to this subdivision.

4 The discovery of the assets of a public entity and the introduction
5 of evidence of the assets of a public entity shall not be permitted
6 in an action in which it is alleged that a public employee is liable
7 for punitive or exemplary damages.

8 The possibility that a public entity may pay that part of a
9 judgment that is for punitive damages shall not be disclosed in any
10 trial in which it is alleged that a public employee is liable for
11 punitive or exemplary damages, and that disclosure shall be
12 grounds for a mistrial.

13 (c) Except as provided in subdivision (d), if the provisions of
14 this section are in conflict with the provisions of a memorandum
15 of understanding reached pursuant to Chapter 10 (commencing
16 with Section 3500) of Division 4 of Title 1, the memorandum of
17 understanding shall be controlling without further legislative action,
18 except that if those provisions of a memorandum of understanding
19 require the expenditure of funds, the provisions shall not become
20 effective unless approved by the Legislature in the annual Budget
21 Act.

22 (d) The subject of payment of punitive damages pursuant to this
23 section or any other provision of law shall not be a subject of meet
24 and confer under the provisions of Chapter 10 (commencing with
25 Section 3500) of Division 4 of Title 1, or pursuant to any other
26 law or authority.

27 (e) Nothing in this section shall affect the provisions of Section
28 818 prohibiting the award of punitive damages against a public
29 entity. This section shall not be construed as a waiver of a public
30 entity's immunity from liability for punitive damages under Section
31 1981, 1983, or 1985 of Title 42 of the United States Code.

32 (f) (1) Except as provided in paragraph (2), a public entity shall
33 not pay a judgment, compromise, or settlement arising from a
34 claim or action against an elected official, if the claim or action is
35 based on conduct by the elected official by way of tortiously
36 intervening or attempting to intervene in, or by way of tortiously
37 influencing or attempting to influence the outcome of, any judicial
38 action or proceeding for the benefit of a particular party by
39 contacting the trial judge or any commissioner, court-appointed
40 arbitrator, court-appointed mediator, or court-appointed special

1 referee assigned to the matter, or the court clerk, bailiff, or marshal
2 after an action has been filed, unless he or she was counsel of
3 record acting lawfully within the scope of his or her employment
4 on behalf of that party. Notwithstanding Section 825.6, if a public
5 entity conducted the defense of an elected official against such a
6 claim or action and the elected official is found liable by the trier
7 of fact, the court shall order the elected official to pay to the public
8 entity the cost of that defense.

9 (2) If an elected official is held liable for monetary damages in
10 the action, the plaintiff shall first seek recovery of the judgment
11 against the assets of the elected official. If the elected official's
12 assets are insufficient to satisfy the total judgment, as determined
13 by the court, the public entity may pay the deficiency if the public
14 entity is authorized by law to pay that judgment.

15 (3) To the extent the public entity pays any portion of the
16 judgment or is entitled to reimbursement of defense costs pursuant
17 to paragraph (1), the public entity shall pursue all available
18 creditor's remedies against the elected official, including
19 garnishment, until that party has fully reimbursed the public entity.

20 (4) This subdivision shall not apply to any criminal or civil
21 enforcement action brought in the name of the people of the State
22 of California by an elected district attorney, city attorney, or
23 attorney general.

24 *(g) Notwithstanding subdivision (a), a public entity shall pay*
25 *for a judgment or settlement for treble damage antitrust awards*
26 *against a member of a regulatory board for an act or omission*
27 *occurring within the scope of his or her employment as a member*
28 *of a regulatory board.*

29 *SEC. 18. Section 11346.5 of the Government Code is amended*
30 *to read:*

31 11346.5. (a) The notice of proposed adoption, amendment, or
32 repeal of a regulation shall include the following:

33 (1) A statement of the time, place, and nature of proceedings
34 for adoption, amendment, or repeal of the regulation.

35 (2) Reference to the authority under which the regulation is
36 proposed and a reference to the particular code sections or other
37 provisions of law that are being implemented, interpreted, or made
38 specific.

1 (3) An informative digest drafted in plain English in a format
2 similar to the Legislative Counsel’s digest on legislative bills. The
3 informative digest shall include the following:

4 (A) A concise and clear summary of existing laws and
5 regulations, if any, related directly to the proposed action and of
6 the effect of the proposed action.

7 (B) If the proposed action differs substantially from an existing
8 comparable federal regulation or statute, a brief description of the
9 significant differences and the full citation of the federal regulations
10 or statutes.

11 (C) A policy statement overview explaining the broad objectives
12 of the regulation and the specific benefits anticipated by the
13 proposed adoption, amendment, or repeal of a regulation, including,
14 to the extent applicable, nonmonetary benefits such as the
15 protection of public health and safety, worker safety, or the
16 environment, the prevention of discrimination, the promotion of
17 fairness or social equity, and the increase in openness and
18 transparency in business and government, among other things.

19 (D) An evaluation of whether the proposed regulation is
20 inconsistent or incompatible with existing state regulations.

21 (4) Any other matters as are prescribed by statute applicable to
22 the specific state agency or to any specific regulation or class of
23 regulations.

24 (5) A determination as to whether the regulation imposes a
25 mandate on local agencies or school districts and, if so, whether
26 the mandate requires state reimbursement pursuant to Part 7
27 (commencing with Section 17500) of Division 4.

28 (6) An estimate, prepared in accordance with instructions
29 adopted by the Department of Finance, of the cost or savings to
30 any state agency, the cost to any local agency or school district
31 that is required to be reimbursed under Part 7 (commencing with
32 Section 17500) of Division 4, other nondiscretionary cost or
33 savings imposed on local agencies, and the cost or savings in
34 federal funding to the state.

35 For purposes of this paragraph, “cost or savings” means
36 additional costs or savings, both direct and indirect, that a public
37 agency necessarily incurs in reasonable compliance with
38 regulations.

39 (7) If a state agency, in proposing to adopt, amend, or repeal
40 any administrative regulation, makes an initial determination that

1 the action may have a significant, statewide adverse economic
2 impact directly affecting business, including the ability of
3 California businesses to compete with businesses in other states,
4 it shall include the following information in the notice of proposed
5 action:

6 (A) Identification of the types of businesses that would be
7 affected.

8 (B) A description of the projected reporting, recordkeeping, and
9 other compliance requirements that would result from the proposed
10 action.

11 (C) The following statement: “The (name of agency) has made
12 an initial determination that the (adoption/amendment/repeal) of
13 this regulation may have a significant, statewide adverse economic
14 impact directly affecting business, including the ability of
15 California businesses to compete with businesses in other states.
16 The (name of agency) (has/has not) considered proposed
17 alternatives that would lessen any adverse economic impact on
18 business and invites you to submit proposals. Submissions may
19 include the following considerations:

20 (i) The establishment of differing compliance or reporting
21 requirements or timetables that take into account the resources
22 available to businesses.

23 (ii) Consolidation or simplification of compliance and reporting
24 requirements for businesses.

25 (iii) The use of performance standards rather than prescriptive
26 standards.

27 (iv) Exemption or partial exemption from the regulatory
28 requirements for businesses.”

29 (8) If a state agency, in adopting, amending, or repealing any
30 administrative regulation, makes an initial determination that the
31 action will not have a significant, statewide adverse economic
32 impact directly affecting business, including the ability of
33 California businesses to compete with businesses in other states,
34 it shall make a declaration to that effect in the notice of proposed
35 action. In making this declaration, the agency shall provide in the
36 record facts, evidence, documents, testimony, or other evidence
37 upon which the agency relies to support its initial determination.

38 An agency’s initial determination and declaration that a proposed
39 adoption, amendment, or repeal of a regulation may have or will
40 not have a significant, adverse impact on businesses, including the

1 ability of California businesses to compete with businesses in other
2 states, shall not be grounds for the office to refuse to publish the
3 notice of proposed action.

4 (9) A description of all cost impacts, known to the agency at
5 the time the notice of proposed action is submitted to the office,
6 that a representative private person or business would necessarily
7 incur in reasonable compliance with the proposed action.

8 If no cost impacts are known to the agency, it shall state the
9 following:

10 “The agency is not aware of any cost impacts that a
11 representative private person or business would necessarily incur
12 in reasonable compliance with the proposed action.”

13 (10) A statement of the results of the economic impact
14 assessment required by subdivision (b) of Section 11346.3 or the
15 standardized regulatory impact analysis if required by subdivision
16 (c) of Section 11346.3, a summary of any comments submitted to
17 the agency pursuant to subdivision (f) of Section 11346.3 and the
18 agency’s response to those comments.

19 (11) The finding prescribed by subdivision (d) of Section
20 11346.3, if required.

21 (12) (A) A statement that the action would have a significant
22 effect on housing costs, if a state agency, in adopting, amending,
23 or repealing any administrative regulation, makes an initial
24 determination that the action would have that effect.

25 (B) The agency officer designated in paragraph ~~(14)~~ (15) shall
26 make available to the public, upon request, the agency’s evaluation,
27 if any, of the effect of the proposed regulatory action on housing
28 costs.

29 (C) The statement described in subparagraph (A) shall also
30 include the estimated costs of compliance and potential benefits
31 of a building standard, if any, that were included in the initial
32 statement of reasons.

33 (D) For purposes of model codes adopted pursuant to Section
34 18928 of the Health and Safety Code, the agency shall comply
35 with the requirements of this paragraph only if an interested party
36 has made a request to the agency to examine a specific section for
37 purposes of estimating the costs of compliance and potential
38 benefits for that section, as described in Section 11346.2.

39 (13) *If the regulatory action is submitted by a state board on*
40 *which a controlling number of decisionmakers are active market*

1 *participants in the market the board regulates, a statement that*
2 *the adopting agency has evaluated the impact of the proposed*
3 *regulation on competition, and that the proposed regulation*
4 *further a clearly articulated and affirmatively expressed state law*
5 *to restrain competition.*

6 ~~(13)~~

7 (14) A statement that the adopting agency must determine that
8 no reasonable alternative considered by the agency or that has
9 otherwise been identified and brought to the attention of the agency
10 would be more effective in carrying out the purpose for which the
11 action is proposed, would be as effective and less burdensome to
12 affected private persons than the proposed action, or would be
13 more cost effective to affected private persons and equally effective
14 in implementing the statutory policy or other provision of law. For
15 a major regulation, as defined by Section 11342.548, proposed on
16 or after November 1, 2013, the statement shall be based, in part,
17 upon the standardized regulatory impact analysis of the proposed
18 regulation, as required by Section 11346.3, as well as upon the
19 benefits of the proposed regulation identified pursuant to
20 subparagraph (C) of paragraph (3).

21 ~~(14)~~

22 (15) The name and telephone number of the agency
23 representative and designated backup contact person to whom
24 inquiries concerning the proposed administrative action may be
25 directed.

26 ~~(15)~~

27 (16) The date by which comments submitted in writing must
28 be received to present statements, arguments, or contentions in
29 writing relating to the proposed action in order for them to be
30 considered by the state agency before it adopts, amends, or repeals
31 a regulation.

32 ~~(16)~~

33 (17) Reference to the fact that the agency proposing the action
34 has prepared a statement of the reasons for the proposed action,
35 has available all the information upon which its proposal is based,
36 and has available the express terms of the proposed action, pursuant
37 to subdivision (b).

38 ~~(17)~~

39 (18) A statement that if a public hearing is not scheduled, any
40 interested person or his or her duly authorized representative may

1 request, no later than 15 days prior to the close of the written
2 comment period, a public hearing pursuant to Section 11346.8.

3 ~~(18)~~

4 (19) A statement indicating that the full text of a regulation
5 changed pursuant to Section 11346.8 will be available for at least
6 15 days prior to the date on which the agency adopts, amends, or
7 repeals the resulting regulation.

8 ~~(19)~~

9 (20) A statement explaining how to obtain a copy of the final
10 statement of reasons once it has been prepared pursuant to
11 subdivision (a) of Section 11346.9.

12 ~~(20)~~

13 (21) If the agency maintains an Internet Web site or other similar
14 forum for the electronic publication or distribution of written
15 material, a statement explaining how materials published or
16 distributed through that forum can be accessed.

17 ~~(21)~~

18 (22) If the proposed regulation is subject to Section 11346.6, a
19 statement that the agency shall provide, upon request, a description
20 of the proposed changes included in the proposed action, in the
21 manner provided by Section 11346.6, to accommodate a person
22 with a visual or other disability for which effective communication
23 is required under state or federal law and that providing the
24 description of proposed changes may require extending the period
25 of public comment for the proposed action.

26 (b) The agency representative designated in paragraph~~(14)~~ (15)
27 of subdivision (a) shall make available to the public upon request
28 the express terms of the proposed action. The representative shall
29 also make available to the public upon request the location of
30 public records, including reports, documentation, and other
31 materials, related to the proposed action. If the representative
32 receives an inquiry regarding the proposed action that the
33 representative cannot answer, the representative shall refer the
34 inquiry to another person in the agency for a prompt response.

35 (c) This section shall not be construed in any manner that results
36 in the invalidation of a regulation because of the alleged inadequacy
37 of the notice content or the summary or cost estimates, or the
38 alleged inadequacy or inaccuracy of the housing cost estimates, if
39 there has been substantial compliance with those requirements.

1 *SEC. 19. Section 11349 of the Government Code is amended*
2 *to read:*

3 11349. The following definitions govern the interpretation of
4 this chapter:

5 (a) “Necessity” means the record of the rulemaking proceeding
6 demonstrates by substantial evidence the need for a regulation to
7 effectuate the purpose of the statute, court decision, or other
8 provision of law that the regulation implements, interprets, or
9 makes specific, taking into account the totality of the record. For
10 purposes of this standard, evidence includes, but is not limited to,
11 facts, studies, and expert opinion.

12 (b) “Authority” means the provision of law which permits or
13 obligates the agency to adopt, amend, or repeal a regulation.

14 (c) “Clarity” means written or displayed so that the meaning of
15 regulations will be easily understood by those persons directly
16 affected by them.

17 (d) “Consistency” means being in harmony with, and not in
18 conflict with or contradictory to, existing statutes, court decisions,
19 or other provisions of law.

20 (e) “Reference” means the statute, court decision, or other
21 provision of law which the agency implements, interprets, or makes
22 specific by adopting, amending, or repealing a regulation.

23 (f) “Nonduplication” means that a regulation does not serve the
24 same purpose as a state or federal statute or another regulation.
25 This standard requires that an agency proposing to amend or adopt
26 a regulation must identify any state or federal statute or regulation
27 which is overlapped or duplicated by the proposed regulation and
28 justify any overlap or duplication. This standard is not intended
29 to prohibit state agencies from printing relevant portions of
30 enabling legislation in regulations when the duplication is necessary
31 to satisfy the clarity standard in paragraph (3) of subdivision (a)
32 of Section 11349.1. This standard is intended to prevent the
33 indiscriminate incorporation of statutory language in a regulation.

34 (g) “Competitive impact” means that the record of the
35 rulemaking proceeding or other documentation demonstrates that
36 the regulation is authorized by a clearly articulated and
37 affirmatively expressed state law, that the regulation furthers the
38 public protection mission of the state agency, and that the impact
39 on competition is justified in light of the applicable regulatory
40 rationale for the regulation.

1 *SEC. 20. Section 11349.1 of the Government Code is amended*
2 *to read:*

3 11349.1. (a) The office shall review all regulations adopted,
4 amended, or repealed pursuant to the procedure specified in Article
5 5 (commencing with Section 11346) and submitted to it for
6 publication in the California Code of Regulations Supplement and
7 for transmittal to the Secretary of State and make determinations
8 using all of the following standards:

9 (1) Necessity.

10 (2) Authority.

11 (3) Clarity.

12 (4) Consistency.

13 (5) Reference.

14 (6) Nonduplication.

15 (7) *For those regulations submitted by a state board on which*
16 *a controlling number of decisionmakers are active market*
17 *participants in the market the board regulates, the office shall*
18 *review for competitive impact.*

19 In reviewing regulations pursuant to this section, the office shall
20 restrict its review to the regulation and the record of the rulemaking
21 ~~proceeding~~ *except as directed in subdivision (h)*. The office shall
22 approve the regulation or order of repeal if it complies with the
23 standards set forth in this section and with this chapter.

24 (b) In reviewing proposed regulations for the criteria in
25 subdivision (a), the office may consider the clarity of the proposed
26 regulation in the context of related regulations already in existence.

27 (c) The office shall adopt regulations governing the procedures
28 it uses in reviewing regulations submitted to it. The regulations
29 shall provide for an orderly review and shall specify the methods,
30 standards, presumptions, and principles the office uses, and the
31 limitations it observes, in reviewing regulations to establish
32 compliance with the standards specified in subdivision (a). The
33 regulations adopted by the office shall ensure that it does not
34 substitute its judgment for that of the rulemaking agency as
35 expressed in the substantive content of adopted regulations.

36 (d) The office shall return any regulation subject to this chapter
37 to the adopting agency if any of the following occur:

38 (1) The adopting agency has not prepared the estimate required
39 by paragraph (6) of subdivision (a) of Section 11346.5 and has not

1 included the data used and calculations made and the summary
2 report of the estimate in the file of the rulemaking.

3 (2) The agency has not complied with Section 11346.3.
4 “Noncompliance” means that the agency failed to complete the
5 economic impact assessment or standardized regulatory impact
6 analysis required by Section 11346.3 or failed to include the
7 assessment or analysis in the file of the rulemaking proceeding as
8 required by Section 11347.3.

9 (3) The adopting agency has prepared the estimate required by
10 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
11 indicates that the regulation will result in a cost to local agencies
12 or school districts that is required to be reimbursed under Part 7
13 (commencing with Section 17500) of Division 4, and the adopting
14 agency fails to do any of the following:

15 (A) Cite an item in the Budget Act for the fiscal year in which
16 the regulation will go into effect as the source from which the
17 Controller may pay the claims of local agencies or school districts.

18 (B) Cite an accompanying bill appropriating funds as the source
19 from which the Controller may pay the claims of local agencies
20 or school districts.

21 (C) Attach a letter or other documentation from the Department
22 of Finance which states that the Department of Finance has
23 approved a request by the agency that funds be included in the
24 Budget Bill for the next following fiscal year to reimburse local
25 agencies or school districts for the costs mandated by the
26 regulation.

27 (D) Attach a letter or other documentation from the Department
28 of Finance which states that the Department of Finance has
29 authorized the augmentation of the amount available for
30 expenditure under the agency’s appropriation in the Budget Act
31 which is for reimbursement pursuant to Part 7 (commencing with
32 Section 17500) of Division 4 to local agencies or school districts
33 from the unencumbered balances of other appropriations in the
34 Budget Act and that this augmentation is sufficient to reimburse
35 local agencies or school districts for their costs mandated by the
36 regulation.

37 (4) The proposed regulation conflicts with an existing state
38 regulation and the agency has not identified the manner in which
39 the conflict may be resolved.

1 (5) The agency did not make the alternatives determination as
2 required by paragraph (4) of subdivision (a) of Section 11346.9.

3 (6) *The office decides that the record of the rulemaking*
4 *proceeding or other documentation for the proposed regulation*
5 *does not demonstrate that the regulation is authorized by a clearly*
6 *articulated and affirmatively expressed state law, that the*
7 *regulation does not further the public protection mission of the*
8 *state agency, or that the impact on competition is not justified in*
9 *light of the applicable regulatory rationale for the regulation.*

10 (e) The office shall notify the Department of Finance of all
11 regulations returned pursuant to subdivision (d).

12 (f) The office shall return a rulemaking file to the submitting
13 agency if the file does not comply with subdivisions (a) and (b)
14 of Section 11347.3. Within three state working days of the receipt
15 of a rulemaking file, the office shall notify the submitting agency
16 of any deficiency identified. If no notice of deficiency is mailed
17 to the adopting agency within that time, a rulemaking file shall be
18 deemed submitted as of the date of its original receipt by the office.
19 A rulemaking file shall not be deemed submitted until each
20 deficiency identified under this subdivision has been corrected.

21 (g) Notwithstanding any other law, return of the regulation to
22 the adopting agency by the office pursuant to this section is the
23 exclusive remedy for a failure to comply with subdivision (c) of
24 Section 11346.3 or paragraph (10) of subdivision (a) of Section
25 11346.5.

26 (h) *The office may designate, employ, or contract for the services*
27 *of independent antitrust or applicable economic experts when*
28 *reviewing proposed regulations for competitive impact. When*
29 *reviewing a regulation for competitive impact, the office shall do*
30 *all of the following:*

31 (1) *If the Director of Consumer Affairs issued a written decision*
32 *pursuant to subdivision (c) of Section 109 of the Business and*
33 *Professions Code, the office shall review and consider the decision*
34 *and all supporting documentation in the rulemaking file.*

35 (2) *Consider whether the anticompetitive effects of the proposed*
36 *regulation are clearly outweighed by the public policy merits.*

37 (3) *Provide a written opinion setting forth the office's findings*
38 *and substantive conclusions under paragraph (2), including, but*
39 *not limited to, whether rejection or modification of the proposed*
40 *regulation is necessary to ensure that restraints of trade are related*

1 *to and advance the public policy underlying the applicable*
2 *regulatory rationale.*

3 *SEC. 21. No reimbursement is required by this act pursuant*
4 *to Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*

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BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY - GOVERNOR EDWIN S. BROWN, JR.

EXECUTIVE OFFICE

1625 N. Market Blvd., Suite S-308, Sacramento, CA 95834

P 916-574-8200 F 916-574-8613 www.dca.ca.gov**MEMORANDUM**

DATE	March 25, 2016
TO	Executive Officers Department of Consumer Affairs
FROM	Awet Kidane, Director Department of Consumer Affairs 
SUBJECT	<i>North Carolina Board of Dental Examiners v. Federal Trade Commission: Policy Concepts</i>

This memorandum is intended to serve as a follow up to the meeting held on March 7, 2016, in which we discussed the potential policy concepts that the Department of Consumer Affairs (Department) was considering in response to the *North Carolina Board of Dental Examiners v. Federal Trade Commission (North Carolina)* decision.

As you are aware, the *North Carolina* case established that when a controlling number of decision makers are active market participants, board members are entitled to state-action antitrust immunity only if they act pursuant to a clearly articulated and affirmatively expressed state policy and their decisions are actively supervised by the state. After careful analysis and consideration, the Department believes the three policy concepts, discussed in our meeting and set out below, will provide further active state supervision to boards as required by the *North Carolina* case and will provide important clarity regarding the payment of damages by the state.

First, the Department believes that removing the active license requirement for executive officer positions will assist with protecting the boards from antitrust liability. This change allows for a nonmarket participant to serve in that critical role thereby minimizing the impact an active market participant executive officer may have on the board's operations.

Second, the existing regulatory review process should be strengthened. Under current law, the Director reviews board regulations and has the authority to disapprove them if they are "injurious to the public health, safety or welfare." Current law does not specifically authorize the Director to disapprove regulations for anticompetitive impacts that do not further a clearly articulated state policy. In order to ensure appropriate state supervision, the Department believes that the Director should have the specific authority to disapprove regulations for anticompetitive impacts without the possibility of a veto override.

And third, the indemnification for board members in antitrust cases needs to be addressed. Specifically, the Attorney General's opinion on the *North Carolina* case indicated that provisions providing indemnity to state actors should be clarified to ensure that treble damages resulting from antitrust violations are not considered punitive and may be paid by the state. This would leave no question that the state will pay treble damages awarded for violations of antitrust law in the same way it pays damages for board members in other types of lawsuits.

The concepts that I discussed with you in our meeting were also shared with the legislative committees during the Department's Joint Legislative Sunset Review hearing on March 9, 2016. The Department is committed to assisting the boards in this area and is continuing to work with the Legislature and Administration to address this important issue.

If you have questions or concerns regarding any of the information provided in this memo, please contact Melinda McClain at (916) 574-7800 or Melinda.McClain@dca.ca.gov, or your assigned legal counsel.

**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Jerry Hill, Chair
2015 - 2016 Regular

Bill No:	SB 1195	Hearing Date:	April 18, 2016
Author:	Hill		
Version:	April 6, 2016		
Urgency:	No	Fiscal:	Yes
Consultant:	Nicole Billington, Bill Gage		

Subject: Professions and vocations: board actions: competitive impact

SUMMARY: Grants authority to the Director of the Department of Consumer Affairs (DCA) to review a decision or other action, except as specified, of a board within the DCA to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified; eliminates the requirement that the executive officer of the Board of Registered Nursing be a registered nurse; clarifies when a judgment or settlement for treble damages antitrust award would be granted for a member of a regulatory board; provides for an additional standard for the Office of Administrative Law to follow when reviewing regulatory actions of state boards. Also makes various changes that are intended to improve the effectiveness of the Veterinary Medical Board (Board) and extends the Board's sunset dates.

Existing law:

- 1) Provides for the licensure and regulation of various professions and vocations by the boards within the DCA, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction.
- 2) Makes decisions of any board within the DCA pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of the DCA. (Business and Professions Code (BPC § 109 (a)))
- 3) Provides that the Director may initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of any examination which is administered by a board, or in the review and qualifications which are part of the licensing process of any board. (BPC § 109 (b))
- 4) Provides that the Director may intervene in any matter of any board where an investigation by the Division of Investigation discloses probable cause to believe that the conduct or activity of a board, or its members or employees constitutes a violation of criminal law. (BPC § 109 (c))
- 5) Authorizes the Director to audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the allied health professional boards, and the California Board of

Podiatric Medicine and the Director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both.
(BPC § 116 (a))

- 6) Requires the Director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, of monitoring and evaluation. (BPC § 116 (b))
- 7) Authorizes the Director to contract for services of experts and consultants where necessary. (BPC § 307)
- 8) Requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the DCA, to comply with certain requirements before the regulation or fee change can take effect, including that the Director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. (BPC § 313.1)
- 9) Prohibits a rule or regulation that is disapproved by the Director from having any force or effect, unless the Director's disapproval is overridden by a unanimous vote of the members of the board, as specified.
- 10) Provides, until January 1, 2018, for the licensure and regulation of registered nurses by the Board of Registered Nursing (BRN) which is within the DCA, and requires the BRN to appoint an executive officer who is a nurse currently licensed by the BRN.
- 11) Establishes the California Veterinary Medicine Practice Act until January 1, 2017, and requires the Veterinary Medical Board (VMB) within the Department of Consumer Affairs (DCA) to, among other things, license and regulate veterinarians, registered veterinary technicians (RVTs), RVT schools and programs, and veterinary premises. (BPC § 4800 et seq.)
- 12) Requires a public entity to pay any judgment or any compromise settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of the trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action. (Government Code § 825)
- 13) Specifies that the Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for review of those regulatory actions by the Office of Administrative Law and requires the review of the office to follow certain standards, including, among others, necessity, as defined. (Government Code § 11340 et seq.)

This bill:

- 1) Authorizes the Director, upon his or her own initiative, and require the Director, upon the request of a consumer or licensee, to review a decision or other action,

except as specified, of a board within the DCA to determine whether it unreasonably restrains trade and to approve, disapprove, or modify the board decision or action, as specified.

- 2) Requires the Director to post on the DCA's website his or her final written decision and the reasons for the decision within 90 days from receipt of the request of a consumer or licensee.
- 3) Commencing on March 1, 2017, would require the Director to annually report to the chairs of specified committees of the Legislature information regarding the Director's disapprovals, modifications, or findings from any audit, review or monitoring and evaluation.
- 4) Authorizes the Director to seek, designate, employ, or contract for services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints of trade.
- 5) Requires the Director to review and approve any regulation promulgated by a board within the DCA, as specified, and would authorize the Director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect.
- 6) Prohibits any rule or regulation from having any force or effect if the Director does not approve the regulation because it has an impermissible anticompetitive effect.
- 7) Extends the sunset date for the VMB and Executive Officer of the Board until January 1, 2021.
- 8) Authorizes a veterinarian and registered veterinarian technician who is under the director supervision of a veterinarian with a current and active license to compound a drug for anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the VMB, as specified, and would authorize the California State Board of Pharmacy and the VMB to ensure compliance with these requirements.
- 9) Requires veterinarians engaged in practice of veterinary medicine employed by the University of California or by Western University of Health Sciences while engage in the performance of specific duties to be licensed as a veterinarians in the state or hold a university license issued by the VMB, and that the applicant for a university license to meet certain requirements, including that the applicant passes a specified exam.
- 10) Provides that a veterinary premise registration may be canceled after five years of delinquency, unless the VMB finds circumstances or conditions that would justify a new premise registration to be issued.
- 11) Makes technical changes to BPC regarding the VMB.
- 12) Requires a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring

within the scope of her or her employment as a member of a regulatory board.

- 13) Adds competitive impact, as defined, as an additional standard for the Office of Administrative Law (Office) to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the Office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits.
- 14) Authorizes the Office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact.
- 15) Requires state boards on which a controlling number of decisionmakers are active market participants in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy.

FISCAL EFFECT: Unknown. This bill is keyed “fiscal” by Legislative Counsel.

COMMENTS:

1. **Purpose.** This bill is sponsored by the Author, and is one of five “sunset bills” the Author is sponsoring this Session. According to the Author, this bill is necessary to make changes to the California Veterinary Medicine Practice Act relating to the operation of the Veterinary Medical Board and to both the authority of the Director of the DCA and the Office of Administrative Law to assure compliance with a recent U.S. Supreme Court Decision, *North Carolina State Board of Dental Examiners v. FTC*. These changes arose from issues raised in the Board’s sunset review process, and require legislative action.
2. **Oversight Hearings and Sunset Review of Licensing Boards and Programs.** Beginning in 2015, the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee (Committees) conducted joint oversight hearings to review 12 regulatory entities: DCA, Acupuncture Board, Board of Behavioral Sciences, California Massage Therapy Association, Court Reporters Board, Board of Pharmacy, Physician Assistant Board, Board of Podiatric Medicine, Bureau of Private Postsecondary Education, Board of Psychology, Bureau of Real Estate, Bureau of Real Estate Appraisers, and Veterinary Medical Board. The Committees conducted three hearings in March to review these entities. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.

3. **Potential Antitrust (Anticompetitive) Actions of Boards – Compliance with *North Carolina State Board of Dental Examiners v. FTC.***

In 2010, the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners (Board) for exclusion of non-dentists from the practice of teeth whitening. The FTC alleged that the Board's decision was an uncompetitive and unfair method of competition under the Federal Trade Commission Act. This opened the Board to lawsuits and substantial damages from affected parties.

The Board was composed of 6 licensed, practicing dentists and 2 public members. The practice of teeth whitening was not addressed in the statutes comprising the Dental Practice Act. Instead of initiating a rulemaking effort to clarify the appropriate practice of teeth whitening, the Board sent cease-and-desist letters to non-dentists in the state offering teeth whitening services. The Board argued that the FTC's complaint was invalid because the Board was acting as an agent of North Carolina, and according to state-action immunity, one cannot sue the state acting in its sovereign capacity for anticompetitive conduct. A federal appeals court sided with the FTC, and the Board appealed to the United States Supreme Court (Court).

In February 2015, the Court agreed with the FTC and determined that the Board was not acting as a state agent and could be sued for its actions. The Court ruled, "Because a controlling number of the Board's decision-makers are active participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met."

The Court was not specific about what may constitute "active participants" or "active supervision." However, the Court did say that "active supervision" requires "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy," and that "the supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it."

FTC Staff Guidance on Active Supervision of State Regulatory Boards. In October 2015, the FTC released a staff guidance, "*Active Supervision of State Regulatory Boards Controlled by Market Participants*," in order to better explain when active supervision of a state regulatory board would be required in order for a board to invoke the state action defense. The guidance also aimed to highlight what factors are relevant when determining if the active supervision requirement has been satisfied. The FTC stated that active supervision includes the ability of a state supervisor to review the substance of the anticompetitive decision and have the power to veto or modify a decision. The state supervisor may not be an active market participant. In addition, the FTC states that active supervision must precede the implementation of the alleged anticompetitive restraint.

The FTC stated that the guidance addresses only the active supervision requirement of the state action defense, and antitrust analysis is fact-specific and context-dependent. This means that although a state action defense might not be

applicable in a certain case, this does not mean that the conduct of a regulatory board necessarily violates federal antitrust laws.

Implications for the Boards under the DCA. On October 22, 2015, the Senate Committee on Business, Professions and Economic Development and Assembly Business and Professions Committee held a joint informational hearing to explore the implications of the Court decision on the DCA's 26 professional regulatory boards and consider recommendations.

In response to the Court's decision, the Chair of this Committee, State Senator Jerry Hill, requested an opinion from the Office of Attorney General Kamala Harris (AG). The AG released the following:

North Carolina Dental has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

Whatever the chosen response may be, the state can be assured that North Carolina Dental's "active state supervision" requirement is satisfied when a non-market-participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies.

The DCA boards are semiautonomous bodies whose members are appointed by the Governor and the Legislature. It is important to note that although a most of the non-healing arts boards have the statutory authority for a public majority allotment in their makeup, more than half of the healing arts and non-healing arts boards are currently comprised of a majority of members representing the profession, based on vacancies and current appointments. There are currently only one health board and four non-health boards that are comprised of a public member majority with their current makeup. While the boards operate largely independently, they also fall within the DCA's jurisdiction. The Legislature provides routine oversight and the Office of Administrative Law reviews regulations stemming from rulemaking undertaken by the boards.

Although the boards are tied to the state through various structural and statutory oversights, it is presently unclear whether current laws and practices are sufficient to ensure that the boards are state actors and, thus, immune from legal action. The recent decision against the Texas Medical Board in the *Teladoc* case emphasizes the need for California to prove that it provides active state supervision. In that case, one of the nation's largest providers of telephone medical services, *Teladoc*, sued the Texas Medical Board after the Board issued a rule that requires physicians to either meet with patients in person before treating them remotely, or to treat them face-to-face via technology while other providers are physically present with them when treating a patient for the first time. *Teladoc* alleged that this rule violates antitrust laws because it would restrict the company's ability to compete, resulting in higher prices and less access to doctors for Texans. The Board argued that it should be immune from antitrust liability as a state agency but a judge rejected that argument, writing that "for a board to be considered actively supervised, the state

supervisor must have power to veto or modify the board's decisions, and supervision of the Texas Medical Board does not meet that requirement.”

It appears necessary for the Legislature and the Department to devise a mechanism for independent state review of regulatory board actions, including the ability of some type of state supervisor to veto or modify decisions, as cited in the Texas *Teladoc* case, in order for these boards and board members to ensure that boards can continue to effectively regulate California's professions without fear of being sued.

During the sunset review hearing in March, in which several DCA issues were discussed, the need to respond to the implications surrounding this recent Court decision were reviewed by the Committees and the DCA. The DCA at that time was asked to address two questions and was asked to respond to the Committees in 30 days:

- (1) How does the DCA plan on addressing the “active state supervision” requirement; and,
- (2) What does the DCA believe are necessary next steps to ensure robust protection of the public from potentially problematic trust forming coalitions on regulatory boards..

It was also recommended by the Committees, that in light of the FTC guidance on the active supervision of state regulatory boards controlled by market participants, that the Committees should remove the active license requirement for the Executive Officer position for the BRN and that there should basically be no Executive Officer of any board who was a licensee of the board they serve.

As indicated earlier, *North Carolina State Board of Dental Examiners v. FTC* placed limitations on the immunity of regulatory boards controlled by active market participants. This is because individuals who are directly affected by their own rulemaking may not be able to detect their biases, purposefully or inadvertently placing their benefit over those of the public. Or, as the Supreme Court stated, “Dual allegiances are not always apparent to an actor.” In the North Carolina case, the focus was on board members, but the argument against interested participants could also be made for boards' administrative managers. The DCA executive officers (EOs) wield a great deal of power, daily directing and running the administrative machine with often only occasional guidance from an ever-changing board. EOs are vested with substantial decision-making authority and have the ability to shape policy direction of a particular board through their recommendations, management, and relationships.

Presently, the Board of Registered Nursing (BRN) is the only board within the DCA that requires its EO to be currently licensed by the board he or she regulates; the Board of Vocational Nursing and Psychiatric Technicians removed this requirement last year in light of serious allegations of mismanagement. According to the recent hiring bulletin for the BRN's Executive Officer, the EO is responsible for “...planning, organizing and directing the activities of the Board in areas of administration, enforcement and licensure. The EO serves as the liaison between the Board and

stakeholders. The EO enforces the overall policies established by the Board relating to Board programs....” To place this control with an interested stakeholder may be directly contrary to the intent of a well-balanced regulatory system.

Response by the DCA. On April 11, 2016, the DCA responded to the questions and recommendations of the Committees as follows:

(1) How does the DCA plan on addressing the “active state supervision” requirement?

According to the DCA, they have proactively provided training and guidance to its constituent entities regarding the North Carolina case, including the active state supervision requirement. Based upon the case, the California Attorney General’s opinion, and the Federal Trade Commission’s published guidelines, the Department has provided guidance to its entities regarding best practices, including:

- Continuing to promote their primary mission of consumer protection;
- Identifying when the board may be making market-sensitive decisions;
- Conducting an analysis of the competitive aspects of decisions;
- Utilizing the applicable state processes which contain elements of state supervision;
- Considering objective evidence; and,
- Adequately documenting the discussions on a particular decision.

The Department and the Attorney General’s Office have also collaborated to develop and present training regarding the case for executive officers and board presidents. Additionally, DCA indicates that information related to the case has been incorporated in the Board Member Orientation Training which is held each quarter. Presentations regarding the case have taken place at numerous board meetings.

The Department addressed potential statutory changes and identified two areas where it believes that the law should be strengthened and clarified.

First, the existing regulatory review process must be made stronger. Under current law, the Director reviews board regulations and has the authority to disapprove them if they are “injurious to the public health, safety or welfare.” However, current law does not specifically authorize the Director to disapprove regulations for anticompetitive impacts in the market without furthering a clearly articulated state policy. In order to ensure appropriate state supervision, the Department believes that the Director should have the specific authority to disapprove regulations that will have anticompetitive impacts in the market, if these are not substantiated by state policy.

Second, the DCA stated that current potential liability of board members needs to be addressed. Lawsuits regarding antitrust violations, if successful, can lead to awards of treble damages. The Department believes that these damages are not punitive in nature, and wishes to clarify this position in statute to ensure that if a board member is acting pursuant to a state policy, they will be indemnified by the

state for an antitrust violation in the same way they are for other types of lawsuits.

(2) What does the DCA believe are necessary next steps to ensure robust protection of the public from potentially problematic trust forming coalitions on regulatory boards?

As noted above, the Department states that it will continue to encourage the boards to utilize best practices and provide training in this area, which should assist in mitigating the potential for board actions which violate antitrust laws. As discussed at the hearing, the Department believes that some legislative change is warranted in the areas of the Director's review of regulations, the classification of treble damages arising in anti-trust litigation as damages that can be indemnified by the state, and the employment of Executive Officers that are licensees. The Department further states that it will continue to evaluate the impact of the North Carolina case and continue to work closely with the Administration and committee staff to vet policies related to potential antitrust liability based upon the board governance model.

(3) In light of the FTC guidance on the Active Supervision of State Regulatory Boards Controlled by Market Participants, the Committees should remove the active license requirement for the Executive Officer position for the Board of Registered Nursing.

The Department agrees, in concept, with the Committees' recommendation that the active license requirement for executive officers should be removed. Having a nonmarket participant serve as an executive officer is critical in minimizing the impact an active market participant executive officer may have on the operations. This would be an additional step in addressing the concerns of the North Carolina case.

This measure is intended to address the concerns raised by the DCA and both its suggested changes and recommendations to comply with the recent U.S. Supreme Court decision. It will expand the authority of the Director to review and take appropriate action regarding regulations or board decisions which may have potential antitrust (anticompetitive) implications, clarify potential liability for board members involved in possible antitrust litigation, and eliminate the requirement that the Executive Officer of the BRN be a registered nurse.

- 4. Background on VMB.** The mission of the Veterinary Medical Board (VMB) is to protect consumers and animals through development and maintenance of professional standards, licensing of veterinarians, registered veterinary technicians, and premises, and diligent enforcement of the California Veterinary Medicine Practice Act. The Board is composed of eight members: four veterinarians, one RVT, and three public members. The Board licenses 12,086 Veterinarians and 6,424 RVTs. The licensee population has increased steadily over the past five years. The Board also requires registration of all premises where veterinary medicine, veterinary dentistry, veterinary surgery, and the various branches thereof, is being practiced. The Board currently registers 3,636 veterinary premises.

The pet-owning public expects that the providers of their pet's health care are well-trained and are competent to provide these services. The Board assures the public that veterinarians and RVTs possess the level of competence required to perform these services by developing and enforcing standards for examinations, licensing, and hospital and school inspection. The Board also conducts regular practice analyses to validate the licensing examinations for both veterinarians and RVTs. Additional eligibility pathways have also been approved for licensure of internationally trained veterinary graduates and certification of RVTs to allow qualified applicants from other states in the U.S. and countries around the world to come to California and to improve the provision of veterinary health care for consumers and their animals. The Board's goals, as stated in its Strategic Plan, include decreased enforcement cycle times, enhanced quality and training of hospital inspectors, inspecting existing hospitals within one year of registration, and working with DCA to reduce the amount of unlicensed activity occurring in the marketplace.

5. **Review of the VMB – Issues Identified and Recommended Changes.** The Board was last reviewed by the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business, Professions and Consumer Protection (now Assembly Business and Professions) in 2012-13. At that time, both committees identified 12 issues for discussion. The Board's sunset date was only extended for two years because of serious concerns raised by the Committees during its review. However, it was determined that the Board would only have to submit a report to the Committees that addressed only the most significant issues for the Board to discuss. On December 1, 2015, the Board submitted its required Supplemental Sunset Review Report to the Committees.

The following are some of the major issues pertaining to the Board along with background information concerning the particular issue. Recommendations were made by Committee staff regarding the particular issue areas that needed to be addressed.

a) **Issue: University Licensure.**

Background: Existing law, BPC Section 4830(a)(4) allows for an exemption to licensure for veterinarians working at both veterinary medical schools in California, UC Davis and Western University.

States that have veterinary schools typically have exemptions or some form of university licensure to accommodate the schools' hiring needs. Veterinary schools hire veterinarians from all over the world who sometimes come into a state for a limited period of time, and who do not practice outside the confines of the university. However, problems can arise when the university veterinary hospital is providing services to the general public and the consumer does not have recourse through a licensing board for standard of care issues.

The Board receives calls periodically from consumers whom are unhappy with the services at a university teaching hospital and request the Board to intervene. Since veterinarians working at the universities are exempt from licensure, the Board states that it has no authority to pursue disciplinary action and must advise

the consumer to seek recourse through the university's complaint mediation process. The exemption presents consumer protection issue, and the Board believes that all veterinarians providing treatment to the public's animals should be licensed and regulated. Faculty recruited for clinical positions within the university typically specialize in certain species and conditions, are experts in their field of study, and have undergone intensive specialty testing that exceeds the examinations required for entry-level licensure. In fact, for employment in clinical faculty positions, the university requires specialty training or other advanced clinical training. Some faculty may have graduated from foreign veterinary schools that are recognized but not accredited by the American Veterinary Medical Association. As reported by UC Davis and Western University, requiring full licensure would negatively impact the universities' ability to attract and recruit the best qualified veterinarians.

During the past two years, the MDC has debated the issue of requiring veterinarians working in a university setting to obtain a University License and therefore, no longer be exempt from Board oversight. As part of the MDC's research, former legal counsel reviewed the pertinent statutes, BPC section 4830 (a)(4), and concluded that the existing exemption for veterinarians employed by the universities would need to be amended to either to strike the language in section 4830 (a)(4) and thus require a license for university personnel or include language in 4830 (a)(4) that would qualify when a "University License" must be issued in order for a veterinarian employed by a university to provide veterinary services to the public's animals.

The MDC voted to recommend to the Board that a separate University License be issued to veterinarians who are employed by and who engage in the practice of veterinary medicine in the performance of their duties for the university. Both UC Davis and Western University are supportive of requiring a University License for veterinarians practicing within the university setting as it will provide consumer recourse through the Board and allow the Board to assist the university in handling enforcement matters involving university employees.

The Board voted to approve the request for a statutory change at its October 2015 meeting and requests assistance from the Legislature to amend Section BPC Section 4830 and add new BPC 4848.1.

The change would require an implementation date set out at least 6 months from the effective date to enable university personnel to comply with the proposed examination requirements (California jurisprudence exam) and educational course on regionally specific diseases and conditions.

Recommendation and Proposed Statutory Change: The Committees may wish to amend Business and Professions Code to require the Board to separately license veterinarians practicing within a university setting.

This bill requires the Board to provide a separate licensure category for veterinarians practicing solely within the university setting.

b) Issue: Delinquent Registration Status.

Background: Currently there is no provision for the premises registration to cancel after five years, as would be consistent with other license types regulated by the Board. Instead hospital premises registrations are left in a delinquent status indefinitely and remain on the Board's records. The records are accessible on the Board's website under the "License Verification" feature. It is confusing for consumers who use the website to find registered veterinary premises and retrieve data on hospitals that have been in a delinquent status for more than five years. Many of these hospitals are no longer operating veterinary premises, yet there is not mechanism by which the Board may cancel the premises registration. In addition, the retention of electronic records for delinquent premises registrations is a resource issue for the Board as there is a "per record" cost for maintaining the data.

Recommendation and Proposed Statutory Change: The Committees may wish to amend Business and Professions Code to allow the Board to cancel the premises registration of veterinary premises that have remained in delinquent status for more than five years.

This bill allows for a premise registration to be canceled after five years of delinquency.

c) Issues: Drug Compounding.

Background: During hospital inspections, Board inspectors routinely encounter bulk form drugs used for compounding medications stored at veterinary hospitals. If the drugs are not properly stored, labeled, or are expired, the inspector will advise the Licensing Manager of the compliance issue. However, there are no specific provisions in the Practice Act to provide oversight of a veterinarian compounding drugs for use in day-to-day veterinary practices and for dispensing to clients. Instead, the Board has looked to laws and regulations governing pharmacies (BPC Sections 4051, 4052, and 4127 & Title 16 CCR Sections 1735-1735.8 and 1751 et. seq.) since veterinarians are authorized prescribers under BPC Section 4170. Pharmacy regulations not only include specific requirements for pharmacies that compound and dispense medications, but also define the "reasonable quantity" of a compounded medication that may be furnished to a prescriber (in this case, veterinarian) by the pharmacy to administer to the prescriber's patients within their facility, or to dispense to their patient/client. It should be noted that the Board of Pharmacy is currently pursuing a regulatory amendment to its Compounding Drug Preparation regulations that includes amendments to the "reasonable quantity" definition of compounded drugs that may be supplied to veterinarians for the purposes of dispensing. In addition to pharmacy provisions, federal law provides for Extralabel Drug Use in Animals, CFR Title 21 Part 530.13, which authorizes veterinarians to compound medications in following situations:

- There is no approved animal or human drug available that is labeled for, and in a concentration or form appropriate for, treating the condition diagnosed.

- The compounding is performed by a licensed veterinarian within the scope of a professional practice.
- Adequate measures are followed to ensure the safety and effectiveness of the compounded product.
- The quantity of compounding is commensurate with the established need of the identified patient.

The Board has been actively engaged in discussions regarding the regulation of veterinarians compounding drugs since October 2014 when the US Government Accountability Office contacted the Board to obtain information on California's regulation of animal drug compounding. At that time, the federal Food and Drug Administration (FDA) was considering changes to its guidance on Compounding Animal Drugs from Bulk Drug Substances. Ultimately, the FDA released Draft Guidance #230 in May 2015, which was intended to provide parameters for compounding animal drugs.

At its October 20, 2014 meeting, the MDC reviewed the issue of drug compounding by veterinarians for their animal patients. The issue, as raised by Board legal counsel, was that there is no explicit grant of authority in the Practice Act authorizing licensed veterinarians to compound drugs pursuant to federal law. Board counsel advised that provisions for veterinarians to compound drugs for animal patients would need to be added to the veterinary medicine scope of practice. The MDC examined the lack of statutory guidance for veterinarians and ultimately recommended that the Board consider a legislative proposal to grant veterinarians the authority to compound drugs for their animal patients under the existing limitations of CFR Title 21 Part 530.13.

Recommendation and Proposed Statutory Change: The Committees may wish to amend Business and Professions Code to grant limited state authority for veterinarians to compound drugs.

This bill establishes authority for drug compounding in the practice of veterinary medicine.

Note: The exact language for this section is still under revision and will likely be amended at a later date.

6. **Prior Related Legislation.** SB 1243 (Lieu, Chapter 395, Statutes of 2014) Extended until January 1, 2017, the provisions establishing the Veterinary Medical Board and the term of the executive officer of the Board.

SB 304 (Lieu, Chapter 515, Statutes of 2013) extended until January 1, 2016, the provisions establishing the VMB, subjects the VMB to a review by the appropriate policy committees of the Legislature, and clarifies that the review of the VMB shall be limited to those issues identified by the appropriate policy committees.

7. **Arguments in Support.** The University of California – Davis School of Veterinary Medicine supports the licensing provisions for veterinarians practicing solely within a university setting. They cite that the proposed change in licensing requirements respects the need for consumer protection in California and provides recourse for consumers with complaints while retaining sufficient flexibility for the University to fulfill its mission by recruiting the very best veterinary faculty.

The California Veterinary Medical Association has a “support, if amended” position on SB 1195. While they support the continued existence of a Veterinary Medical Board, CVMA is concerned with components of the current language as it relates to veterinary drug compounding. The proposed language seeks to substitute the terms “pharmacist” and “pharmacies” with “veterinarian” and “veterinary premises” in statute and in reference to numerous compounding regulations. CVMA believes the compounding for veterinarians is uniquely different from the pharmacy profession and requires separate regulations. They also raise concern that the language may inadvertently cancel out previous statutory agreements relative to veterinary labeling and drug packaging. However, they indicated confidence that they will be able to achieve a positive resolution at an upcoming meeting with stakeholders including the Board, Board of Pharmacy, CVMA, and Committee staff. As previously noted in this analysis, the drug compounding language is still under revision pending the outcome of that meeting.

SUPPORT AND OPPOSITION:

Support:

University of California – Davis School of Veterinary Medicine

Support if Amended:

California Veterinary Medical Association

Opposition: None on file as of April 12, 2016.

-- END --



1201 "K" Street, Ste. 1000
Sacramento, CA 95814
(916) 441-5351
www.calcpa.org

April 12, 2016

Senator Jerry Hill
State Capitol, Room 5035
Sacramento, CA 95814

RE: SB 1195 –Competitive Impact of DCA Board Actions **OPPOSE UNLESS AMENDED**

Senate Committee on Business, Professions and Economic Development – Hearing 4/18/16

Dear Senator Hill,

On behalf of the over 42,000 members of the California Society of CPAs (CalCPA) representing the CPA profession working in large, medium and small public accounting firms; as well as businesses and industries throughout California, we regret to inform you that we are opposed to Senate Bill 1195 as amended on April 6, 2016. This bill makes significant changes in the law regarding the oversight authority the Director of the Department of Consumer Affairs (DCA) has pertaining to state licensing boards, including the California Board of Accountancy.

As noted in the attached letter from James S. Gross of the law firm Nielsen Merksamer, which represents CalCPA, we believe SB 1195 is unnecessarily overreaching and allows for too much intervention opportunity by the Director of DCA over licensing boards. While we understand that the recent U.S. Supreme Court decision in *North Carolina State Board of Dental Examiners v. FTC* warrants an assurance of active state supervision, we are concerned that the amplified ability for one individual to intervene goes beyond what is necessary for sufficient state supervision. Too much authority to intervene without the appropriate due process structure could hinder the Board's ability to take appropriate and timely actions to ensure consumer protection.

The Office of Administrative Law (OAL), which already reviews Board actions, is a more appropriate entity to review the anticompetitive implications of Board actions. The structured administrative processes of the OAL would allow for a measured and deliberative review of anticompetitive effects with greater transparency and less opportunity to politicize the review process.

For these reasons, CalCPA must oppose SB 1195 as amended on April 6, 2016. We look forward to working with you and the committee to address these concerns. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Fox".

Jason Fox, Director,
Government Relations

cc: Members, Senate Committee on Business, Professions and Economic Development
Kayla Williams, Policy Consultant, Senate Republican Caucus

The Honorable Jerry Hill
State Capitol, Room 5035
Sacramento, CA 95814

RE: Senate Bill 1195—OPPOSE UNLESS AMENDED

Dear Senator Hill:

On behalf of our clients the California Society of Certified Public Accountants, the California Pharmacists Association, and the California Psychiatric Association, we regret to inform you of their opposition to Senate Bill 1195.

We have followed closely the discussions regarding the impact of the U.S. Supreme Court decision in *North Carolina State Board of Dental Examiners v. FTC*. We understand that the decision raises questions as to whether actions of state boards that license and oversee professionals involve sufficient “active state supervision” to ensure the board members retain their “state action immunity” in the conducting of board business. We appreciate the review that your committee has conducted and the analysis provided by interested parties such as the Center for Public Interest Law. Ultimately, we agree that some additional action is warranted by the legislature to provide more certainty that proper state supervision exists.

Unfortunately, we have issues with the construct in SB 1195. We do not believe that the additional authority the bill would give to the Director of Consumer Affairs will best serve our collective goals of protecting the legitimate actions of licensing boards.

We believe the bill vests too much discretion in the position of director. While we believe the current director has carried out his responsibilities with the highest degree of professionalism and in the best interests of consumers, we do not believe the director position should be given the authority to overturn board actions by simply consulting with experts of his or her choosing. This authority presents the risk of less than deliberative processes for decisions, a lack of transparency and the potential for politicization. Currently, the director does have similar authority, and aside from the risks noted above, we are unconvinced that granting that authority to a single person that lacks a structured administrative process will actually immunize the state from the problem set forth in the Supreme Court decision.

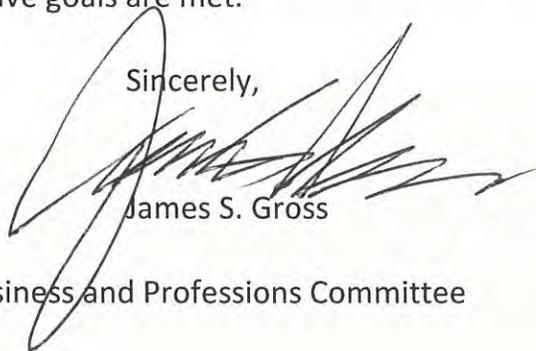
We are also concerned that this process will be used by certain parties to assert that actions by licensing boards are anticompetitive simply because those boards are following and enforcing existing law regarding the scope of practice of the professionals the boards oversee. We believe that such claims are properly left to the courts to resolve, and unless the issue is raised via enactment, repeal or amendment of a regulation, should not be a matter for consideration as part of this new process.

For all of the reasons stated above, we believe it is far more appropriate only to vest the Office of Administrative Law with the responsibility to review board actions for anticompetitive effects. We think the process for challenging these actions that parties assert are anticompetitive need to be more structured, deliberative and that subjecting them to the OAL's review would best provide the state supervision needed. The proposed amendments to the Administrative Procedures Act largely accomplish the construct required to vest the OAL with the responsibility needed to address the issues raised by the *North Carolina* decision.

As with the issue of enforcement of existing scope of practice laws, we believe that the areas identified for review by the director go beyond the actual areas of risk for the state. The bill authorizes the review of any and all actions of a board other than disciplinary actions. CPIL pointed out in its letter of November 10, 2015 that "the majority of non-rulemaking decisions do not raise anticompetitive concerns." CPIL suggests a presumption in favor of such decisions in order to avoid subjecting all of them to challenge on anticompetitive grounds. We do not see such a presumption in the bill. Hence, we believe the bill creates the very real risk of wholesale challenges to actions that certain parties simply do not like.

We very much appreciate your tackling this difficult issue and stand ready to work with you to ensure our collective goals are met.

Sincerely,

A handwritten signature in black ink, appearing to read 'James S. Gross', is written over the typed name. The signature is fluid and cursive, with a large loop at the beginning.

James S. Gross

Cc: Members, Senate Business and Professions Committee



CENTER FOR PUBLIC INTEREST LAW
University of San Diego School of Law
5998 Alcalá Park
San Diego, CA 92110-2492
P: (619) 260-4806 / F: (619) 260-4753
1107 Ninth Street, Suite 880
Sacramento, CA 95814 / P: (916) 844-5646
www.cpil.org

April 14, 2016

Honorable Jerry Hill, Chair, and Members
Senate Committee on Business, Professions and Economic Development
State Capitol, Room 2053
Sacramento, CA 95814

re: SB 1195 (Hill) — SUPPORT

Dear Senator Hill and Committee Members:

The Center for Public Interest Law (“CPIL”) strongly supports SB 1195 (Hill), which would codify the absolute minimum action that California must take in order to implement the United States Supreme Court’s landmark decision in *North Carolina State Board of Dental Examiners v. FTC* (“*North Carolina*”).¹ Indeed, failure to approve the bill will continue to expose consumers to anticompetitive actions and decisions made by boards controlled by active market participants in the relevant market, and will also expose boards and board members to potential federal antitrust criminal and civil liability.

About the Center for Public Interest Law

CPIL is a nonprofit, nonpartisan academic and advocacy center based at the University of San Diego School of Law that has been studying this precise issue for the past 35 years. Since 1980, CPIL has studied the state’s regulation of business, professions, and trades, and monitors the activities of state occupational licensing agencies, including the regulatory boards within the Department of Consumer Affairs (DCA). CPIL publishes the *California Regulatory Law Reporter*, which chronicles the activities and decisions of 25 California regulatory agencies.

CPIL’s expertise has long been relied upon by the Legislature, the executive branch, and the courts where the regulation of licensed professions is concerned. For example, after numerous reports of problems at the Medical Board of California (MBC) were published in 2002, the DCA director named CPIL Administrative Director Julianne D’Angelo Fellmeth as MBC’s Enforcement Monitor, charged over a two-year period with an in-depth investigation and review of the Board’s enforcement and diversion programs. Several major pieces of reform legislation have been enacted, mirroring the Monitor’s many recommendations. Ms. D’Angelo Fellmeth also served as the principal consultant to the Contractors’ State License Board’s Enforcement Monitor from 2001 to 2003, and CPIL served in a similar role at the State Bar during the late 1980s.

The *North Carolina* Decision

The *North Carolina* decision recognized the inherent conflict of interest that exists when a state licensing board is largely comprised of members of the trade regulated by that board. For the first

¹ ___ U.S. ___, 135 S. Ct. 1101 (2015).

time, the Supreme Court explicitly held that boards are not immune from federal antitrust scrutiny unless they are controlled by public members – not licensees; **or** the state has created a mechanism in place to actively supervise the acts and decisions of these boards to ensure they are acting for the benefit of the public, and not for the benefit of the professions themselves.

Justice Kennedy’s observation, writing for the majority, highlights the purpose behind SB 1195 and the safeguards it provides:

Limits on state-action immunity are *most essential when the State seeks to delegate its regulatory power to active market participants*, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. *In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability.*

135 S. Ct. at 1111 (emphases added), *citing California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 106 (1980) (“Midcal”) (“The national policy in favor of competition cannot be thwarted by casting [a] gauzy cloak of state involvement over what is essentially a private price-fixing arrangement”).

Today, many of California’s occupational licensing boards are controlled by “active market participants” – licensees who stand to directly benefit from anticompetitive decisions the board makes. Thus, to protect consumers from the harm that flows from such anticompetitive conduct, and to protect boards and their members from antitrust liability, California must ensure that these boards are subject to a state supervision mechanism that “provide[s] ‘*realistic assurance*’ that a nonsovereign actor’s anticompetitive conduct ‘promotes state policy, rather than merely the party’s individual interests.’” *North Carolina*, 135 S.Ct. at 1116, *quoting Patrick v. Burget*, 486 U.S. 94, 100-01 (1988) (emphasis added). The supervision mechanism must review “the *substance* of the anticompetitive decision, not merely the procedures followed to produce it...” *North Carolina*, 135 S.Ct. at 1116 (citations omitted, emphasis added). Moreover, “the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy...; and the ‘mere potential for state supervision is not an adequate substitute for a decision by the State....” *Id.* SB 1195 provides such a mechanism.

The status quo does not provide active supervision of state boards according to *North Carolina*

The current authority of the Office of Administrative Law to review board rulemaking does not constitute “active state supervision” for anticompetitive effect. The Attorney General’s Opinion about the application of *North Carolina* to DCA boards draws the unfounded conclusion that the rulemaking process governed by the Administrative Procedure Act (APA)² and overseen by the Office of Administrative Law (OAL) “is a fairly safe area for board members, because of the public notice, written justification, [DCA] Director review, and review by the Office of Administrative Law...”³ Although the Attorney General is correct in that the APA rulemaking process is replete with

² Gov’t Code § 11340 *et seq.*

³ Attorney General’s Opinion No. 15-402 at 8.

“review” by non-“active market participants,” none of those reviewers is required to, tasked with, authorized to, or trained to review for anticompetitive impact; further, none of them are empowered to “modify” board regulations, as explicitly required by *North Carolina*. OAL’s six areas of specified review do not include “anticompetitive” effects at all. SB 1195 addresses this issue by requiring, and setting the parameters for, such a review by OAL of state board rulemaking for anticompetitive effect.

Moreover, the DCA Director currently lacks the authority to “actively supervise” boards for anticompetitive effect. At this committee’s hearing on *North Carolina* implementation on October 22, 2015, the Deputy Attorney General noted two deficiencies about the DCA Director’s current authority to review board activity: (a) the Director’s review does not include all of the various categories of board acts and decisions related to licensing examinations and requirements that form the heart of the *per se* antitrust offense often at issue; and (b) the Director does not have the unfettered power to make final decisions in his review function, but may be overridden by boards controlled by “active market participants.” In addition, as CPIL noted at the hearing, there are currently numerous other deficiencies that prevent the DCA Director from exerting “active state supervision” of DCA board acts and decisions. SB 1195 necessarily broadens the Director’s reviewing authority and requires the Director to consider anticompetitive impact when conducting such a review.

SB 1195 provides the minimum level of “active state supervision” required by the *North Carolina* decision.

The opposition asserted by Nielsen Merksamer on behalf of several trade associations contends that SB 1195 reposes too much discretion in the DCA Director, and seeks to confine “active state supervision for anticompetitive effect” to the Office of Administrative Law. However, OAL is only authorized to review formal rulemaking by state agencies. Regulatory boards controlled by active market participants make decisions and take actions every day that are not rulemaking and will thus not be reviewed by OAL. In fact, the acts undertaken by the North Carolina State Board of Dental Examiners which became the subject of the U.S. Supreme Court’s decision were non-rulemaking acts – cease and desist letters – that OAL does not review.

As it must (in order to properly implement the decision), SB 1195 authorizes the DCA Director to review those kinds of non-rulemaking actions for anticompetitive effect, and requires the Director to review them if requested by a consumer or a licensee. The bill affords transparency of any DCA Director review of a board action: It requires the Director to start with the record of the decision compiled by the board (section 109(c)(3)(A)); it requires the Director to release the matter for a 30-day public comment period if the board did not previously conduct a public comment period (section 109(c)(3)(B)); and it requires the director to post his/her decision on DCA’s Internet Website (section 109(c)(3)(D)). These transparency procedures were recommended by the staff of the Federal Trade Commission in its Guidance released in October 2015.⁴ Further, if the DCA Director decides to modify a board regulation, the Director must subject the modified language to a 30-day public comment period “before the director issues a final decision regarding the modified regulation” (section 313.1(d)). These procedures afford substantial transparency to the DCA Director’s review of regulatory board decisions.

⁴ See https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf

The opposition also fears that the review process will be “used by certain parties to assert that actions by licensing boards are anticompetitive simply because those boards are following and enforcing existing law regarding the scope of practice of the professionals the boards oversee.” This fear is unfounded. If the board is simply enforcing existing law, the Director is required to “close the investigation and review of the board action or decision” (section 109(c)(2)). The bill is also careful to guard against duplicative reviews (section 109(f)) and to ensure that it is not used as a way to appeal or interfere with board disciplinary actions (section 109(g)).

In short, SB 1195 is the minimum that California must enact in order to ensure “active state supervision” of acts and decisions of regulatory boards that are controlled by active market participants. It requires a review for anticompetitive effect of all formal board rulemaking, and it affords a review process for non-rulemaking acts and decisions which should not unduly interfere with a board’s ability to enforce a “clearly articulated and affirmatively expressed state law.” It is necessary to protect consumers from anticompetitive decisions made by regulatory boards captured by the regulated, and to protect board members from federal antitrust liability.

For all of these reasons, CPIL urges your “YES” vote on SB 1195.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert C. Fellmeth". The signature is written in a cursive style with a large initial "R".

Robert C. Fellmeth, Executive Director
Center for Public Interest Law
Price Professor of Public Interest Law
University of San Diego School of Law

cc. Awet Kidane, Director, Department of Consumer Affairs



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



MSG Item II.
May 19, 2016

CBA Item IX.D.2.
May 19-20, 2016

Mobility Stakeholder Group Decision Matrix and Stakeholder Objectives

Presented by: Written Report Only

Purpose of the Item

The purpose of this agenda item is to provide the Mobility Stakeholder Group (MSG) with its decision matrix (**Attachment 1**) and stakeholder objectives (**Attachment 2**).

Consumer Protection Objectives

The decision matrix and stakeholder objectives are intended to ensure that the MSG is considering whether the provisions of the California practice privilege law “satisfy the objectives of stakeholders of the accounting profession in this state, including consumers.”

Action(s) Needed

No specific action is required on this agenda item.

Background

At its March 2014 meeting, staff presented the MSG with a plan to maintain a decision matrix in order to track decisions made by the MSG. The purpose for the decision matrix was to assist the MSG and staff in determining what activities have been accomplished and what decisions still remain for discussion.

In addition, the MSG is charged with considering whether the provisions of the California practice privilege law “satisfy the objectives of stakeholders of the accounting profession in this state, including consumers.” At its July 2014 meeting, the MSG established two stakeholder objectives and requested that they be provided at future meetings in order that the MSG may continue to revise and add to them as needed.

Comments

Staff will continue to provide the decision matrix and stakeholder objectives as a written report only agenda item unless otherwise directed by the MSG.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Staff does not have a recommendation on this agenda item.

Mobility Stakeholder Group Decision Matrix and Stakeholder Objectives

Page 2 of 2

Attachments

1. MSG Decision Matrix
2. Stakeholder Objectives



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



Attachment 1

MSG Decision Matrix

<u>Date</u>	<u>Decision</u>
March 2014	The MSG will meet three times per year in conjunction with the March, July and November CBA meetings.
March 2014	The MSG will prepare a written report to the CBA at least once per calendar year.
March 2014	The MSG will prepare a final report in time to be considered by the CBA as it prepares its final report to the Legislature which is due January 1, 2018.
November 2014	The MSG adopted the following definition for "stakeholders:" Stakeholders include consumers, licensees, applicants, and professional organizations and groups that have a direct or indirect stake in the CBA because they can affect or be affected by the CBA's actions, objectives, and policies.
March 2015	The MSG approved the timeline for making determinations pursuant to Business and Professions Code (BPC) section 5096.21. The MSG agreed that staff will prepare a letter for each state to notify them of the process the CBA is undertaking and to request specific information that will assist the CBA as it makes the determinations pursuant to BPC section 5096.21. ¹
May 2015	The MSG opined that the National Association of State Boards of Accountancy's Guiding Principles of Enforcement (NASBA Enforcement Guidelines) meet or exceed the CBA's enforcement practices.
July 2015	The MSG selected NASBA to assist the CBA in comparing the enforcement practices of other states to the NASBA Enforcement Guidelines.
July 2015	The MSG will meet in conjunction with scheduled CBA meetings until the comparison project is complete.

¹ At its May 28-29, 2015 meeting, the CBA deferred the timeframe for sending the letter to the Executive Officer.

MSG Decision Matrix

Page 2 of 2

<u>Date</u>	<u>Decision</u>
September 2015	The MSG approved a legislative proposal to grant emergency rule-making authority to remove states from California's mobility program.
March 2016	<p>The MSG recommended, out of 43 jurisdictions identified as substantially equivalent by NASBA, staff conduct and initial assessment of Arizona and Washington using the State Information sheet (with suggested modifications), and concurrently review the Internet portion of all states identified as substantially equivalent.</p> <p>The MSG directed staff to report the results of the initial assessment and to recommend an appropriate sample size at the CBA May 2016 meeting.</p>

**DEPARTMENT OF CONSUMER AFFAIRS**

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

**Attachment 2****Stakeholder Objectives**

Date Added or Revised	Objective
July 2014	Help out-of-state licensees know and understand their self-reporting requirements.
July 2014	Assure the CBA that all states have adequate enforcement.



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



MSG Item III.
May 19, 2016

CBA Item IX.D.3.
May 19-20, 2016

Timeline for Activities Regarding Determinations to be Made Pursuant to Business and Professions Code Section 5096.21

Presented by: Matthew Stanley, Information and Planning Officer

Purpose of the Item

The purpose of this agenda item is to provide the Mobility Stakeholder Group (MSG) with an opportunity to discuss items related to the timeline for practice privilege activities (**Attachment**) pursuant to Business and Professions Code (BPC) section 5096.21.

Consumer Protection Objectives

This discussion will be used by the California Board of Accountancy (CBA) to ensure the timeline for practice privilege activities corresponds with their goal of transparency and mission to protect consumers.

Action(s) Needed

No specific action is required on this agenda item.

Background

In 2012, the Legislature revised the practice privilege law to eliminate the requirement for out-of-state licensees to provide notice and fee prior to obtaining a California practice privilege. BPC section 5096.21(a) requires the CBA to make determinations as to whether allowing licensees of a particular state to practice in California under a no notice; no fee practice privilege violates its duty to protect the public. If this determination shows the public is at risk, the licensees of those particular states would, following a rulemaking by the CBA, revert back to using the prior practice privilege program with its notice and fee provisions. These determinations are to be made on and after January 1, 2016, and on an ongoing basis. In making the determinations, the CBA is required to consider three factors:

1. Whether the state timely and adequately addresses enforcement referrals made by the board to the accountancy regulatory board of that state, or otherwise fails to respond to requests the board deems necessary to meet its obligations under this article.
2. Whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the board to adequately link consumers to an Internet website to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.

Timeline for Activities Regarding Determinations to be Made Pursuant to Business and Professions Code Section 5096.21

Page 2 of 2

3. Whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

Alternatively, a state may be allowed to remain under the no notice, no fee practice privilege program under BPC 5096.21(c) if the following four statutory conditions are met:

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

The initial timeline for this project was approved by the CBA at its March 2015 meeting.

Comments

This agenda item is a standing item to keep members apprised of upcoming activities regarding the determinations made pursuant to BPC section 5096.21. It also serves as an opportunity for members to discuss any of the items on the timeline. At the March 2016 meeting the MSG asked that staff present this item, rather than providing a written report only.

The timeline reflects the most current information available. Staff determined the timeline based on the following dates and timeframes:

- January 1, 2018 – Final report is due to the Legislature
- January 1, 2019 – Sunset date of the no notice, no fee practice privilege program
- 12 to 18 months – the amount of time normally required to complete the rulemaking process

The timeline may be changed as needed or as directed.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Staff does not have a recommendation on this agenda item.

Attachment

Timeline for Practice Privilege Activities Pursuant to Business and Professions Code Section 5096.21



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



Attachment

Timeline for Practice Privilege Activities Pursuant to Business and Professions Code Section 5096.21

Substantial Equivalence to NASBA's Enforcement Guidelines

Business and Professions Code (BPC) section 5096.21(c) states that a state's licensees may remain in the no notice, no fee practice privilege program if the following four conditions are met:

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

This portion of the timeline outlines the activities surrounding the CBA's determination of which states' enforcement practices are substantially equivalent to NASBA's Enforcement Guidelines. While the law does not specify a date by which these activities must be concluded, staff developed this timeline keeping in mind the following dates and timeframes:

- January 1, 2018 – Final report is due to the Legislature
- January 1, 2019 – Sunset date of the no notice, no fee practice privilege program
- 12 to 18 months – the amount of time normally required to complete the rulemaking process

These dates are the only firm dates in BPC section 5096.21. There is no firm date by which the CBA must take action to remove a state or states from the no notice, no fee practice privilege program. This allows some flexibility for the CBA to work with an individual state in bringing it to a position where the CBA may indicate that they are substantially equivalent to the NASBA Enforcement Guidelines.

May 28, 2015	NASBA released its final version of its Enforcement Guidelines
May 28, 2015	CBA issued a finding that the NASBA Enforcement Guidelines met the CBA's enforcement practices
July 23, 2015	CBA determines how best to compare other states' enforcement practices with the NASBA Enforcement Guidelines
Summer/Fall 2015	Staff implements the method for comparing other states' enforcement practices with the NASBA Enforcement Guidelines
January 2016	CBA makes its initial determinations of substantial equivalence based on early research provided by the entity to be selected in CBA Agenda Item XI.D.4. (this date may be later if the consultant approach is selected)
September 2016	CBA reviews the final findings provided by the entity performing the research

State-by-State Determinations

After the CBA completes the portion of the timeline regarding substantial equivalence to the NASBA Enforcement Guidelines, there may be states that were not found to be substantially equivalent. If so, these states may still remain under the no notice, no fee practice privilege program if they are allowed to do so by the CBA in the state-by-state determination process.

The CBA must determine whether allowing the licensees of those states to practice in California under a practice privilege violates its duty to protect the public. In doing so, the CBA must consider the three items listed in BPC section 5096.21(b):

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

The CBA is required to make the determinations using these considerations on and after January 1, 2016. The following portion of the timeline outlines the activities

surrounding the CBA's determinations made for those states not found to be substantially equivalent to NASBA's Enforcement Guidelines.

September 2016	Staff requests information to assist the CBA in making the determinations from states not found by the CBA to be substantially equivalent to the NASBA Enforcement Guidelines
March 2017	CBA reviews information provided by those states and identifies any that are at risk of removal from the no notice, no fee practice privilege program
May and July 2017	CBA deliberates on states that should remain or be removed from the no notice, no fee practice privilege program
July 2017	CBA initiates Rulemaking to remove states, where the CBA determines that allowing the licensees of that state to practice in California under a practice privilege violates its duty to protect the public, from the no notice, no fee practice privilege program
November 2017	CBA conducts a public hearing on the Rulemaking and initiates a 15-day notice of changes to include any additional states
July 2017 – January 2019	CBA continues reviewing states regarding whether their licensees should remain or be removed from the no notice, no fee practice privilege program as needed

Practice Privilege Final Report to the Legislature

BPC section 5096.21(f) states:

On or before January 1, 2018, the board shall prepare a report to be provided to the relevant policy committees of the Legislature, the director, and the public, upon request, that, at minimum, explains in detail all of the following:

- (1) How the board has implemented this article and whether implementation is complete.
- (2) Whether this article is, in the opinion of the board, more, less, or equivalent in the protection it affords the public than its predecessor article.
- (3) Describes how other state boards of accountancy have addressed referrals to those boards from the board, the timeframe in which those referrals were addressed, and the outcome of investigations conducted by those boards.

At its initial meeting, the Mobility Stakeholder Group (MSG) decided to prepare a final report for the CBA to reference as it prepares its report to the Legislature by January 1, 2018. This portion of the timeline outlines the activities surrounding these reporting requirements.

July 2017	CBA receives the MSG's Final Report
September 2017	CBA reviews its draft Practice Privilege Report to the Legislature
November 2017	CBA approves the final version of the Practice Privilege Report to the Legislature
January 1, 2018	Practice Privilege Report due to the Legislature



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



MSG Item IV.
May 19, 2016

CBA Item IX.D.4.
May 19-20, 2016

Discussion Regarding the Assessment of the National Association of State Boards of Accountancy's Process for Evaluating and Information Gathered Regarding Washington's and Arizona's Accountancy Board Operations

Presented by: Matthew Stanley, Information and Planning Officer

Purpose of the Item

The purpose of this agenda item is to allow the California Board of Accountancy (CBA) the opportunity to review the results of the preliminary assessment of the National Association of State Boards of Accountancy (NASBA) findings related to Business and Professions Code (BPC) Section 5096.21(c).

Consumer Protection Objectives

The findings will be used by the CBA to determine whether allowing licensees of certain states to continue practicing under a no notice, no fee practice privilege fulfills the responsibility of the CBA to protect consumers.

Action(s) Needed

There is no action required. The CBA will have an opportunity to discuss the assessment process and evaluate the direction it may choose for the remainder of NASBA's findings during **CBA Agenda Item IX.D.5.**

Background

BPC section 5096.21(a) (**Attachment 1**), requires the CBA to determine whether allowing individuals from a particular state to practice in California pursuant to a practice privilege violates its duty to protect the public.

At the July 2015 meeting, the CBA discussed the best approach to complete a comparison of states' enforcement practices to determine if they are substantially equivalent to the NASBA Guiding Principles of Enforcement (Guiding Principles of Enforcement) (**Attachment 2**). The CBA selected NASBA as the entity to conduct the research, and they have already provided an initial listing of states it has identified as substantially equivalent.

At the March 2016 meeting, the CBA directed staff to conduct an initial assessment of information gathered by NASBA regarding its substantial equivalency finding for Washington and Arizona, and provide the CBA with the results of the assessment.

Discussion Regarding the Assessment of the National Association of State Boards of Accountancy's Process for Evaluating and Information Gathered Regarding Washington's and Arizona's Accountancy Board Operations

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Comments

The CBA directed staff to conduct an assessment of the information gathered by NASBA and its evaluation process for two states, Arizona and Washington, and to use the State Information Sheet (**Attachment 3**) as a guideline during the process. The State Information Sheet provides a list of questions that correspond to the Guiding Principles of Enforcement.

On Wednesday, April 6, 2016, staff met with NASBA at the CBA's office to conduct the preliminary assessment. NASBA provided staff an overview of its substantial equivalency evaluation process, including the specific questions sent via surveys to each state board of accountancy and the follow-up communications requesting a timely response. NASBA explained circumstances specific to each state that led to the substantial equivalency findings, and NASBA's use of its Objectives of Substantial Equivalency Evaluation (**Attachment 4**).

In order to encourage candor and open discussions, the specifics of NASBA's information collected from the two states were not recorded. However, staff were able to view the raw information for the two states during this assessment. Staff inquired about the process NASBA used to collect the data and was informed that NASBA conducted two extensive surveys, several follow-up communications with each board, and website research.

NASBA provided staff a summary of the specific enforcement practices for the two selected jurisdictions. To validate the data, staff chose one random question from each section of the Guiding Principles of Enforcement. For example, staff may have chosen question 1.a.i. from the "Time Frames for Prosecuting a Complaint from Intake to Final Disposition." This question asks for the board's target time frame to either close a complaint for lack of legal merit or jurisdictional nexus or initiate an investigation. NASBA showed the data answering the question and verified the source for the information as being from the surveys, follow-up communications, or the state board's website.

Based on the results of the assessment and the verification of the states' websites with disciplinary information, staff was satisfied with NASBA's identification of Arizona and Washington being substantially equivalent.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Staff does not have a recommendation on this agenda item.

Discussion Regarding the Assessment of the National Association of State Boards of Accountancy's Process for Evaluating and Information Gathered Regarding Washington's and Arizona's Accountancy Board Operations
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Attachments

1. BPC Section 5096.21
2. NASBA's Guiding Principles of Enforcement
3. State Information Sheet
4. Objectives for Substantial Equivalency Evaluation



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



Attachment 1

Business and Professions Code

5096.21

(a) On and after January 1, 2016, if the board determines, through a majority vote of the board at a regularly scheduled meeting, that allowing individuals from a particular state to practice in this state pursuant to a practice privilege as described in Section 5096, violates the board's duty to protect the public, pursuant to Section 5000.1, the board shall require, by regulation, out-of-state individuals licensed from that state, as a condition to exercising a practice privilege in this state, to file the notification form and pay the applicable fees as required by former Section 5096, as added by Chapter 921 of the Statutes of 2004, and regulations adopted thereunder.

(b) The board shall, at minimum, consider the following factors in making the determination required by subdivision (a):

(1) Whether the state timely and adequately addresses enforcement referrals made by the board to the accountancy regulatory board of that state, or otherwise fails to respond to requests the board deems necessary to meet its obligations under this article.

(2) Whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the board to adequately link consumers to an Internet Web site to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.

(3) Whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

(c) Notwithstanding subdivision (a), if (1) the National Association of State Boards of Accountancy (NASBA) adopts enforcement best practices guidelines, (2) the board, upon a majority vote at a regularly scheduled board meeting, issues a finding after a public hearing that those practices meet or exceed the board's own enforcement practices, (3) a state has in place and is operating pursuant to enforcement practices substantially equivalent to the best practices guidelines, and (4) disciplinary history of a state's licensees is publicly available through the Internet in a manner that allows the board to link consumers to an Internet Web site to obtain information at least equal to the information that was previously available to consumers through the practice privilege form filed by out-of-state licensees pursuant to former Section 5096, as added by Chapter 921 of the Statutes of 2004, no practice privilege form shall be required to be filed by any licensee of that state as required by subdivision (a), nor shall the board be required to report on that state to the Legislature as required by subdivision (d).

(d) (1) The board shall report to the relevant policy committees of the Legislature, the director, and the public, upon request, preliminary determinations made pursuant to this

section no later than July 1, 2015. The board shall, prior to January 1, 2016, and thereafter as it deems appropriate, review its determinations made pursuant to subdivision (b) to ensure that it is in compliance with this section.

(2) This subdivision shall become inoperative on July 1, 2017, pursuant to Section 10231.5 of the Government Code.

(e) On or before July 1, 2014, the board shall convene a stakeholder group consisting of members of the board, board enforcement staff, and representatives of the accounting profession and consumer representatives to consider whether the provisions of this article are consistent with the board's duty to protect the public consistent with Section 5000.1, and whether the provisions of this article satisfy the objectives of stakeholders of the accounting profession in this state, including consumers. The group, at its first meeting, shall adopt policies and procedures relative to how it will conduct its business, including, but not limited to, policies and procedures addressing periodic reporting of its findings to the board.

(f) On or before January 1, 2018, the board shall prepare a report to be provided to the relevant policy committees of the Legislature, the director, and the public, upon request, that, at minimum, explains in detail all of the following:

(1) How the board has implemented this article and whether implementation is complete.

(2) Whether this article is, in the opinion of the board, more, less, or equivalent in the protection it affords the public than its predecessor article.

(3) Describes how other state boards of accountancy have addressed referrals to those boards from the board, the timeframe in which those referrals were addressed, and the outcome of investigations conducted by those boards.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

NASBA

Guiding Principles of Enforcement

The purpose of issuing these Guiding Principles is to promote consumer protection by promoting uniformly effective board enforcement and disclosure policies and practices nationally as a reinforcing compliment to mobility, which depends upon all states having confidence in the enforcement and disclosure policies and practices of the home state of the mobile licensee. While of course not binding on boards, these Guiding Principles are based on exhaustive, multi-year research into the enforcement and disclosure practices and policies of the boards of the 55 jurisdictions, and represent NASBA identifying common practices for boards to consider and, potentially, against which to measure themselves.

ENFORCEMENT

Board enforcement throughout the nation is largely complaint driven. How boards handle complaints is, therefore, foundational to how well its enforcement program works to benefit consumers.

What follows are the performance-based hallmarks of enforcement programs and Guiding Principles related to each. How fast are complaints addressed? How are complaints prioritized? How fast are urgent complaints addressed? What discipline is imposed? What is the quality of the resources available and the capacity of those resources? These are some of the key questions to be weighed when evaluating an enforcement program.

1. Time Frames for prosecuting a complaint from intake to final disposition

General Findings: State laws often dictate the manner in which boards prosecute cases, in some cases dictating the manner in which actions are handled. For example one board may have the authority to close a complaint without merit almost immediately based solely on the decision of the Executive Director, while another board may be required to hold the file open until a vote by the board at the next scheduled meeting.

When considering a new complaint, boards should first determine whether a complaint has legal merit and, if legal merit is found, whether the state board has jurisdictional nexus on the matter. If both these criteria are satisfied and the board determines to move forward with the enforcement matter, the board should then consider whether any discipline already issued by another agency, board, etc. was sufficient to address the violations or whether the harm justifies further enforcement action by the board.

An analysis of the various jurisdictions reveals useful benchmarks for the time frame of handling complaints. Set forth below are targeted time frames that boards should strive to meet, understanding there are instances where different time frames are appropriate in light of the legal and operational considerations (e.g. volume of complaints) that may justify different targets for certain boards.

- a. Decision to (i) close complaints for lack of legal merit or jurisdictional nexus or (ii) initiate an investigation
 - i. Target – 7 days after expiration of time period for responses with either receipt of all supporting document from parties or failure to respond, or at

- next scheduled board/complaint committee meeting
- b. Assignment of investigator
 - i. Target – 10 days from decision to initiate investigation
- c. Completion of investigation
 - i. Target – 180 days or less from initiation of investigation
- d. Formal Discipline at administrative level – final disposition
 - i. Target – 540 days or less from initiation of complaint
- e. Initiation of action (re-opening of complaint) or initiation of new complaint following probation violation
 - i. Target – 15 days or next scheduled board/complaint committee meeting

2. Enforcement resources to adequately staff investigations

General Findings: Both consumers and licensees have an interest in seeing complaints processed expeditiously, with a board enjoying adequate enforcement resources to ensure a fair and efficient process. Generally, the appropriate level of enforcement resources in a given jurisdiction is a function of the size of the jurisdiction’s licensee population, and the number and nature of complaints typically handled by that jurisdiction. A board with 70,000 licensees will need a much more robust investigative unit with more personnel, but a board with 1,500 licensees may be able to utilize board members with specialized knowledge to handle investigations. Overall, 33 jurisdictions have less than 10,000 licensees (“small” jurisdictions); 13 jurisdictions have 10,000-20,000 licensees (“mid-size”); and nine have more than 20,000 licensees (“large”).

- a. In determining adequate staffing resources a board should routinely evaluate staffing levels to ensure that the appropriate number of staff are assigned to the right positions and at the right time. A board should evaluate their respective program needs, taking into consideration workload projections and any new anticipated workload over the coming years (possibly as a result of law or rule changes). When evaluating staffing workload, a board should consider identified core tasks to complete investigations, general duration of time to complete the tasks, and the number of staff presently assigned to handle investigation. Based on this evaluation, a board should determine if any overages or shortages in workload exist and seek to align staffing resources accordingly.
- b. Factors that may warrant modification (up or down) to such ratios:
 - i. Ratio of administrative complaints to practice complaints – history of practice claims in a particular jurisdiction would warrant more investigators per licensee. Administrative complaints are typically less complicated and would include violations like failure to renew, failure to obtain CPE (“Administrative Complaints”). Practice complaints are generally more complex and would include violations such as failure to follow standards, failure to follow the code of conduct and actions involving dishonesty or fraud (“Practice Complaints”).
 - ii. Ratio of complaints involving firms with offices in multiple states versus smaller firms with local offices. The prevalence of complex cases, such as cases against the auditors in Enron and against big firms that involve

representation by outside law firms may require an increase in the ratio of investigators to licensees, to handle the added workload associated with periodic complex cases.

- c. Qualification and training of investigators
 - i. Large, mid-size and small accountancy boards should all seek to utilize CPAs, law enforcement, board staff, or other individuals with accounting or investigative training (such as the Investigator Training Series identified in Section 2 (c)(iii) below or the training offered by the Council on Licensure, Enforcement and Regulation (CLEAR)) as an investigator whenever possible;
 - ii. Encourage investigative staff to attend investigative training seminars such as those hosted by CLEAR;
 - iii. Encourage investigative staff to complete the Investigator Training Series on NASBA.org
 - iv. Boards should establish and follow a process for determining appropriate utilization of CPA investigators and/or CPA board members or staff and non-CPA investigators, which considers whether the case involves an Administrative Complaint or involves a Practice Complaint.
 - v. Boards should utilize subject matter experts for complex investigations involving highly technical areas and standards, such as ERISA, Yellow Book, cases involving complicated tax issues, and fraud.
 - 1. Work with NASBA to identify a means of obtaining the necessary resources if costs are prohibitive to boards
 - 2. Use NASBA pool of available expert witnesses, if needed, to address complex issues, such as those items referenced in subsection (v) above
 - 3. Referral to a board member with expertise that is case specific
 - a. In such cases, the Board member should recuse himself/herself from further participation in any formal disciplinary action in the specific matter
- d. Boards should be able to access funds in a timely manner to handle a case against a big firm, as a demand arises, either through an appropriation process, the board, the umbrella agency, or the prosecuting agency.

3. Case management

General Findings: The volume of complaints considered by a board will also have a bearing regarding case management for a particular board. For example, a board handling 3,000 complaints a year typically should have a system in place to prioritize those cases based upon the potential for harm, while a board receiving only 1-3 complaints will not need a prioritization system because each complaint can receive immediate attention. If the number of complaints received by board requires prioritization in order to adequately address all complaints and best allocate board resources to achieve maximum protection of the public, then such jurisdiction should identify cases for potential to cause greatest harm, or offenses that are indicators of problems that could lead to such harm and adopt procedures to manage Administrative Complaints by handling them in a manner similar to that outlined below in Section 3(a)

and Practice Complaints by handling them in a manner similar to that outlined below in Section 3(b).

- a. Administrative Complaints involving matters of licensing deficiencies such as, failure to timely renew or obtain CPE, improper firm names, other administrative matters and certain first-time misdemeanor offenses, generally pose a lesser threat to the public and as such may be processed as follows:
 - i. Attorney, Executive Director, and/or qualified staff review informal matters
 - ii. Cases can be closed based on voluntary compliance
 - iii. Informal conference may be scheduled to assist in reaching a settlement or if there is non-compliance with an agreed resolution
- b. Practice Complaints generally involving matters of incompetence, dishonesty, violation of any rule of professional ethics or professional conduct, failing to timely complete an engagement, failure to communicate, criminal convictions, breach of fiduciary duty or fraud or disclosing confidential information pose a greater threat to the public and as such are generally processed as follows:
 - i. Summary of investigation is reviewed by Attorney, Executive Director, appointed Board member, or Complaint Committee (depending upon board structure)
 - ii. Further investigation may be requested
 - iii. Information Conference may be scheduled to aid settlement
 - iv. Upon determination of a violation, corrective (remedial) or disciplinary action is taken (either by consent agreement or proceeding to formal hearing) upon approval of the Board
- c. Boards should review discipline from other agencies, such as the DOL, SEC, PCAOB, and AICPA, included in the NASBA Quarterly Enforcement Report to determine whether such discipline should give rise to disciplinary action by the Board.
- d. Boards should use a method of tracking probationary matters with assigned personnel (staff or investigator) to monitor compliance with probationary terms, such as follow up phone calls or other correspondence with licensee, requiring the licensee to appear in person at interviews/meetings as directed by the Board to report on probation compliance, submitting written quarterly compliance reports, and/or allowing a practice investigation upon request of the Board.

4. Disciplinary Guidelines

General Findings: Boards of accountancy are charged with protecting consumers by regulating the profession and disciplining licensees who fail to comply with the professional standards. Another goal of the disciplinary process is to increase adherence to licensing requirements and professional standards, thereby elevating the quality of services provided by the profession. Boards have the authority to impose discipline to revoke, suspend, condition, or refuse to renew a license or certificate for violation of rules and regulations or statutes of the accountancy law. Boards should strive to impose fair and consistent discipline against licensees who violate the accountancy laws or rules. These guidelines recommend penalties and conditions of probation for specific statutes and rules violated, as well as aggravating and mitigating circumstances that may necessitate deviation from the recommended discipline. The disciplinary guidelines are to be used by Board members, Board staff, and others involved in the disciplinary process. Boards may exercise discretion in recommending penalties, including conditions of probation, as warranted by aggravating and mitigating circumstances.

- a. The disciplinary process for boards of accountancy should consider offenses and their appropriate penalties, including the following major categories of offenses. Each determination should be fact specific and penalties may be escalated, reduced or combined depending on the Boards' consideration of the relevant mitigating and aggravating factors.
 - i. Grounds for Revocation
 1. Revocation of a license/permit by another agency or Board
 2. Failure to inform the Board of a failed peer review
 3. Fraud or deceit in obtaining a license
 4. Conviction of any crime substantially related to the qualifications, functions, or duties of a CPA (involving dishonesty or fraud)
 5. Dishonesty, fraud, or gross negligence in the practice of public accounting
 6. Commission of a felony
 - ii. Grounds for Suspension/Probation
 1. Failure to comply with board order
 2. Failure to meet firm ownership requirements
 3. Failure of a peer review
 - iii. Grounds for Monetary Fine/Penalty
 1. Unlicensed conduct
 2. Failure to comply with professional standards or code of conduct
 3. Failure to renew
 4. Failure to timely complete CPE or peer review
 - iv. Grounds for Remediation
 1. Failure to comply with professional standards
 2. Issues regarding client records/ownership of work papers
 3. Issues regarding confidential disclosures
 4. Unlicensed conduct due to inadvertence (i.e., mobility, multiple designations, foreign accountants, etc.)
 5. Misleading name, title, or designation
- b. Boards may adopt specific factors to consider in assessing penalties, such as:
 - i. Permissible sanctions available to the Board, including those sanctions set forth in Section 4(a) above
 - ii. Mitigating or aggravating factors (described in detail below)
 - iii. Past disciplinary history or "trends" in licensee's behavior involving this Board or other agencies such as SEC, IRS, PCAOB and societies
 - iv. Likelihood of repeating the behavior
 - v. Potential for future public harm
 - vi. Potential for licensee's rehabilitation
 - vii. Extent of damages or injury due to licensee's behavior
 - viii. Board sanctions with similar misconduct in other cases
 - ix. Other enforcement actions or legal actions against licensee involving the conduct which is the subject of the current case (and impact of those actions/sanctions upon licensee)
 - x. Whether action was a clear violation or was an area of law/rule subject to

- interpretation
- xi. Whether the individual or firm has already been sanctioned for the action by another state, PCAOB the SEC, or other enforcement body, and whether the enforcement body imposed sanctions consistent with sanctions the board would typically impose under the circumstances.
- c. Boards may consider the following mitigating factors in assessing penalties:
 - i. Passage of time without evidence of other professional misconduct
 - ii. Convincing proof of rehabilitation
 - iii. Violation was without monetary loss to consumers and/or restitution was made
 - iv. If multiple licensees are involved in the violation, the relative degree of culpability of the subject licensee should be considered
 - d. Boards may consider the following aggravating factors in assessing penalties:
 - i. Failure to cooperate with Board in investigation of complaint and/or disciplinary process (providing requested documentation, timely responses, participating in informal conference)
 - ii. Violation is willful, knowingly committed and/or premeditated
 - iii. Case involved numerous violations of Board’s statutes and rules, as well as federal or other state statutes
 - iv. History of prior discipline, particularly where prior discipline is for same or similar conduct
 - v. Violation results in substantial harm to client, employer and/or public
 - vi. Evidence that licensee took advantage of his client for personal gain, especially if advantage was due to ignorance, age or lack of sophistication of the client

5. Internet Disclosure

General Findings: The goal is to allow market forces to elevate the profession by directing consumers away from licensees with troubled records and toward those who have adhered to professional standards. Thus, the disclosures must be of sufficient detail for consumers to be able to make informed judgments about whether discipline poses a risk to them or is indicative of a prior problem relevant to why they are retaining the CPA.

Finally, internet disclosure has two other beneficial consequences. One, it elicits confidence in the board’s operations. If a consumer found out that the board had secreted information from the public about a CPA that hurt the consumer, that consumer would not view the board as its champion. Likewise, as enforcement is the major duty of the board, disclosure of enforcement promotes transparency and accountability about the performance of an important state government agency.

Internet disclosures should for these reasons provide easy access by consumers to the disciplinary history, if any, of a CPA offering services to the consumer. States will vary in the documents that may be accessed by the public online, but at a minimum, states should provide sufficient information that a consumer can readily determine if any regulatory “red flags” exist that warrant further investigation by the consumer.

- a. Boards should participate in the ALD and CPAVerify
 - i. Boards should strive to provide final disciplinary action to ALD/CPA Verify for notation in the database

- ii. Boards should strive to provide information necessary for “hashing” licensee records across jurisdictions to the ALD to assist transparency and cross-border discipline

- b. Boards should publish final disciplinary action by the Board through a web site, newsletter or other available media, either with specific information regarding the facts that caused the board to impose discipline including, but not limited to, a board considering posting official documents that would be public records if requested by a consumer, or sufficient information to allow the consumer to contact the Board for particular details.

- c. Boards should capture “discipline under mobility” violation in CPAverify licensee record indicating the state where discipline was issued, with sufficient information to allow the consumer to contact the disciplining board to investigate the activity that resulted in discipline.

** These Guiding Principles are intended for use as a reference by NASBA Member Boards and staff only. Due to the unique structure of each Board of Accountancy, the enforcement process will be conducted differently in each jurisdiction. It is the reader's responsibility to learn state specific procedures, bearing in mind that each jurisdiction has different statutes, rules and case law which frequently change the ways that Accountancy Boards conduct enforcement. Only the current version of the document will be available for use.*

**DEPARTMENT OF CONSUMER AFFAIRS**

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



Attachment 3

State Information Sheet

This information sheet provides a list of questions that correspond to the NASBA Guiding Principles of Enforcement and additional items requested by the CBA. The columns to the right of the questions allow NASBA to opine as to how the responding state's enforcement practices compare to the NASBA Guiding Principles of Enforcement on each point.

State: _____

1. Time Frames for Prosecuting a Complaint from Intake to Final Disposition	
<u>Question</u>	<u>Evaluation of NASBA's answers</u>
What is the board's target time frame to either close a complaint for lack of legal merit or jurisdictional nexus or to initiate an investigation? (1.a.i.)	
What is the board's target time frame to assign the case to an investigator from initiation of an investigation? (1.b.i.)	
What is the board's target time frame to complete the investigation from initiation of an investigation? (1.c.i.)	
What is the board's target time frame to formal discipline from initiation of a complaint? (1.d.i.)	
What is the board's target time frame to initiate action (re-opening of complaint) or initiate a new complaint following a probation violation? (1.e.i.)	

2. Enforcement Resources to Adequately Staff Investigations

<u>Question</u>	<u>Evaluation of NASBA's answers</u>
Does the board routinely evaluate enforcement staffing levels to ensure that the appropriate number of staff are assigned to the right positions at the right time? (2.a.)	
Does the board evaluate their respective program needs, taking into consideration workload projections and any new anticipated workload over the coming years? (2.a.)	
When evaluating staffing workload, does the board consider identified core tasks to complete investigations, general duration of time to complete the tasks, and number of staff presently assigned to handle the investigation? (2.a.)	
Does the board determine if any overages or shortages in workload exist and seek to align staffing resources accordingly? (2.a.)	
Does the board consider the following two factors, which may warrant modification (up or down) in staffing:	
Ratio of administrative complaints to practice complaints (history of practice claims in a particular jurisdiction would warrant more investigators per licensee)? (2.b.i.)	
Ratio of complaints involving firms with offices in multiple states versus smaller firms with local offices? (2.b.ii.)	
Does the board seek to utilize CPA's, law enforcement, board staff, or other individuals with accounting or investigative training as an investigator whenever possible? (2.c.i.)	
Does the board encourage investigative staff to attend investigative training seminars? (2.c.ii.)	
Does the board encourage investigative staff to complete the Investigator Training Series on NASBA.org? (2.c.iii)	

<p>Does the board establish and follow a process for determining appropriate utilization of CPA investigators and/or CPA board members or staff and non-CPA investigators, which considers whether the case is an Administrative Complaint or involves Practice Compliant? (2.c.iv.)</p>	
<p>Does the board utilize subject matter experts for complex investigations involving highly technical areas and standards, such as ERISA, Yellow Book, cases involving complicated tax issues, and fraud? (2.c.v.)</p>	
<p>Can the board access funds in a timely manner to handle a case against a big firm, as a demand arises, either through an appropriation process, the board, the umbrella agency, or the prosecuting agency? (2.d.)</p>	

3. Case Management	
<u>Question</u>	<u>Evaluation of NASBA's answers</u>
Does the number of complaints received by the board require a prioritization system in order to adequately address all complaints and best allocate board resources to achieve maximum protection of the public? (3)	
Who reviews Administrative Complaints involving matters of licensing deficiencies such as failure to timely renew or obtain CPE, improper firm names, and other administrative matters and certain first-time misdemeanor offenses that pose a lesser threat to the public? (3.a.i.)	
Does the board allow for Administrative Complaints to be closed based on voluntary compliance? (3.a.ii.)	
Does the board allow for an informal conference to be scheduled to assist in reaching a settlement for Administrative Complaints or non-compliance to an agreed resolution? (3.a.iii.)	
Who reviews the summary of investigations for Practice Complaints involving matters of incompetence, dishonesty, violation of any rule of professional ethics or professional conduct, failing to timely complete an engagement, failure to communicate, criminal convictions, breach of fiduciary duty, fraud, or disclosing confidential information that pose a greater threat to the public? (3.b.i.)	
If warranted, does the board request further investigation for Practice Complaints? (3.b.ii.)	
Does the board allow for an Information Conference to be scheduled to aid in the settlement of a Practice Complaint? (3.b.iii.)	
Upon determination of a practice violation, is the appropriate corrective or disciplinary action taken by the board? (3.b.iv.)	

Does the board review discipline from other agencies, such as DOL, SEC, PCAOB, and AICPA, included in the NASBA Quarterly Enforcement Report to determine whether such discipline should give rise to disciplinary action by the board? (3.c.)

Does the board have a method in-place to track probationary matters with assigned personnel to monitor compliance with probationary terms, such as follow-up phone calls or other correspondence with licensee, requiring the licensee to appear in person at interviews/meetings as directed by the board to report on probation compliance, submitting written quarterly compliance reports, and/or allowing a practice investigation upon request of the board? (3.d.)

4. Disciplinary Guidelines	
<u>Question</u>	<u>Evaluation of NASBA's answers</u>
Can disciplinary penalties be escalated, reduced or combined depending on the boards' consideration of the relevant mitigating and aggravating factors? (4.a.)	
Are the following categories of offenses grounds for revocation:	
Revocation of a license/permit by another agency or board? (4.a.i.1.)	
Failure to inform the board of a failed peer review? (4.a.i.2.)	
Fraud or deceit in obtaining a license? (4.a.i.3.)	
Conviction of any crime substantially related to the qualifications, functions, or duties of a CPA (involving dishonesty or fraud)? (4.a.i.4.)	
Dishonesty, fraud, or gross negligence in the practice of public accounting? (4.a.i.5.)	
Commission of a felony? (4.a.i.6.)	
Are the following categories of offenses grounds for suspension/probation:	
Failure to comply with board order? (4.a.ii.1)	
Failure to meet firm ownership requirements? (4.a.ii.2)	
Failure of a peer review? (4.a.ii.3.)	
Are the following categories of offenses grounds for monetary fine/penalty:	
Unlicensed conduct? (4.a.iii.1.)	
Failure to comply with professional standards or code of conduct? (4.a.iii.2.)	
Failure to renew? (4.a.iii.3.)	
Failure to timely complete CPE or peer review? (4.a.iii.4.)	
Are the following categories of offenses grounds for remediation:	
Failure to comply with professional standards? (4.a.iv.1.)	
Issues regarding client records/ ownership of work papers? (4.a.iv.2.)	
Issues regarding confidential disclosures? (4.a.iv.3.)	

Unlicensed conduct due to inadvertence (i.e., mobility, multiple designations, foreign accounts, ect.)? (4.a.iv.4.)	
Misleading name, title or designation? (4.a.iv.5.)	
Does the board consider any of the following factors in assessing penalties:	
Permissible sanctions available to the board, including those sanctions set forth in Section 4(a) above? (4.b.i.)	
Mitigating or aggravating factors? (4.b.ii.)	
Past disciplinary history or trends in licensee's behavior involving this board or other agencies such as SEC, IRS, PCAOB and societies? (4.b.iii.)	
Likelihood of repeating the behavior? (4.b.iv.)	
Potential for future public harm? (4.b.v.)	
Potential for licensee's rehabilitation? (4.b.vi.)	
Extent of damages or injury due to licensee's behavior? (4.b.vii.)	
Board sanctions with similar misconduct in other cases? (4.b.viii.)	
Other enforcement actions or legal actions against licensee involving the conduct which is the subject of the current case, and the impact of those actions/sanctions upon the licensee? (4.b.ix.)	
Whether action was a clear violation or was an area of law /rule subject to interpretation? (4.b.x.)	
Whether the individual or firm has already been sanctioned for the actions by another state, PCAOB, SEC, or other enforcement body, and whether the enforcement body imposed sanctions consistent with sanctions the board would typically impose under the circumstances? (4.b.xi.)	
Does the board consider the following mitigating factors in assessing penalties:	
Passage of time without evidence of other professional misconduct? (4.c.i.)	
Convincing proof of rehabilitation? (4.c.ii.)	

Violation was without monetary loss to consumers and/or restitution was made? (4.c.iii.)	
If multiple licensees are involved in the violation, the relative degree of culpability of the subject licensee should be considered? (4.c.iv.)	
Does the board consider the following aggravating factors in assessing penalties:	
Failure to cooperate with Board in investigation of complaint and/or disciplinary process (providing requested documentation, timely responses, participating in informal conference)? (4.d.i.)	
Violation is willful, knowingly committed and/or premeditated? (4.d.ii.)	
Case involved numerous violations of Board's statutes and rules, as well as federal or other state statutes? (4.d.iii.)	
History of prior discipline, particularly where prior discipline is for same or similar conduct? (4.d.iv.)	
Violation results in substantial harm to client, employer and/or public? (4.d.v.)	
Evidence that licensee took advantage of his client for personal gain, especially if advantage was due to ignorance, age or lack of sophistication of the client? (4.d.vi.)	

5. Internet Disclosure	
Question	<u>Evaluation of NASBA's answers</u>
Does the board participate in ALD and CPAVerify? (5.a.)	
Does the board strive to provide final disciplinary action to ALD/CPAVerify for notation on the database? (5.a.i.)	
Does the board strive to provide ALD with the information necessary for "hashing" licensee records across jurisdictions to assist transparency and cross-border discipline? (5.a.ii.)	
Does the board publish final disciplinary action by the Board through a web site, newsletter or other available media, either with specific information regarding the facts that caused the board to impose discipline including, but not limited to, a board considering posting official documents that would be public records if requested by a consumer, or sufficient information to allow the consumer to contact the Board for particular details? (5.b.)	
Does the board capture "discipline under mobility" violation in CPAVerify licensee record indicating the state where discipline was issued, with sufficient information to allow the consumer to contact the disciplining board to investigate the activity that resulted in discipline? (5.c.)	

CBA Requested Items

The following items are requested to be included in the research. While these items are not a part of determining each states' substantial equivalence to the NASBA Guiding Principles of Enforcement, the answers will prove beneficial should a state be found to be not substantial equivalent and need to go through the state-by-state determination process outlined in Business and Professions Code section 5096.21(a).

<u>Question</u>	<u>Answer</u>
How many active licensees does the board have?	
What is the average number of disciplinary actions taken by the board over the past five years?	
Does the board have a mandatory peer review program?	
Does the board post disciplinary actions on its website?	
How long do disciplinary actions remain on the board's website?	
Does the board ever expunge disciplinary actions from a licensee's records? If so, after how long?	
How easy is it for a consumer to make a complaint against a licensee to the board?	
Can consumers file a complaint online? If so, are there clear instructions on how to do so?	
If the consumer cannot file a complaint online, how are consumers informed of the complaint process?	

The following information is provided by the National Association of State Boards of Accountancy (NASBA) to serve as its basis for determining which states' enforcement practices are substantially equivalent to its Enforcement Guidelines.

GUIDING PRINCIPLES OF ENFORCEMENT

OBJECTIVES FOR SUBSTANTIAL EQUIVALENCY EVALUATION

The CBA, MSG, and NASBA recognize that the enforcement process of each jurisdiction will vary based on many factors that are specific to the particular board, such as number of licensees, number of complaints/cases, authority vested in the board, delegation of certain phases of enforcement to other agencies, and interaction with an umbrella agency. As such, it is a disservice to this project to attempt to conform the review of an enforcement process to an objective checklist which does not allow one to consider the uniqueness of a specific enforcement process and its ability to meet the needs of the particular board. The term "substantial equivalency" implies that the review is not a checklist of specific data points, but rather an analysis that allows various methods of satisfying the over-reaching objectives of the project. Therefore, the review to determine whether a board's enforcement process is substantially equivalent to the Guiding Principles of Enforcement must be a subjective analysis of each jurisdiction's statutes, rules, and practices to inquire whether those elements create an enforcement process that reflects the comprehensive objectives of the Guiding Principles as described below.

The development of the Guiding Principles of Enforcement was a key element in assisting the California Board in meeting its legislative mandate pursuant to 5096.21, as well as a significant advance in cross-border accountancy regulation. The Guiding Principles identify the characteristics of an active and effective enforcement process, thereby enabling all state Boards to have confidence that other jurisdictions have a proactive culture of enforcement which successfully regulates the profession and protects the public consumer. In the environment of CPA mobility, Boards who are allowing CPAs licensed in other jurisdictions to provide services to their consumers through mobility have a vested interest in ensuring that the enforcement practices of other jurisdictions meet or exceed the objectives of the Guiding Principles. Consumer protection and disclosure of disciplinary data were important aspects of the development of the Guiding Principles, and Boards have used these Guiding Principles to review and in certain cases enhance their enforcement practices and policies."

1. Time Frames for Prosecuting a Complaint from Intake to Final Disposition

The structure and authority of boards of accountancy vary greatly across the country. Some boards are empowered to close or dismiss a matter without board vote while others would be required to hold the complaint open until a vote at the next board meeting. Some boards do not perform their own investigation of a complaint, but rather are required to send the complaint to an investigative unit within an umbrella agency, in which case it is beyond the authority of the board to regulate the speed of investigation, available investigative personnel, assignment of files, etc. The Guiding Principles set forth

benchmarks the help facilitate the speedy handling of complaints. Regardless of the timing of individual steps throughout the process (perhaps a board takes longer than the benchmark of 10 days to assign an investigator but completes investigations in less than the benchmark of 180 days), the ultimate objective of this principle is that (1) matters will be resolved in 540 days or less from the initiation of the complaint. Parties recognize that matters which are pending before other agencies or involved in civil litigation, or complex matters involving large firms or multiple parties may still fall outside this goal of 540 days due to the circumstances of the particular case.

2. Enforcement Resources to Adequately Staff Investigations

Boards typically either have one or more investigators dedicated to the board, utilize an investigator from an investigative pool provided by an umbrella agency, or utilize board staff or personnel to investigate complaints. Any of these methods may provide adequate resources to investigate complaints in a timely and knowledgeable manner. (1) As a measurement, if a board is able to meet the 540 day disposition benchmark in Principle #1, then the board is adequately staffed with sufficient personnel to timely conduct the investigations. Otherwise, the investigation process would bottleneck the disposition of cases. (2) Regarding qualification and training of investigators, those boards utilizing a designated investigator or personnel from an investigative pool would have sufficient investigative training to satisfy their particular board. Likewise, this principle can be satisfied by the performance of investigations by board members who can additionally provide particular subject matter expertise. (3) Boards should have access (through use of board members, contract hire, or other means) to subject matter experts to advise or testify as needed. (4) Boards should be able to access funds in order to prosecute a case against a big firm.

3. Case Management

The primary goal of this Principle is to determine that the board has (1) a case management process in place which allows staff to handle those complaints that can be dealt with administratively, if the Board is authorized to do so, and creates a process for efficient management of practice complaints through investigation, settlement, disciplinary hearings, etc. Again, the time management goal of 540 days in Principle #1 is an indicator that a board's case management system is meeting this criteria. (2) In addition, the case management process should also allow the board to prioritize those cases with the greatest potential for harm, if prioritization is required due to larger caseloads. (3) Boards should also consider discipline from other agencies as a basis for possible discipline by the board. (4) If probation is utilized, then the terms of the probation agreement should be monitored.

4. Disciplinary Guidelines

The disciplinary process of each board should consider offenses and appropriate penalties. (1) Boards may have written disciplinary guidelines and/or may utilize historical knowledge of the disciplinary history of the board to ensure consistency in disciplinary decisions. (2) Penalties may be escalated, reduced, or combined with other penalties or remedial measures depending on the board's

consideration of relevant mitigating or aggravating factors. Penalties can include revocation, suspension/probation, monetary fine/penalty, and remediation.

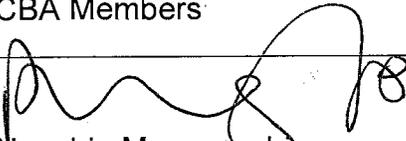
5. Internet Disclosures

The goal of internet disclosures is to provide sufficient information to allow the public to make an informed decision regarding the employment of a specific CPA. Consumers should be able to ascertain whether or not a CPA has an active license and whether the CPA has been disciplined by a particular board of accountancy. Because public records laws vary among jurisdictions, states should be least provide sufficient information that a consumer can readily determine if any regulatory “flags” exist that warrant further investigation by the consumer. This Principle can be satisfied by (1) disciplinary data being reflected on the board’s web site or (2) by the board providing disciplinary flags to be displayed in CPAverify.

California Board of Accountancy
2000 Evergreen Street, Suite 250 Sacramento, CA 95815-3832
P (916) 263-3680 F (916) 263-3675 | www.cba.ca.gov



MEMORANDUM

DATE	May 11, 2016
TO	CBA Members
FROM	 Nooshin Movassaghi Legislative Analyst
SUBJECT	Clarification on Agenda Item IX.D.5. for the May 19-20, 2016 California Board of Accountancy Meeting

As requested by the MSG at the CBA's March 2016 meeting, staff reviewed CPAverify and state websites to determine which states made the disciplinary history of their licensees publicly available through the Internet in a manner that allows the boards to adequately link consumers to a website to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.

At its July 2014 meeting, the CBA determined that an indicator or flag on CPAverify or state websites denoting prior discipline was sufficient to meet the requirement of the law.

Staff's review of CPAverify and each jurisdiction's website determined that the required disciplinary flags were all correctly noted by the National Association of State Boards of Accountancy's Listing of Substantially Equivalent States.



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



MSG Item V.
May 19, 2016

CBA Item IX.D.5.
May 19-20, 2016

Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c)

Presented by: Matthew Stanley, Information and Planning Officer

Purpose of the Item

The purpose of this agenda item is to allow the California Board of Accountancy (CBA) the opportunity to discuss the findings of the National Association of State Boards of Accountancy (NASBA) related to Business and Professions Code (BPC) section 5096.21(c).

Consumer Protection Objectives

The findings will be used by the CBA to determine whether allowing licensees of certain states to continue practicing under a no notice, no fee practice privilege fulfills the responsibility of the CBA to protect consumers.

Action(s) Needed

The CBA will be asked to decide, based on the results of the preliminary assessments described in **Agenda Item IX.D.4**, whether it wishes to alter the assessment process, continue with the assessment of the remaining jurisdictions, follow staff recommendation, or any other option the CBA chooses to direct staff to do.

Background

BPC section 5096.21(a) (**Attachment 1**), requires the CBA to determine on and after January 1, 2016, whether allowing individuals from a particular state to practice in California pursuant to a practice privilege violates its duty to protect the public.

A state may be allowed to remain under the no notice, no fee practice privilege program under BPC 5096.21(c) if the following four statutory conditions are met:

1. NASBA adopts enforcement best practices guidelines.
2. The CBA issues a finding that those practices meet or exceed the CBA's own enforcement practices.
3. A state has in place, and is operating pursuant to, enforcement practices substantially equivalent to the best practices guidelines.

Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c)

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4. Disciplinary history of a state's licensees is publicly available through the Internet in a manner that allows the CBA to link consumers to a website. The information available must be at least equal to the information that was previously available to consumers through the practice privilege form that was used in the CBA's notice and fee practice privilege program.

The first condition was fulfilled when NASBA released its Guiding Principles of Enforcement (NASBA Guiding Principles of Enforcement) (**Attachment 2**) in May 2015. The second condition was fulfilled when the CBA issued a finding that the NASBA Guiding Principles of Enforcement met the CBA's own enforcement practices at its May 27-29, 2015 meeting.

In order to meet the third condition, at the July 2015 meeting, the CBA discussed the best approach to complete a comparison of states' enforcement practices to determine if they are substantially equivalent to the Guiding Principles of Enforcement including identifying the process and objectives of the party who would be responsible for conducting the comparison. After an in depth discussion, the CBA selected NASBA as the entity to conduct the research. The process in which the research and recommendations were to be made is outlined below and includes the deliverables to the CBA:

- NASBA will be responsible for gathering the information needed to assess the substantial equivalency of each state.
- NASBA will rely, in large part, on data it previously gathered during the drafting of the Guiding Principles of Enforcement.
- NASBA will collect additional information through email, phone calls, and travel to meet with other states.
- In order to encourage candor and open discussions, NASBA will honor the confidentiality of any direct communication with the other state boards of accountancy and will retain the data collected during this process.
- NASBA's subjective analysis of each state's statutes, rules, and practices will assist in deciding whether, collectively, they create an enforcement practice that reflects the objectives of the Guiding Principles of Enforcement.
- A representative from NASBA will be available at future CBA meetings where substantial equivalence to the Guiding Principles of Enforcement is discussed.
- NASBA will provide staff with the ability to audit the basis of the substantial equivalency determinations by meeting with NASBA to collectively review states as identified by the CBA. This review will include a summary prepared by NASBA of the specific enforcement practices in the selected jurisdictions, and, when deemed necessary by staff, a confidential review of the underlying documents used to make a particular determination at a meeting between NASBA and staff.

Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c)

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Comments

NASBA's Objectives for Substantial Equivalency Evaluation (**Attachment 3**) were presented at the July 2015 CBA meeting to assist with the evaluation process as they relate to determining states' substantial equivalence to the Guiding Principles of Enforcement. The objectives are identified below with additional identifying criteria provided by NASBA.

- Time Frames for Prosecuting a Complaint from Intake to Final Disposition
 - Average Number of Complaints
 - Timeliness of Past and Present Complaints
- Enforcement Resources to Adequately Staff Investigations
 - Investigation Resources for Current and Projected Workload
 - Investigator Training Required
 - Use of Experts
- Case Management
 - Available Case Funding
 - Prioritization of Cases
- Disciplinary Guidelines
 - Consistency of Discipline
 - Factors in Assessing Penalties
 - Grounds for Revocation, Suspension, Probation, Fine, Penalty or Remediation
- Internet Disclosures
 - CPAverify versus Individual Board Website

Consistent with the Timeline for Activities Regarding Determination to be Made Pursuant to BPC section 5096.21 as identified in **CBA Agenda Item IX.D.3**. NASBA provided the results of its initial analysis of other states' enforcement practices as they compare to the Guiding Principles of Enforcement at the January 2016 CBA meeting.

NASBA's revised analysis (**Attachment 4**) now identifies 32 jurisdictions as substantially equivalent to the Guiding Principles of Enforcement. The first column in **Attachment 4**, titled "*SE*," shows the jurisdictions NASBA identifies as substantially equivalent to the Guiding Principles of Enforcement. The second column, titled "*SE w/o DISC FLAG*," represents jurisdictions NASBA identifies as substantially equivalent with the exception that these jurisdictions do not currently reflect the necessary disciplinary flag on the Internet. The third column, titled "*Undetermined*," represents jurisdictions NASBA is still researching and working with to bring them into substantially equivalent status.

As discussed in **Agenda Item IX.D.4.**, staff conducted the preliminary assessment of NASBA's substantial equivalency recommendation of Washington and Arizona. Staff analyzed the remainder of the jurisdictions based on geography, licensee population

Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c)

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and number of practice privilege holders under the prior program. Staff determined that, if the CBA chooses to continue the assessment process, an appropriate number of assessments might be 15 percent (eight jurisdictions) of all 55 jurisdictions. This sample of eight jurisdictions should include small, medium and large states as described in the Table of Factors to Assist with State Selection for Assessment (**Attachment 5**).

Staff recommend the eight jurisdictions include the following: Arizona, Colorado, D.C., Illinois, New York, Oregon, Texas, and Washington. Staff have assessed Arizona and Washington, leaving six jurisdictions to assess.

Colorado, Illinois, New York, and Texas are states with large licensee populations. Arizona, Oregon, and Washington have medium size licensee populations. While D.C. has a small population. Arizona, Colorado, Oregon, and Washington are geographically close to California. Illinois and Texas are in the midwest, leaving New York and D.C., on the east coast. Seven of these jurisdictions had over 290 practice privilege holders under the prior program. D.C. had just over 100, but it was selected to represent a small state and the east coast due to its proportionally high number of practice privilege holders.

If the CBA decides to continue the assessment process, to minimize the travel required by NASBA representatives, NASBA has requested that the next round of assessments take place at the CBA office, prior to their attendance at the NASBA Western Regional Conference. As this date is just before the mailout date for meeting materials for the CBA's July 2016 meeting, it is likely the agenda item reporting on the assessment will be hand-carried to the CBA meeting.

In addition, NASBA has informed staff that a representative will not be able to attend the CBA's May 2016 meeting; however, it will be available via conference call for any questions the CBA may have.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Staff recommend continuing the assessment of NASBA's findings of substantially equivalent states, and that Colorado, D.C., Illinois, New York, Oregon, and Texas be designated for assessment.

Attachments

1. BPC Section 5096.21
2. NASBA's Guiding Principles of Enforcement
3. Objectives for Substantial Equivalency Evaluation

Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c)

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4. NASBA Listing of Substantially Equivalent States
5. Table of Factors to Assist with State Selection for Assessment

**DEPARTMENT OF CONSUMER AFFAIRS**

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

**Attachment 1****Business and Professions Code**

5096.21

(a) On and after January 1, 2016, if the board determines, through a majority vote of the board at a regularly scheduled meeting, that allowing individuals from a particular state to practice in this state pursuant to a practice privilege as described in Section 5096, violates the board's duty to protect the public, pursuant to Section 5000.1, the board shall require, by regulation, out-of-state individuals licensed from that state, as a condition to exercising a practice privilege in this state, to file the notification form and pay the applicable fees as required by former Section 5096, as added by Chapter 921 of the Statutes of 2004, and regulations adopted thereunder.

(b) The board shall, at minimum, consider the following factors in making the determination required by subdivision (a):

(1) Whether the state timely and adequately addresses enforcement referrals made by the board to the accountancy regulatory board of that state, or otherwise fails to respond to requests the board deems necessary to meet its obligations under this article.

(2) Whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the board to adequately link consumers to an Internet Web site to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form.

(3) Whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

(c) Notwithstanding subdivision (a), if (1) the National Association of State Boards of Accountancy (NASBA) adopts enforcement best practices guidelines, (2) the board, upon a majority vote at a regularly scheduled board meeting, issues a finding after a public hearing that those practices meet or exceed the board's own enforcement practices, (3) a state has in place and is operating pursuant to enforcement practices substantially equivalent to the best practices guidelines, and (4) disciplinary history of a state's licensees is publicly available through the Internet in a manner that allows the board to link consumers to an Internet Web site to obtain information at least equal to the information that was previously available to consumers through the practice privilege form filed by out-of-state licensees pursuant to former Section 5096, as added by Chapter 921 of the Statutes of 2004, no practice privilege form shall be required to be filed by any licensee of that state as required by subdivision (a), nor shall the board be required to report on that state to the Legislature as required by subdivision (d).

(d) (1) The board shall report to the relevant policy committees of the Legislature, the director, and the public, upon request, preliminary determinations made pursuant to this

section no later than July 1, 2015. The board shall, prior to January 1, 2016, and thereafter as it deems appropriate, review its determinations made pursuant to subdivision (b) to ensure that it is in compliance with this section.

(2) This subdivision shall become inoperative on July 1, 2017, pursuant to Section 10231.5 of the Government Code.

(e) On or before July 1, 2014, the board shall convene a stakeholder group consisting of members of the board, board enforcement staff, and representatives of the accounting profession and consumer representatives to consider whether the provisions of this article are consistent with the board's duty to protect the public consistent with Section 5000.1, and whether the provisions of this article satisfy the objectives of stakeholders of the accounting profession in this state, including consumers. The group, at its first meeting, shall adopt policies and procedures relative to how it will conduct its business, including, but not limited to, policies and procedures addressing periodic reporting of its findings to the board.

(f) On or before January 1, 2018, the board shall prepare a report to be provided to the relevant policy committees of the Legislature, the director, and the public, upon request, that, at minimum, explains in detail all of the following:

(1) How the board has implemented this article and whether implementation is complete.

(2) Whether this article is, in the opinion of the board, more, less, or equivalent in the protection it affords the public than its predecessor article.

(3) Describes how other state boards of accountancy have addressed referrals to those boards from the board, the timeframe in which those referrals were addressed, and the outcome of investigations conducted by those boards.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

NASBA Guiding Principles of Enforcement

The purpose of issuing these Guiding Principles is to promote consumer protection by promoting uniformly effective board enforcement and disclosure policies and practices nationally as a reinforcing compliment to mobility, which depends upon all states having confidence in the enforcement and disclosure policies and practices of the home state of the mobile licensee. While of course not binding on boards, these Guiding Principles are based on exhaustive, multi-year research into the enforcement and disclosure practices and policies of the boards of the 55 jurisdictions, and represent NASBA identifying common practices for boards to consider and, potentially, against which to measure themselves.

ENFORCEMENT

Board enforcement throughout the nation is largely complaint driven. How boards handle complaints is, therefore, foundational to how well its enforcement program works to benefit consumers.

What follows are the performance-based hallmarks of enforcement programs and Guiding Principles related to each. How fast are complaints addressed? How are complaints prioritized? How fast are urgent complaints addressed? What discipline is imposed? What is the quality of the resources available and the capacity of those resources? These are some of the key questions to be weighed when evaluating an enforcement program.

1. Time Frames for prosecuting a complaint from intake to final disposition

General Findings: State laws often dictate the manner in which boards prosecute cases, in some cases dictating the manner in which actions are handled. For example one board may have the authority to close a complaint without merit almost immediately based solely on the decision of the Executive Director, while another board may be required to hold the file open until a vote by the board at the next scheduled meeting.

When considering a new complaint, boards should first determine whether a complaint has legal merit and, if legal merit is found, whether the state board has jurisdictional nexus on the matter. If both these criteria are satisfied and the board determines to move forward with the enforcement matter, the board should then consider whether any discipline already issued by another agency, board, etc. was sufficient to address the violations or whether the harm justifies further enforcement action by the board.

An analysis of the various jurisdictions reveals useful benchmarks for the time frame of handling complaints. Set forth below are targeted time frames that boards should strive to meet, understanding there are instances where different time frames are appropriate in light of the legal and operational considerations (e.g. volume of complaints) that may justify different targets for certain boards.

- a. Decision to (i) close complaints for lack of legal merit or jurisdictional nexus or (ii) initiate an investigation
 - i. Target – 7 days after expiration of time period for responses with either receipt of all supporting document from parties or failure to respond, or at

- next scheduled board/complaint committee meeting
- b. Assignment of investigator
 - i. Target – 10 days from decision to initiate investigation
- c. Completion of investigation
 - i. Target – 180 days or less from initiation of investigation
- d. Formal Discipline at administrative level – final disposition
 - i. Target – 540 days or less from initiation of complaint
- e. Initiation of action (re-opening of complaint) or initiation of new complaint following probation violation
 - i. Target – 15 days or next scheduled board/complaint committee meeting

2. Enforcement resources to adequately staff investigations

General Findings: Both consumers and licensees have an interest in seeing complaints processed expeditiously, with a board enjoying adequate enforcement resources to ensure a fair and efficient process. Generally, the appropriate level of enforcement resources in a given jurisdiction is a function of the size of the jurisdiction’s licensee population, and the number and nature of complaints typically handled by that jurisdiction. A board with 70,000 licensees will need a much more robust investigative unit with more personnel, but a board with 1,500 licensees may be able to utilize board members with specialized knowledge to handle investigations. Overall, 33 jurisdictions have less than 10,000 licensees (“small” jurisdictions); 13 jurisdictions have 10,000-20,000 licensees (“mid-size”); and nine have more than 20,000 licensees (“large”).

- a. In determining adequate staffing resources a board should routinely evaluate staffing levels to ensure that the appropriate number of staff are assigned to the right positions and at the right time. A board should evaluate their respective program needs, taking into consideration workload projections and any new anticipated workload over the coming years (possibly as a result of law or rule changes). When evaluating staffing workload, a board should consider identified core tasks to complete investigations, general duration of time to complete the tasks, and the number of staff presently assigned to handle investigation. Based on this evaluation, a board should determine if any overages or shortages in workload exist and seek to align staffing resources accordingly.
- b. Factors that may warrant modification (up or down) to such ratios:
 - i. Ratio of administrative complaints to practice complaints – history of practice claims in a particular jurisdiction would warrant more investigators per licensee. Administrative complaints are typically less complicated and would include violations like failure to renew, failure to obtain CPE (“Administrative Complaints”). Practice complaints are generally more complex and would include violations such as failure to follow standards, failure to follow the code of conduct and actions involving dishonesty or fraud (“Practice Complaints”).
 - ii. Ratio of complaints involving firms with offices in multiple states versus smaller firms with local offices. The prevalence of complex cases, such as cases against the auditors in Enron and against big firms that involve

representation by outside law firms may require an increase in the ratio of investigators to licensees, to handle the added workload associated with periodic complex cases.

- c. Qualification and training of investigators
 - i. Large, mid-size and small accountancy boards should all seek to utilize CPAs, law enforcement, board staff, or other individuals with accounting or investigative training (such as the Investigator Training Series identified in Section 2 (c)(iii) below or the training offered by the Council on Licensure, Enforcement and Regulation (CLEAR)) as an investigator whenever possible;
 - ii. Encourage investigative staff to attend investigative training seminars such as those hosted by CLEAR;
 - iii. Encourage investigative staff to complete the Investigator Training Series on NASBA.org
 - iv. Boards should establish and follow a process for determining appropriate utilization of CPA investigators and/or CPA board members or staff and non-CPA investigators, which considers whether the case involves an Administrative Complaint or involves a Practice Complaint.
 - v. Boards should utilize subject matter experts for complex investigations involving highly technical areas and standards, such as ERISA, Yellow Book, cases involving complicated tax issues, and fraud.
 - 1. Work with NASBA to identify a means of obtaining the necessary resources if costs are prohibitive to boards
 - 2. Use NASBA pool of available expert witnesses, if needed, to address complex issues, such as those items referenced in subsection (v) above
 - 3. Referral to a board member with expertise that is case specific
 - a. In such cases, the Board member should recuse himself/herself from further participation in any formal disciplinary action in the specific matter
- d. Boards should be able to access funds in a timely manner to handle a case against a big firm, as a demand arises, either through an appropriation process, the board, the umbrella agency, or the prosecuting agency.

3. Case management

General Findings: The volume of complaints considered by a board will also have a bearing regarding case management for a particular board. For example, a board handling 3,000 complaints a year typically should have a system in place to prioritize those cases based upon the potential for harm, while a board receiving only 1-3 complaints will not need a prioritization system because each complaint can receive immediate attention. If the number of complaints received by board requires prioritization in order to adequately address all complaints and best allocate board resources to achieve maximum protection of the public, then such jurisdiction should identify cases for potential to cause greatest harm, or offenses that are indicators of problems that could lead to such harm and adopt procedures to manage Administrative Complaints by handling them in a manner similar to that outlined below in Section 3(a)

and Practice Complaints by handling them in a manner similar to that outlined below in Section 3(b).

- a. Administrative Complaints involving matters of licensing deficiencies such as, failure to timely renew or obtain CPE, improper firm names, other administrative matters and certain first-time misdemeanor offenses, generally pose a lesser threat to the public and as such may be processed as follows:
 - i. Attorney, Executive Director, and/or qualified staff review informal matters
 - ii. Cases can be closed based on voluntary compliance
 - iii. Informal conference may be scheduled to assist in reaching a settlement or if there is non-compliance with an agreed resolution
- b. Practice Complaints generally involving matters of incompetence, dishonesty, violation of any rule of professional ethics or professional conduct, failing to timely complete an engagement, failure to communicate, criminal convictions, breach of fiduciary duty or fraud or disclosing confidential information pose a greater threat to the public and as such are generally processed as follows:
 - i. Summary of investigation is reviewed by Attorney, Executive Director, appointed Board member, or Complaint Committee (depending upon board structure)
 - ii. Further investigation may be requested
 - iii. Information Conference may be scheduled to aid settlement
 - iv. Upon determination of a violation, corrective (remedial) or disciplinary action is taken (either by consent agreement or proceeding to formal hearing) upon approval of the Board
- c. Boards should review discipline from other agencies, such as the DOL, SEC, PCAOB, and AICPA, included in the NASBA Quarterly Enforcement Report to determine whether such discipline should give rise to disciplinary action by the Board.
- d. Boards should use a method of tracking probationary matters with assigned personnel (staff or investigator) to monitor compliance with probationary terms, such as follow up phone calls or other correspondence with licensee, requiring the licensee to appear in person at interviews/meetings as directed by the Board to report on probation compliance, submitting written quarterly compliance reports, and/or allowing a practice investigation upon request of the Board.

4. Disciplinary Guidelines

General Findings: Boards of accountancy are charged with protecting consumers by regulating the profession and disciplining licensees who fail to comply with the professional standards. Another goal of the disciplinary process is to increase adherence to licensing requirements and professional standards, thereby elevating the quality of services provided by the profession. Boards have the authority to impose discipline to revoke, suspend, condition, or refuse to renew a license or certificate for violation of rules and regulations or statutes of the accountancy law. Boards should strive to impose fair and consistent discipline against licensees who violate the accountancy laws or rules. These guidelines recommend penalties and conditions of probation for specific statutes and rules violated, as well as aggravating and mitigating circumstances that may necessitate deviation from the recommended discipline. The disciplinary guidelines are to be used by Board members, Board staff, and others involved in the disciplinary process. Boards may exercise discretion in recommending penalties, including conditions of probation, as warranted by aggravating and mitigating circumstances.

- a. The disciplinary process for boards of accountancy should consider offenses and their appropriate penalties, including the following major categories of offenses. Each determination should be fact specific and penalties may be escalated, reduced or combined depending on the Boards' consideration of the relevant mitigating and aggravating factors.
 - i. Grounds for Revocation
 1. Revocation of a license/permit by another agency or Board
 2. Failure to inform the Board of a failed peer review
 3. Fraud or deceit in obtaining a license
 4. Conviction of any crime substantially related to the qualifications, functions, or duties of a CPA (involving dishonesty or fraud)
 5. Dishonesty, fraud, or gross negligence in the practice of public accounting
 6. Commission of a felony
 - ii. Grounds for Suspension/Probation
 1. Failure to comply with board order
 2. Failure to meet firm ownership requirements
 3. Failure of a peer review
 - iii. Grounds for Monetary Fine/Penalty
 1. Unlicensed conduct
 2. Failure to comply with professional standards or code of conduct
 3. Failure to renew
 4. Failure to timely complete CPE or peer review
 - iv. Grounds for Remediation
 1. Failure to comply with professional standards
 2. Issues regarding client records/ownership of work papers
 3. Issues regarding confidential disclosures
 4. Unlicensed conduct due to inadvertence (i.e., mobility, multiple designations, foreign accountants, etc.)
 5. Misleading name, title, or designation
- b. Boards may adopt specific factors to consider in assessing penalties, such as:
 - i. Permissible sanctions available to the Board, including those sanctions set forth in Section 4(a) above
 - ii. Mitigating or aggravating factors (described in detail below)
 - iii. Past disciplinary history or "trends" in licensee's behavior involving this Board or other agencies such as SEC, IRS, PCAOB and societies
 - iv. Likelihood of repeating the behavior
 - v. Potential for future public harm
 - vi. Potential for licensee's rehabilitation
 - vii. Extent of damages or injury due to licensee's behavior
 - viii. Board sanctions with similar misconduct in other cases
 - ix. Other enforcement actions or legal actions against licensee involving the conduct which is the subject of the current case (and impact of those actions/sanctions upon licensee)
 - x. Whether action was a clear violation or was an area of law/rule subject to

- interpretation
- xi. Whether the individual or firm has already been sanctioned for the action by another state, PCAOB the SEC, or other enforcement body, and whether the enforcement body imposed sanctions consistent with sanctions the board would typically impose under the circumstances.
- c. Boards may consider the following mitigating factors in assessing penalties:
 - i. Passage of time without evidence of other professional misconduct
 - ii. Convincing proof of rehabilitation
 - iii. Violation was without monetary loss to consumers and/or restitution was made
 - iv. If multiple licensees are involved in the violation, the relative degree of culpability of the subject licensee should be considered
 - d. Boards may consider the following aggravating factors in assessing penalties:
 - i. Failure to cooperate with Board in investigation of complaint and/or disciplinary process (providing requested documentation, timely responses, participating in informal conference)
 - ii. Violation is willful, knowingly committed and/or premeditated
 - iii. Case involved numerous violations of Board’s statutes and rules, as well as federal or other state statutes
 - iv. History of prior discipline, particularly where prior discipline is for same or similar conduct
 - v. Violation results in substantial harm to client, employer and/or public
 - vi. Evidence that licensee took advantage of his client for personal gain, especially if advantage was due to ignorance, age or lack of sophistication of the client

5. Internet Disclosure

General Findings: The goal is to allow market forces to elevate the profession by directing consumers away from licensees with troubled records and toward those who have adhered to professional standards. Thus, the disclosures must be of sufficient detail for consumers to be able to make informed judgments about whether discipline poses a risk to them or is indicative of a prior problem relevant to why they are retaining the CPA.

Finally, internet disclosure has two other beneficial consequences. One, it elicits confidence in the board’s operations. If a consumer found out that the board had secreted information from the public about a CPA that hurt the consumer, that consumer would not view the board as its champion. Likewise, as enforcement is the major duty of the board, disclosure of enforcement promotes transparency and accountability about the performance of an important state government agency.

Internet disclosures should for these reasons provide easy access by consumers to the disciplinary history, if any, of a CPA offering services to the consumer. States will vary in the documents that may be accessed by the public online, but at a minimum, states should provide sufficient information that a consumer can readily determine if any regulatory “red flags” exist that warrant further investigation by the consumer.

- a. Boards should participate in the ALD and CPAVerify
 - i. Boards should strive to provide final disciplinary action to ALD/CPA Verify for notation in the database

- ii. Boards should strive to provide information necessary for “hashing” licensee records across jurisdictions to the ALD to assist transparency and cross-border discipline

- b. Boards should publish final disciplinary action by the Board through a web site, newsletter or other available media, either with specific information regarding the facts that caused the board to impose discipline including, but not limited to, a board considering posting official documents that would be public records if requested by a consumer, or sufficient information to allow the consumer to contact the Board for particular details.

- c. Boards should capture “discipline under mobility” violation in CPAverify licensee record indicating the state where discipline was issued, with sufficient information to allow the consumer to contact the disciplining board to investigate the activity that resulted in discipline.

** These Guiding Principles are intended for use as a reference by NASBA Member Boards and staff only. Due to the unique structure of each Board of Accountancy, the enforcement process will be conducted differently in each jurisdiction. It is the reader's responsibility to learn state specific procedures, bearing in mind that each jurisdiction has different statutes, rules and case law which frequently change the ways that Accountancy Boards conduct enforcement. Only the current version of the document will be available for use.*

The following information is provided by the National Association of State Boards of Accountancy (NASBA) to serve as its basis for determining which states' enforcement practices are substantially equivalent to its Enforcement Guidelines.

GUIDING PRINCIPLES OF ENFORCEMENT

OBJECTIVES FOR SUBSTANTIAL EQUIVALENCY EVALUATION

The CBA, MSG, and NASBA recognize that the enforcement process of each jurisdiction will vary based on many factors that are specific to the particular board, such as number of licensees, number of complaints/cases, authority vested in the board, delegation of certain phases of enforcement to other agencies, and interaction with an umbrella agency. As such, it is a disservice to this project to attempt to conform the review of an enforcement process to an objective checklist which does not allow one to consider the uniqueness of a specific enforcement process and its ability to meet the needs of the particular board. The term "substantial equivalency" implies that the review is not a checklist of specific data points, but rather an analysis that allows various methods of satisfying the over-reaching objectives of the project. Therefore, the review to determine whether a board's enforcement process is substantially equivalent to the Guiding Principles of Enforcement must be a subjective analysis of each jurisdiction's statutes, rules, and practices to inquire whether those elements create an enforcement process that reflects the comprehensive objectives of the Guiding Principles as described below.

The development of the Guiding Principles of Enforcement was a key element in assisting the California Board in meeting its legislative mandate pursuant to 5096.21, as well as a significant advance in cross-border accountancy regulation. The Guiding Principles identify the characteristics of an active and effective enforcement process, thereby enabling all state Boards to have confidence that other jurisdictions have a proactive culture of enforcement which successfully regulates the profession and protects the public consumer. In the environment of CPA mobility, Boards who are allowing CPAs licensed in other jurisdictions to provide services to their consumers through mobility have a vested interest in ensuring that the enforcement practices of other jurisdictions meet or exceed the objectives of the Guiding Principles. Consumer protection and disclosure of disciplinary data were important aspects of the development of the Guiding Principles, and Boards have used these Guiding Principles to review and in certain cases enhance their enforcement practices and policies."

1. Time Frames for Prosecuting a Complaint from Intake to Final Disposition

The structure and authority of boards of accountancy vary greatly across the country. Some boards are empowered to close or dismiss a matter without board vote while others would be required to hold the complaint open until a vote at the next board meeting. Some boards do not perform their own investigation of a complaint, but rather are required to send the complaint to an investigative unit within an umbrella agency, in which case it is beyond the authority of the board to regulate the speed of investigation, available investigative personnel, assignment of files, etc. The Guiding Principles set forth

benchmarks the help facilitate the speedy handling of complaints. Regardless of the timing of individual steps throughout the process (perhaps a board takes longer than the benchmark of 10 days to assign an investigator but completes investigations in less than the benchmark of 180 days), the ultimate objective of this principle is that (1) matters will be resolved in 540 days or less from the initiation of the complaint. Parties recognize that matters which are pending before other agencies or involved in civil litigation, or complex matters involving large firms or multiple parties may still fall outside this goal of 540 days due to the circumstances of the particular case.

2. Enforcement Resources to Adequately Staff Investigations

Boards typically either have one or more investigators dedicated to the board, utilize an investigator from an investigative pool provided by an umbrella agency, or utilize board staff or personnel to investigate complaints. Any of these methods may provide adequate resources to investigate complaints in a timely and knowledgeable manner. (1) As a measurement, if a board is able to meet the 540 day disposition benchmark in Principle #1, then the board is adequately staffed with sufficient personnel to timely conduct the investigations. Otherwise, the investigation process would bottleneck the disposition of cases. (2) Regarding qualification and training of investigators, those boards utilizing a designated investigator or personnel from an investigative pool would have sufficient investigative training to satisfy their particular board. Likewise, this principle can be satisfied by the performance of investigations by board members who can additionally provide particular subject matter expertise. (3) Boards should have access (through use of board members, contract hire, or other means) to subject matter experts to advise or testify as needed. (4) Boards should be able to access funds in order to prosecute a case against a big firm.

3. Case Management

The primary goal of this Principle is to determine that the board has (1) a case management process in place which allows staff to handle those complaints that can be dealt with administratively, if the Board is authorized to do so, and creates a process for efficient management of practice complaints through investigation, settlement, disciplinary hearings, etc. Again, the time management goal of 540 days in Principle #1 is an indicator that a board's case management system is meeting this criteria. (2) In addition, the case management process should also allow the board to prioritize those cases with the greatest potential for harm, if prioritization is required due to larger caseloads. (3) Boards should also consider discipline from other agencies as a basis for possible discipline by the board. (4) If probation is utilized, then the terms of the probation agreement should be monitored.

4. Disciplinary Guidelines

The disciplinary process of each board should consider offenses and appropriate penalties. (1) Boards may have written disciplinary guidelines and/or may utilize historical knowledge of the disciplinary history of the board to ensure consistency in disciplinary decisions. (2) Penalties may be escalated, reduced, or combined with other penalties or remedial measures depending on the board's

consideration of relevant mitigating or aggravating factors. Penalties can include revocation, suspension/probation, monetary fine/penalty, and remediation.

5. Internet Disclosures

The goal of internet disclosures is to provide sufficient information to allow the public to make an informed decision regarding the employment of a specific CPA. Consumers should be able to ascertain whether or not a CPA has an active license and whether the CPA has been disciplined by a particular board of accountancy. Because public records laws vary among jurisdictions, states should be least provide sufficient information that a consumer can readily determine if any regulatory “flags” exist that warrant further investigation by the consumer. This Principle can be satisfied by (1) disciplinary data being reflected on the board’s web site or (2) by the board providing disciplinary flags to be displayed in CPAverify.

GUIDING PRINCIPLES EVALUATION - as of 4/13/16

JURISDICTION	SE	SE w/o DISC FLAG	UNDETERMINED
Alabama		X	
Alaska			X
Arizona	X		
Arkansas	X		
California	X		
Colorado	X		
Connecticut	X		
CNMI		X	
Delaware			X
D.C.			X
Florida	X		
Georgia			X
Guam	X		
Hawaii		X	
Idaho	X		
Illinois	X		
Indiana			X
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana	X		
Maine			X
Maryland		X	
Mass.	X		
Michigan	X		
Minnesota	X		
Mississippi		X	
Missouri	X		
Montana	X		
Nebraska	X		
Nevada	X		
New Hampshire		X	
New Jersey	X		
New Mexico		X	
New York	X		
North Carolina	X		
North Dakota	X		
Ohio	X		
Oklahoma	X		
Oregon	X		
Pennsylvania	X		
Puerto Rico			X
Rhode Island	X		

South Carolina		X	
South Dakota		X	
Tennessee		X	
Texas	X		
Utah			X
Vermont			X
Virgin Islands			X
Virginia		X	
Washington	X		
West Virginia			X
Wisconsin			X
Wyoming	X		
	32	11	12

**DEPARTMENT OF CONSUMER AFFAIRS**

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



Attachment 5

Table of Factors to Assist with State Selection For Assessment

<u>Jurisdictions Recommended by NASBA to be Substantially Equivalent</u>	<u>Internet History of Discipline</u>	<u>Licensee Population</u>	<u>Practice Privilege¹</u>	
Arizona	Yes	Medium	293	20
Arkansas	Yes	Small	27	0
Colorado	Yes	Large	446	21
Connecticut	Yes	Medium	171	3
Florida	Yes	Large	244	23
Guam	Yes	Small	0	0
Idaho	Yes	Small	58	4
Illinois	Yes	Large	579	21
Iowa	Yes	Small	91	1
Kansas	Yes	Small	22	2
Kentucky	Yes	Small	49	1
Louisiana	Yes	Medium	37	4
Massachusetts	Yes	Medium	355	18
Montana	Yes	Small	19	3
Minnesota	No	Medium	255	10
Missouri	Yes	Medium	173	10
Nebraska	Yes	Small	27	2
Nevada	Yes	Small	123	15
New Jersey	Yes	Large	191	12
New York	Yes	Large	583	33
North Carolina	Yes	Medium	163	10
North Dakota	Yes	Small	13	0
Ohio	Yes	Large	245	13
Oklahoma	Yes	Medium	48	3
Oregon	Yes	Medium	457	12
Pennsylvania	Yes	Large	270	6
Rhode Island	Yes	Small	22	2
Texas	Yes	Large	632	29
Washington	Yes	Medium	695	22
Wyoming	Yes	Small	3	0

¹ The first column represents the number of individuals approved for a practice privilege by the CBA from each state during the time of the prior notice and fee practice privilege program (January 2006 – June 2013). The second column represents the number of Out-of-State Firm Registrations (OFR) that have been approved from each state since the no notice, no fee practice privilege program went into effect July 1, 2013 through February 17, 2016.

Table of Factors to Consider for Assessment

Page 2 of 2

<u>Remaining Jurisdictions to be Determined</u>	<u>Internet History of Discipline</u>	<u>Licensee Population</u>	<u>Practice Privilege</u>	
Alabama	No	Small	37	8
Alaska	No	Small	8	0
CNMI	No	Small	0	0
Delaware	Yes	Small	1	0
DC	No	Small	101	0
Georgia	No	Large	174	18
Hawaii	Yes	Small	80	3
Indiana	No	Medium	161	10
Maine	Yes	Small	6	0
Maryland	No	Medium	156	13
Michigan	No	Medium	167	9
Mississippi	No	Small	10	4
New Hampshire	No	Small	3	1
New Mexico	No	Small	46	2
Puerto Rico	No	Small	0	0
South Carolina	No	Small	21	0
South Dakota	No	Small	11	1
Tennessee	No	Medium	57	9
USVI	No	Small	0	0
Utah	No	Small	160	14
Vermont	No	Small	2	0
Virginia	No	Large	242	10
West Virginia	Yes	Small	6	1
Wisconsin	No	Medium	106	5

Key

Population

Large

Medium

Small

Licensees

>20,000

10,000-20,000

> 0-10,000



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



MSG Item VI.
May 19, 2016

CBA Item IX.D.6.
May 19-20, 2016

Discussion Regarding the National Association of State Boards of Accountancy's Activities and CPAVerify

Presented by: Matthew Stanley, Information and Planning Officer

Purpose of the Item

The purpose of this agenda item is to allow the Mobility Stakeholder Group (MSG) the opportunity to discuss the National Association of State Boards of Accountancy's (NASBA) recent activities and CPAVerify.

Consumer Protection Objectives

To ensure transparency and allow for input from stakeholders, including consumers.

Action(s) Needed

No specific action is required on this agenda item.

Background

At its November 2014 meeting, the MSG requested that NASBA activities and CPAVerify be added as a standing agenda item to allow for ongoing discussion.

The Accountancy Licensing Database (ALD) is a national database of certified public accountant license information. Only the CBA and other state boards of accountancy have direct access to ALD. CPAVerify is the public website that conveys information contained in the ALD database. If information is not available in ALD, it is not available on CPAVerify. The CBA maintains a link to CPAVerify on its website for the use of consumers and other stakeholders.

Comments

Additional Information regarding NASBA's Activities and CPAVerify

At this time, there are 51 jurisdictions participating in ALD and CPAVerify. At the January 2016 meeting, NASBA announced that Michigan was added to the list of participating jurisdictions. NASBA continues its efforts to bring the remaining four onto the system. These four jurisdictions are Delaware, Hawaii, Utah, and Wisconsin. It is anticipated Wisconsin will begin participating in the ALD by the end of the year.

Discussion Regarding the National Association of State Boards of Accountancy's Activities and CPA Verify

Page 2 of 2

At its July 22-23, 2015 meeting, the CBA selected NASBA to assist in comparing whether a state's enforcement practices are substantially equivalent to NASBA's Guiding Principles of Enforcement (Enforcement Guidelines). As identified in **Agenda Item X.D.5.**, NASBA continues to review states for substantial equivalency to their NASBA Enforcement Guidelines, and NASBA is working with each state to determine if disciplinary history information is, or can be made, available on the Internet.

NASBA's Eastern Regional Meeting will be held on June 7-9, 2016 in Asheville, North Carolina. Its Western Regional Meeting will be held on June 22-24, 2016 in Denver, Colorado.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation

Staff does not have a recommendation on this agenda item.

Attachment

None.



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



MSG Item VII.
May 19, 2016

CBA Item IX.D.7.
May 19-20, 2016

Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting

Presented by: Matthew Stanley, Information and Planning Officer

Purpose of the Item

The purpose of this agenda item is to establish the items that will be included on the next agenda for the Mobility Stakeholder Group (MSG).

Consumer Protection Objective

To ensure transparency and allow for input from stakeholders, including consumers regarding upcoming MSG Agenda Items.

Action(s) Needed

The MSG will be asked to identify topics it wishes to discuss at its next meeting.

Background

As the MSG is intended to be representative of "stakeholders of the accounting profession in this state, including consumers," it may wish to set its future agenda during its meetings in order that all public input may be considered when deciding how best to proceed.

Comments

The following topics are being proposed for consideration when determining the agenda for the next MSG meeting:

- Further discussion regarding the progress made in comparing other states to the National Association of State Boards of Accountancy's Guiding Principles of Enforcement.
- Review of staff assessment of additional states identified by the California Board of Accountancy.

The MSG may wish to accept, alter, or add to these suggestions based on the direction in which it wishes to proceed.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting

Page 2 of 2

Recommendation

Staff does not have a recommendation on this agenda item.

Attachment

None.



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



CBA Item X.A.
 May 19-20, 2016

DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

MINUTES OF THE
March 17-18, 2016
CBA MEETING

DRAFT

DoubleTree Guest Suites Anaheim Resort
 2085 South Harbor Blvd.
 Anaheim, CA 92802
 Telephone: (714) 750-3000

Roll Call and Call to Order.

California Board of Accountancy (CBA) President Katrina Salazar called the meeting to order at 9:00 a.m. on Thursday, March 17, 2016 at the DoubleTree Guest Suites Anaheim Resort. The CBA recessed at 10:43 a.m. to conduct committee meetings. The CBA reconvened from 1:30 p.m. until 1:59 p.m. to conduct agenda items II.A. – II.B. The CBA reconvened at 2:58 p.m. and recessed at 6:02 p.m. The CBA reconvened into open session on Friday, March 18, 2016 at 9:00 a.m. The meeting reconvened into closed session at 10:36 a.m. The meeting reconvened into open session at 11:10 a.m. The meeting reconvened into closed session at 11:32 a.m. President Salazar adjourned the meeting at 2:58 p.m.

CBA Members

March 17, 2016

Katrina Salazar, CPA, President	9:00 p.m. to 6:02 p.m.
Alicia Berhow, Vice-President	9:00 p.m. to 6:02 p.m.
Michael Savoy, CPA, Secretary/Treasurer	9:00 p.m. to 6:02 p.m.
Jose Campos, CPA	9:00 p.m. to 6:02 p.m.
Herschel Elkins, Esq.	Absent
George Famalett, CPA	9:00 p.m. to 6:02 p.m.
Karriann Farrell Hinds, Esq.	9:00 p.m. to 6:02 p.m.
Laurence (Larry) Kaplan	9:00 p.m. to 6:02 p.m.
Kay Ko	9:00 p.m. to 6:02 p.m.
Leslie LaManna, CPA	9:00 p.m. to 6:02 p.m.
Xochitl León	Absent
Jian Ou-Yang, CPA	9:00 p.m. to 6:02 p.m.

Deidre Robinson	9:00 p.m. to 6:02 p.m.
Mark Silverman, Esq.	Absent
Kathleen Wright, CPA	9:00 p.m. to 6:02 p.m.

CBA Members

March 18, 2016

Katrina Salazar, CPA, President	9:00 a.m. to 2:58 p.m.
Alicia Berhow, Vice-President	9:00 a.m. to 2:58 p.m.
Michael Savoy, CPA, Secretary/Treasurer	9:00 a.m. to 2:58 p.m.
Jose Campos, CPA	9:00 a.m. to 2:58 p.m.
Herschel Elkins, Esq.	Absent
George Famalett, CPA	9:00 a.m. to 2:58 p.m.
Karriann Farrell Hinds, Esq.	9:00 a.m. to 2:58 p.m.
Laurence (Larry) Kaplan	9:00 a.m. to 2:58 p.m.
Kay Ko	9:00 a.m. to 2:58 p.m.
Leslie LaManna, CPA	9:00 a.m. to 2:58 p.m.
Xochitl León	Absent
Jian Ou-Yang, CPA	9:00 a.m. to 2:58 p.m.
Deidre Robinson	Absent
Mark Silverman, Esq.	Absent
Kathleen Wright, CPA	9:00 a.m. to 2:58 p.m.

Staff and Legal Counsel

Patti Bowers, Executive Officer
 Deanne Pearce, Assistant Executive Officer
 Rich Andres, Information Technology Staff
 Pat Billingsley, Regulations Analyst
 Paul Fisher, Enforcement Supervising CPA
 Dominic Franzella, Chief, Enforcement Division
 Nooshin Movassaghi, Legislative Analyst
 Corey Riordan, Board Relations Analyst
 Gina Sanchez, Chief, Licensing Division
 Ben Simcox, CPA, Enforcement Manager
 Matthew Stanley Information and Planning Officer
 Kristy Schieldge, Legal Counsel, Department of Consumer Affairs (DCA)
 Carl Sonne, Deputy Attorney General, Department of Justice (DOJ)

Committee Chairs and Members

Jeffrey De Lyser, CPA, Vice-Chair, Peer Review Oversight Committee
 Joseph Rosenbaum, CPA, Chair, Enforcement Advisory Committee

Other Participants

Geoff Burcaw, CPS HR Consulting (CPS HR)
 Michael DeSousa, CPS HR

Ian Dingwall, CPA, Chief Accountant, United States Department of Labor
Don Driftmier, CPA, Member, Mobility Stakeholder Group
Jason Fox, California Society of Certified Public Accountants
Ed Howard, Esq., Center for Public Interest Law
Shelly Jones, Manager, DCA
Pilar Oñate-Quintana, The Oñate Group
Joseph Petito, The Accountants Coalition

I. Presentation Regarding Assessing the Quality of Employee Benefit Plan Audits.

A. Ian Dingwall, CPA, Chief Accountant, United States Department of Labor.

Mr. Dingwall provided a presentation regarding the Department of Labor's (DOL) report regarding assessing the quality of employee benefit plan audits. Mr. Dingwall reviewed the study, outcomes, the Employee Benefits Security Administration (EBSA) audit quality initiatives, and DOL resources. Mr. Dingwall stated that as a result of the study, improvements in the process is necessary, including increased communication between the DOL and accountancy boards, more education for auditors and plan administrators, more enforcement actions taken with respect to auditors performing deficient audits, enhance licensing procedures and enforcement, and improved peer reviews.

II. Regulations.

A. Regulation Hearing Regarding Title 16, California Code of Regulations Section 9.1 – Approved Credentials Evaluation Service Status.

Mr. Billingsley read the following statement regarding the regulation hearing into the record.

“Good Afternoon. This is a public hearing on proposed regulations of the California Board of Accountancy, Department of Consumer Affairs, to consider amending CBA Regulations Section 9.1 regarding the criteria and procedures for approval of credentials evaluation services.

On behalf of the Board and its staff, I'd like to welcome you. My name is Pat Billingsley and I serve as the Board's Regulatory Analyst. I will preside over this hearing on behalf of the Board and the Department. The California Board of Accountancy is contemplating this action pursuant to the authority vested by Sections 5010, and 5094 of the Business and Professions Code, authorizing the Board to amend, adopt, or repeal regulations for the administration and enforcement of Chapter 1 of Division 3 of the Business and Professions Code. For the record, the date today is March 17, 2016 and the time is approximately 1:32 p.m. Our hearing is being held at DoubleTree Suites by Hilton Hotel Anaheim

Resort - Convention Center, 2085 S Harbor Blvd, Anaheim, CA

The notice for the hearing on these proposed regulations was published by the Office of Administrative Law. Interested parties on our mailing list have been notified of today's hearing. The language of the proposed regulations has been mailed to those who requested it and has been available on the board's Web site and upon request by other members of the public. Copies of the proposed regulations are available here today.

If the Board has received written comments on the proposal, those comments will be entered into the official record of the proceedings. The Board shall be provided and shall consider all written comments received up to 5:00 p.m., March 14, 2016. Those persons interested in testifying today should identify themselves and the section or subsection of the proposed regulations that they wish to address. Individuals will be called to testify in the order determined by recognition from the hearing officer.

If you have a comment about the proposed regulation or any part or specific subsection of the proposal, please step up to the microphone and give your name, spelling your last name and tell us what organization you represent, if any. Speak loudly enough for your comments to be heard and recorded.

Remember, it's not necessary to repeat the testimony of previous commentators. It is sufficient if you simply say that you agree with what a previous speaker has stated. Written testimony can be summarized but should not be read. When you are testifying, please identify the particular regulation proposal you are addressing. Please comment only on provisions of the article under discussion.

If you have a question about a proposed regulation, please re-phrase your question as a comment. For example, instead of asking what a particular subdivision means, you should state that the language is unclear and why. This will give the Board an opportunity to address your comments directly when the Board makes its final determination of its response to your comments.

Please keep in mind that this is a public forum to receive comments on the proposed regulations from interested parties. It is not intended to be a forum for debate or defense of the regulations. After all witnesses have testified, the testimony phase of the hearing will be closed."

No public comments were received.

Mr. Billingsley closed the regulation hearing at 1:36 p.m.

B. Discussion and Possible Action to Amend Title 16, California Code of Regulations Section 9.1 – Approved Credentials Evaluation Service Status.

Mr. Billingsley stated that the CBA received three comment letters regarding the proposed amendment. Mr. Billingsley reviewed the ten comments and staff's recommendations.

- The Association of International Credentials Evaluators, Inc. (AICE) requested that AICE be included in the CBA Regulation section 9.1(a)(1) as a reference organization which credentials evaluation service providers can be members.

Staff recommended that the CBA should reject this comment because statute lists specific organizations and does not include AICE and Government Code section 11342.2 prohibits state agencies from adopting a regulation that is inconsistent or in conflict with statute.

- The Academic & Credential Records, Evaluation & Verification Service's (ACREVS) provided the following comments:
 - ACREVS agreed that American Association of College Registrars and Admissions Officers should be included.

Staff recommended the CBA accept the comment, as the statute lists the specific organization.

- ACREVS stated that the exact name is American Association of Collegiate Registrars and Admissions Officers (The word "Admissions" is plural).

Staff recommended that the CBA reject the comment as the statute is singular.

- ACREVS stated that the organization American Association of Collegiate Registrars and Admissions Officers is more popularly known as AACRAO, and hence identifying it as such may provide further clarity; e.g. American Association of Collegiate Registrars and Admissions Officers (AACRAO).

Staff recommended that the CBA reject the comment as neither statute nor regulations use acronyms.

- ACREVS suggested that since the American Association of Collegiate Registrars and Admissions Officers has affiliated State and Regional Associations (39), and California is part of the Pacific Association of Collegiate Registrars and Admission Officers

(PACRAO), the proposed amended language should be as follows:
“CCR section 9.1(a)(1) Be a member of and certify to its membership in either the American Association of Collegiate Registrars and Admissions Officers (AACRAO), or its affiliated California regional association: Pacific Association of Collegiate Registrars and Admissions Officers (PACRAO).”

Staff recommended that the CBA reject the comment as changing the name would be inconsistent with the statute.

- ACREVS agreed that the National Association for Foreign Student Affairs should be included.

Staff recommended that the CBA accept the comment as the statute lists this specific organization.

- ACREVS stated that the National Association for Foreign Student Affairs has gone through a name change and is currently known as “NAFSA: Association of International Educators”.

Staff recommended that the CBA reject the comment as it would create inconsistency with the statute.

- ACREVS stated that they do not agree that National Association of Credential Evaluation Service should be included in this list of membership organizations.

Staff recommended that the CBA reject the comment as it would create inconsistency with the statute.

- ACREVS stated that they would like to see that evaluations be based off of “Originals” only, unless the documents received directly are printed on official tamper proof paper with the right seals and signatures. Most official seals are embossed and this should be requested.

Staff recommended that the CBA reject the comment as the comment was unclear since the regulation already requires original, authentic transcripts and degrees.

- Education Records Evaluation Service, Inc. (ERES) request that the Legislature’s professional affiliation requirement be reconsidered.

Staff recommended that the CBA reject the comment as the CBA does not have the authority to establish affiliations that would be inconsistent with statute.

Ms. Farrell Hinds inquired if there is any impact on the effectiveness on the Regulation with ACREVS not being plural in CBA Regulations.

Mr. Billingsley stated that the comment cannot be accepted, as the statute lists the organization a singular. He stated that staff proposed that the CBA place an item on a future agenda that will review these organizations and provide the CBA with an opportunity to recommend possible legislative language.

It was moved by Ms. Berhow and seconded by Ms. Wright to reject the comments received by the ACREVS, ERES, and AICE.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

It was moved by Ms. Salazar and seconded by Mr. Campos to direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law (OAL), authorize the Executive Officer to make any non-substantive changes to the proposed regulations, and adopt the proposed regulations as originally noticed.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

It was moved by Mr. Campos and seconded by Mr. Savoy to reconsider the motion to reject the comments received by ACREVS, ERES, and AICE.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

It was moved by Mr. Campos and seconded by Ms. Berhow to reject all comments received, with the exception of ACREVS' comments "ACREVS agrees that the American Association of College Registrars and Admissions Officers should be included" and "ACREVS agrees that the National Association of Foreign Student Affairs should be included."

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

III. Report of the President.

- A. Introduction of New California Board of Accountancy Member Karriann Farrell Hinds, Esq.

President Salazar welcomed Karriann Farrell Hinds to the CBA.

- B. National Association of State Boards of Accountancy/American Institute of Certified Public Accountants Committee Interest Form.

President Salazar stated that members interested in serving on a National Association of State Boards of Accountancy or the American Institute of Certified Public Accountants (AICPA) committee should submit an application by the deadline.

- C. Proposed 2017 California Board of Accountancy Meeting Dates and Locations.

It was moved by Mr. Campos and seconded by Ms. Berhow to adopt the 2017 CBA meeting dates and locations.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar,

Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: Mr. Kaplan.

- D. Resolutions for Retiring Qualifications Committee Members Charles Hester and David Papotta.

It was moved by Ms. Salazar and seconded by Ms. Berhow to approve the resolutions for retiring Qualifications Committee (QC) members Charles Hester and David Papotta.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

- E. Exposure Draft Regarding the American Institute of Certified Public Accountants Professional Ethics Division's Omnibus Proposal Regarding Proposed Revisions to the American Institute of Certified Public Accountants Code of Professional Conduct.

Mr. Stanley provided an overview of the agenda item. Mr. Stanley stated that the revised interpretations provide guidance related to a licensee's obligations concerning the confidentiality and return of client files when the licensee either transfers, sells, or discontinues his or practice or the licensee acquires a practice.

Mr. Stanley stated that revised interpretations also provide guidance when a licensee acquires all or part of a practice that the licensee is satisfied that all clients of the predecessor firm have been notified of the acquisition and have consented to the licensees continuation of professional services. He further noted that the Professional Ethics Executive Committee is proposing that the disclosure of permitted commissions and referral fees to be in writing. He stated that the intent of the exposure draft is to bring standardization to all states. Mr. Stanley provided a comparison of the exposure draft to CBA Regulations and noted that the CBA will have an opportunity to consider if any changes may be appropriate to incorporate into CBA Regulations after the final

release of the exposure draft.

It was moved by Mr. Campos and seconded by Ms. Berhow to approve the comment letter, with an edit to change the word “success” to “successor” and delegate the CBA President with the authority to approve the final letter.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

- F. Comments Regarding the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy Re-Issue Exposure Draft Regarding Statement on Standards for Continuing Professional Education Programs.

Ms. Sanchez provided an overview of the agenda item. She stated that the re-issued Exposure Draft regarding proposed revisions to the Statement on Standards for Continuing Professional Education Programs (Standards) contained minor revisions and adjustments to the definitions and terms, and clarifies many of the Standards. Ms. Sanchez provided a comparison of the revisions of the Standards to CBA Regulations, including nano-learning, live programs, and self-study. Lastly, she noted that the CBA will have an opportunity to review and consider which changes may be appropriate to incorporate into the CBA Regulations.

- G. Discussion Regarding the Results of the California Board of Accountancy’s Study of the Attest Experience Requirement.

Ms. Sanchez reported that the CBA’s study of the attest experience requirement concluded, and was comprised of two parts: 1 – a California specific survey and 2 – a national survey. Mr. Sanchez stated that the CBA began discussing the CBA’s experience requirement in 2013 and established a taskforce to review the topic, which resulted in the CBA directing staff to gather research of California licensees regarding the 500 hour requirement and obtaining national data. She reviewed the results of the survey of other state boards and introduced Mr. DeSousa and Mr. Burcaw from CPS HR Consulting, who were selected to provide consulting service for the California specific study.

Mr. DeSousa and Mr. Burcaw provided an in depth overview of the results of the California survey.

President Salazar requested that staff provide future updates regarding developments of policy changes of experience requirements in other states.

Mr. Campos suggested that staff review the comments in the study for possible future agenda items or opportunities to provide outreach to consumers and licensees regarding the differences between the types of licenses.

After discussion of the survey results, the CBA concluded that the 500-hour attest experience requirement is necessary and sufficient to support the CBA mission to protect consumers and took no action.

H. Developments Since the February 2015 United States Supreme Court Decision: North Carolina State Board of Dental Examiners v. Federal Trade Commission.

Ms. Schieldge provided an update on the agenda item. She stated that there are three anticipated legislative proposals that are expected to be introduced. She noted that the DCA believes the legislative proposals are aimed to increase active state supervision to boards. Ms. Schieldge highlighted the anticipated legislative proposals.

I. Discussion on the California Little Hoover Commission Hearings Regarding Occupational Licensing.

Mr. Stanley provided an overview of the agenda item. He stated that the first hearing was held on February 4, 2016 where various individuals testified regarding the subject. He noted that the commission has scheduled a second hearing on March 30, 2016.

The CBA discussed sending a comment letter and concluded that a comment letter was not necessary at this time and directed staff to send a representative to the next hearing.

J. Department of Consumer Affairs Director's Report on Departmental Activities.

Ms. Jones provided the DCA' Director's report on departmental activities. She stated that DCA is developing training for new and future Executive Officers (EO) and a survey to assess the training needs will be sent to the EOs and board members. She noted that DCA Director Kidane is working with the Office of Information Security to address the boards information technology needs and will continue to work with boards regarding online

application and credit card acceptance. Lastly, Ms. Jones stated that DCA will be publicly reporting enhanced performance measures for board enforcement activities, which were revised as a result of the review of the current performance measures during the department's sunset review process.

IV. Report of the Vice-President.

A. Recommendations for Appointment(s)/Reappointment(s) to the Enforcement Advisory Committee.

It was moved by Mr. Campos and seconded by Ms. LaManna to reappoint Dale Best and Mary Rose Caras to the Enforcement Advisory Committee (EAC) effective April 1, 2016 through March 31, 2018.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: Mr. Kaplan.

It was moved by Mr. Campos and seconded by Ms. Robinson to appoint Nicholas Antonian to the EAC effective March 17, 2016 through March 31, 2018.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: Mr. Kaplan

B. Recommendations for Appointment(s)/Reappointment(s) to the Qualifications Committee.

It was moved by Mr. Campos and seconded by Ms. Wright to reappoint David Evans and Tracy Garone to the Qualifications Committee (QC) effective April 1, 2016 through March 31, 2018.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

- C. Recommendations for Appointment(s)/Reappointment(s) to the Peer Review Oversight Committee.

There was no report for this agenda item.

V. Report of the Secretary/Treasurer.

- A. Fiscal Year 2015-16 Mid-Year Financial Statement and Governor's Budget.

Mr. Savoy provided an overview of the agenda item. Mr. Savoy stated that the budget reports have been revised to ensure that they are comprehensive for the CBA and stakeholders. Mr. Savoy stated that the Fiscal Year (FY) 2016-17 proposed budget is currently \$14,833,000. He noted that the revenues for the current year have decreased; however, revenues will significantly increase in FY 2016-17 as a result of the CBA's fee reduction concluding. Mr. Savoy stated that the CBA enforcement costs have increased due to the increased number of investigations that the CBA is able to complete with its increased staffing resources. Mr. Savoy noted that the CBA is scheduled to receive repayment of loans made to the General Fund, with \$10 million in FY 2015-16 and \$21 million in FY 2016-17. Lastly, Mr. Savoy noted that, due to the elimination of the limited-term positions that expire on July 1, 2016, the CBA will be reviewing all program resource needs to determine if any resource needs will be requested through the budget change proposal process for next fiscal year.

VI. Report of the Executive Officer.

- A. Update on the Relocation of the California Board Accountancy's Office.

Ms. Bowers stated that the move has stalled and no construction is being completed until the State Fire Marshal gives approval. She stated that if the State Fire Marshal does not approve the location, the process will begin with selecting a new location.

Mr. Campos inquired if there is a problem with the building.

Ms. Bowers stated that as a State agency the stairwell does not meet State fire code requirements.

B. Update on Staffing.

Ms. Bowers stated that Corey Riordan, Board Relations Analyst, has accepted a position with the Enforcement Division and staff will be actively recruiting to fill the position.

C. Update Regarding the Department of Consumer Affairs Proposed Revisions to the Enforcement Performance Measures.

Ms. Bowers stated the DCA is currently revising the Enforcement Performance Measures, which the CBA has used since 2010. She stated that as part of the most recent sunset review, the Legislature requested that the DCA perform a system-wide review and analysis of enforcement programs, including the presently used Enforcement Performance Measures. She stated staff will be evaluating the new measures and suggested that the CBA President delegate the topic to the Enforcement Program Oversight Committee (EPOC).

D. Educational Presentation on the California Board of Accountancy's Redesigned Website and Update on Communications and Outreach.

Mr. Stanley provided an update on the CBA's Communications and Outreach. He stated that President Salazar attended the California Society of Certified Public Accountants' (CalCPA) Council meeting to share the CBA's objectives and priorities for 2016. Mr. Stanley also noted that Vice-President Berhow was interviewed by the Korea Daily, which covered a wide range of subjects and focused on the services the CBA provides. He noted that staff have reached out to three universities and, as a result, have scheduled two presentations regarding the CBA's educational requirements. Lastly, Mr. Stanley provided an overview of the CBA's new website, which is anticipated to be launched by the end of April.

VII. Report on the Enforcement Advisory Committee, Qualifications Committee, and Peer Review Oversight Committee.

A. Enforcement Advisory Committee.

There was no report on this agenda item.

B. Qualifications Committee.

There was no report on this agenda item.

C. Peer Review Oversight Committee.

1. Report of the January 29, 2016 Peer Review Oversight Committee Meeting.

Mr. De Lyser reported that the Peer Review Oversight Committee (PROC) scheduled the 2016 oversight activities that the PROC will perform. He stated that the committee reviewed the annual reports of the National Peer Review Committee, AICPA, and CalCPA.

Mr. De Lyser also reported that the Peer Review Oversight Committee (PROC) began reviewing the checklists used for their oversight activities, which were created when the PROC was established.

2. Presentation and Approval of the 2015 Peer Review Oversight Committee Annual Report.

Mr. De Lyser presented the 2105 PROC Annual Report.

It was moved by Mr. Campos and seconded by Mr. Savoy to continue to recognize AICPA's Peer Review Program as a board recognized peer review provider and accept the 2015 PROC Annual Report.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

VIII. Report of the Enforcement Chief.

A. Enforcement Activity Report.

Mr. Franzella provided an overview of the Enforcement Activity Report. He stated that there are currently 85 investigations over 24 months; however, staff have completed or nearly completed 45 of these cases.

Mr. Franzella stated that for FY 2015-16 there have been 58 referrals to the Attorney General's Office and 46 cases have been closed.

Mr. Franzella noted that the Enforcement Division has nine positions that are scheduled to expire over the next year and a half and staff is reviewing internal processes and the redirection of resources. Lastly, Mr. Franzella thanked the Director of Business, Consumer Services, and Housing Agency and Governor Brown for approving his out-of-state travel

request to attend NASBA's Board of Accountancy Legal Counsel Conference, where he presented on the CBA's process of handling matters related to DOL referrals.

Ms. Farrell Hinds inquired about the significant decrease in complaints received and investigations assigned between the three fiscal years.

Mr. Franzella stated that the decrease between FY2013-14 and FY 2014-15 was contributed to the peer review reporting issues.

IX. Report of the Licensing Chief.

A. Licensing Activity Report.

Ms. Sanchez provided an overview of the agenda item. Ms. Sanchez stated that the quantity and types of contact with stakeholders continues to be in close proximity to last FY. She stated that the Initial Licensing Unit is continuing to meet the 30-day time frames. Lastly, Ms. Sanchez stated that 1,942 applications for licensure have been approved in FY 2015-16.

X. Committee Reports.

A. Committee on Professional Conduct.

1. Report of the March 17, 2016 Committee on Professional Conduct Meeting.
2. Discussion and Possible Action to Make Technical ("Section 100") or Regulatory Changes to Amend Title 16, California Code of Regulations Sections 20 and 36.1.

Ms. LaManna reported that the Committee on Professional Conduct (CPC) discussed technical changes changes to amend Title 16, California Code of Regulations sections 20 and 36.1. Ms. LaManna stated that, in consultation with Legal Counsel, changes to proposed section 20 were not necessary. She stated that last year Assembly Bill (AB) 181 amended Business and Professions Code section 5087 to require applicants for California certified public accountant licensure who were licensed in another state to possess a current, active and unrestricted license from the other state and the prior law only required a valid and unrevoked license. Ms. LaManna stated that the changes would establish consistency between the statute and the regulations, which will eliminate confusion for applicants and staff helping to ensure the protection of consumers in California.

The CPC recommended that the CBA authorize the Executive Officer to pursue a Section 100 Change to amend CBA Regulations section 36.1 as proposed in the draft regulatory language or initiate the regular rulemaking process if the Section 100 action is denied by the OAL.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

B. Enforcement Program Oversight Committee.

1. Report of the March 17, 2016 Enforcement Program Oversight Committee Meeting.
2. Discussion Regarding the Revision Schedule for the Disciplinary Guidelines and Model Orders.

Ms. Wright reported that staff provided the Enforcement Program Oversight Committee (EPOC) a schedule for the revision of the CBA's Disciplinary Guidelines and Model Orders (Guidelines). She stated that the EPOC will be reviewing the changes to the Guidelines over the next few meetings and staff will provide the final version for the EPOC and CBA's consideration at the September 2016 CBA Meeting.

The EPOC recommended that the CBA approve the revision schedule of the CBA's Guidelines.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

3. Discussion and Possible Approval of Model Orders for Permanent Restricted Practice for Inclusion in Proposed Amendments to the California Board of Accountancy Disciplinary Guidelines and Model Orders.

Ms. Wright reported that staff provided the EPOC background information regarding permanent restricted practice orders. She stated that staff noted that as a result of legislation that took effect January 1, 2016, the CBA can, after notice and hearing, permanently restrict a licensee's ability to perform specified services when there has been unprofessional conduct, including gross negligence, on the part of the licensee and when the problem will not necessarily be remediated during the term of probation. She stated that permanent restricted practice order would prohibit the licensee from performing or offering specific services during and after the term of probation until the respondent successfully petitions the CBA to have the restriction removed. She noted that staff will propose regulatory language for inclusion in a future rulemaking associated with the Guidelines.

The EPOC recommended that the CBA approve the proposed regulatory language for Permanent Restricted Practice Order for inclusion in a future rulemaking associated with the Guidelines.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

C. Legislative Committee.

1. Report of the March 17, 2016 Legislative Committee Meeting.
2. Review and Consideration of Possible Positions on Legislation Impacting the California Board of Accountancy.
 - a. Assembly Bill 1566 – Reports to the Legislature.

Ms. Robinson reported that AB 1566 would require a written report be submitted to the Legislature to include a signed statement by the head of an agency stating the factual contents of the report are true to the best of his or her knowledge. She noted that the bill would also make any person who states that the content is true but

know it is false liable for a civil penalty up to \$20,000. She stated that legal counsel expressed concern that the current language would require the Executive Officer to certify on documents not created by the CBA.

The Legislative Committee (LC) recommended that the CBA take a Support if Amended position on AB 1566, if the amendment stated “A document, summary, or statement created by the board in the ordinary course of business that is requested by a member of the Legislature.” on lines 21-22 of page 2 of the bill.

Yes: Mr. Campos, Mr. Famalett, Mr. Kaplan, Ms. Ko, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: Ms. Berhow and Ms. LaManna.

Abstain: None.

Absent: Ms. Farrell Hinds.

- b. Assembly Bill 1707 – Requirements for Denials of Public Records Requests.

Ms. Robinson reported that AB 1707 would require the response to a public records request to be in writing regardless of whether the request was in writing and to include a list of the names of the documents withheld and the exemption that applies to each document. She stated the according to the author’s office, an amendment to the bill will be asking agencies to only make public the titles that can be disclosed and to not contain any privileged information.

The LC recommended that the CBA take a Watch position on AB 1707.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: Mr. Ou-Yang.

c. Assembly Bill 1939 – Study of Licensing Requirements.

Ms. Robinson reported that AB 1939 would require the Director of the DCA to conduct a study on the occupational licensing requirements and whether they create unnecessary barriers to the labor market entry or mobility. She noted that the study would be due to the Legislature by July 1, 2017. Ms. Robinson stated that the CBA discussed at the January meeting, the Little Hoover Commission is conducting hearings regarding the impact of occupational licensing on upward mobility and opportunities for entrepreneurship, specifically to those with modest means.

It LC recommended that the CBA take a Watch position on AB 1939.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: Mr. Ou-Yang.

d. Assembly Bill 2560 – Professional Land Surveyors’ Act.

Ms. Robinson stated that AB 2560 is a spot bill and will be used for the CBA’s previously approved proposal to grant the CBA the legislative authority to adopt the emergency regulations to remove states from the no notice, no fee Practice Privilege program. Ms. Robinson stated that no action was needed as the bill is sponsored by the CBA.

e. Assembly Bill 2853 – Public records.

Ms. Robinson stated that AB 2853 will be amended to clarify the California Public Records Act, to say that if requested documents are already available on the internet, the agency may direct the requestor to its website.

The LC recommended that the CBA take a Watch position on AB 2853.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: Mr. Ou-Yang.

Absent: None.

- f. Assembly Bill 2859 – Professions and vocations: retired category: licenses.

Ms. Robinson stated that AB 2859 would authorize any board or bureau with the DCA to establish by regulation a system for a retired category of license for people who are not actively engaged in the practice of the profession. She noted that the CBA has its own statute and regulations for retired status application.

The LC recommended that the CBA take a Support if Amended position on AB 2859 and directed staff to request the author's office exclude entities within the DCA that have their own statutes regarding retired license status.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

- g. Assembly Concurrent Resolution 131 – Professions and vocations: licensing fees: equity.

Ms. Robinson stated that Assembly Concurrent Resolution (ACR) 131 would encourage the DCA and its boards and bureaus to create policies that promote fairness and equity to guarantee that each licensee pays a fair amount. She stated that the CBA has a prorated fee at initial licensure for those who will hold the license for less than a year prior to the first renewal date.

The LC recommended that the CBA take a Watch position on ACR 131.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

- h. Senate Bill 1155 – Professions and vocations: licenses: military service fee waiver.

Ms. Robinson reported that Senate Bill (SB) 1155 requires the DCA to establish a program that grants veterans who have been honorably discharged an initial application fee waiver. She stated that current law requires that each board inquire if an applicant has served or is serving in the military and expedite and assist veterans with the initial licensure process.

The LC recommended that the CBA take a Support position on SB 1155.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

- i. Senate Bill 1251 – Publication of state financial obligations.

Ms. Robinson reported that Senator John Moorlach, the only CPA in the Legislature, requested that staff review his bill proposals. She stated that SB 1251 is about transparency of financial obligations and voting information.

The LC recommended that the CBA take a Watch position on SB 1251.

Yes: Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: Ms. Berhow and Ms. LaManna.

Abstain: None.

Absent: None.

- j. Senate Bill 1348 – Licensure applications: military experience.

Ms. Robinson reported that SB 1348 would require each board, with a governing law authorizing veterans, to apply military experience and training towards licensure requirements and to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements. Ms. Robinson stated that the CBA does not have such governing law, but there is no law prohibiting a veteran to apply military experience and training under a licensed CPA towards licensure requirements.

The LC recommended that the CBA take a Support position on SB 1348.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

- k. Senate Bill 1445 – Taxation.

Ms. Robinson reported that SB 1445 is an intent language bill that would impose a sales tax on services. She stated that current law imposes a tax on retailers measured by the gross receipts from the sale of a tangible personal property sold. Ms. Robinson states that the author introduced a similar bill in 2015, SB 8, which the CBA took a Watch position on.

The LC recommended that the CBA take a Watch position on SB 1445.

Yes: Ms. Berhow, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. Robinson, and Ms. Salazar.

No: Mr. Famalett, Ms. LaManna, Mr. Ou-Yang, Mr. Savoy, and Ms. Wright.

Abstain: Mr. Campos.

Absent: None.

- I. Update on Previously Approved Legislative Proposal Regarding Expedited Rulemaking Authority for Practice Privilege Program.

Ms. Robinson reported that the Senate Business, Professions and Economic Development Committee introduced its omnibus bill on March 10, 2016, as SB 1479. She stated that included in the proposal is a provision that provides a level of flexibility by modifying the current ethics course title requirement for initial licensure to a subject requirement.

The LC recommended that the CBA take a Support position on SB 1479.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

- m. Other Bills Being Watched by the California Board of Accountancy (Assembly Bill 1868, Assembly Bill 1887, Assembly Bill 1949, Assembly Bill 2421, Assembly Bill 2423, Assembly Bill 2691, Assembly Bill 2701, Assembly Bill 2843, Senate Bill 1130, Senate Bill 1444, and Senate Bill 1448).

Ms. Robinson reported that staff will be monitoring the bills, as most are currently spot bills, which may have potential implications on the CBA.

D. Mobility Stakeholder Group.

1. Report of the March 17, 2016 Mobility Stakeholder Group Meeting.
2. Mobility Stakeholder Group Decision Matrix and Stakeholder Objectives.

This agenda item was a written report only and no comments were received.

3. Timeline for Activities Regarding Determinations to be Made Pursuant to Business and Professions Code Section 5096.21.

This agenda item was a written report only and no comments were received.

4. Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c).

Mr. Campos stated that the MSG discussed the NABSA findings regarding substantially equivalent states and how best to proceed with assessing the information. He stated that the discussion revolved around setting a framework for staff to use in evaluating NASBA's findings of substantially equivalent states.

The MSG recommended that the CBA

- **Set the initial population at 43, the total number of states identified as substantially equivalent by NASBA irrespective of the Internet Disciplinary Disclosure**
- **Direct staff to review the internet portion concurrently**
- **Direct staff to recommend an appropriate sample size**
- **Conduct an initial assessment of information regarding Washington and Arizona and present the findings at the May MSG and CBA meeting**
- **Use the State Information Sheet as suggested to be modified to remove the checkboxes and provide for an "Evaluation of NABSA's answers" as a guideline when conducting the assessment**

5. Discussion Regarding the National Association of State Boards of Accountancy's Activities and CPAVerify.

Mr. Campos reported that there are currently 51 jurisdictions participating in Accountancy Licensee Database (ALD) and CPAVerify. He noted that Michigan was added to the list of participating jurisdictions after the January 2016 CBA meeting. He stated that there are four states (Delaware, Hawaii, Utah, and Wisconsin) that are not participating in ALD and CPAVerify and that NASBA is continuing its efforts to bring these jurisdictions onto the system.

6. Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting.

Mr. Campos reported that staff proposed the standing topics for the next MSG meeting, which would include the items outlined from the March meeting and a review of the timeline.

XI. Acceptance of Minutes.

- A. Draft Minutes of the January 21-22, 2016 California Board of Accountancy Meeting.
- B. Minutes of the January 21, 2016 Committee on Professional Conduct Meeting.
- C. Minutes of the January 21, 2016 Legislative Committee Meeting.
- D. Minutes of the November 19, 2015 Enforcement Program Oversight Committee Meeting.
- E. Minutes of the January 21, 2016 Mobility Stakeholder Group Meeting.
- F. Minutes of the December 9, 2015 Peer Review Oversight Committee Meeting.

It was moved by Mr. Campos and seconded by Ms. Berhow to approve agenda items XI.A – IX.F.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: Ms. Farrell Hinds.

Absent: None.

XII. Other Business.

- A. American Institute of Certified Public Accountants.
 - 1. Report on Public Meetings of the American Institute of Certified Public Accountants Attended by a California Board of Accountancy Representative.

There was no report on this agenda item.
- B. National Association of State Boards of Accountancy.
 - 1. Report on Public Meetings of the National Association of State Boards of Accountancy Attended by a California Board of Accountancy Representative.

There was no report on this agenda item.

2. Proposed Responses to the National Association of State Boards of Accountancy's Focus Questions Regarding Issues Relevant to the Regulation of the Accounting Profession.

It was moved by Ms. Berhow and seconded by Ms. Robinson to approve the responses to the NASBA focus questions.

Yes: Ms. Berhow, Mr. Campos, Mr. Famalett, Ms. Farrell Hinds, Mr. Kaplan, Ms. Ko, Ms. LaManna, Mr. Ou-Yang, Ms. Robinson, Ms. Salazar, Mr. Savoy, and Ms. Wright.

No: None.

Abstain: None.

Absent: None.

XIII. Closing Business.

A. Public Comments.

B. Agenda Items for Future California Board of Accountancy Meetings.

Ms. Salazar stated that the CBA identified items throughout the meeting, including DOL audit of employee benefit plans and the enforcement performance measures.

XIV. Petition Hearings.

A. Federico Quinto Jr., License No. 68925 –Petition for Reduction of Penalty.

The CBA heard Mr. Quinto's petition for reduction of penalty.

B. Rom N. De Guzman – Petition for Reinstatement of Revoked Certificate.

The CBA heard Mr. De Guzman's petition for reinstatement of revoked certificate.

C. Jack Rickman Sowell – Petition for Reinstatement of Revoked Certificate.

The CBA heard Mr. Sowell's petition for reinstatement of revoked certificate.

D. Closed Session. Pursuant to Government Code Section

11126(c)(3), the California Board of Accountancy Convened into Closed Session to Deliberate on Disciplinary Matters (Petitions for Reinstatement of Revoked Certificate and Reduction of Penalty).

XV. Closed Session.

- A. Pursuant to Government Code Section 11126(c)(3), the California Board of Accountancy Convened Into Closed Session to Deliberate on Disciplinary Matters (Stipulated Settlements, Default Decisions, and Proposed Decisions).
- B. Pursuant to Government Code Section 11126(e), the California Board of Accountancy Met In Closed Session to Receive Advice from Legal Counsel on Litigation (David Greenberg v. California Board of Accountancy, Los Angeles County Superior Court, Case No. BS155045; David B. Greenberg v. California Board of Accountancy, Orange County Superior Court, Case No. 30-2015-00809799-CU-WM-CJC.; David B. Greenberg v. California Board of Accountancy, Orange County Superior Court, Case No. 30-2015-00809802-CU-WM-CJC.; and David Greenberg v. Erin Sunseri, et al., U.S. District Court, Southern District of Florida, Case No. 15-CV-80624.).

President Salazar adjourned the meeting at 2:58 p.m. on Friday, March 18, 2016.

_____ Katrina L. Salazar, CPA, President

_____ Michael M. Savoy, CPA, Secretary/
Treasurer

Corey Riordan, Board Relations Analyst, and Patti Bowers, Executive Officer, CBA, prepared the CBA meeting minutes. If you have any questions, please call (916) 561-1718.

**DEPARTMENT OF CONSUMER AFFAIRS**

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



CPC Item I.
 May 19, 2016

CBA Item X.B.
 May 19-20, 2016

DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

MINUTES OF THE
March 17, 2016
COMMITTEE ON PROFESSIONAL CONDUCT (CPC) MEETING

DRAFT

DoubleTree Guest Suites Anaheim Resort
 2085 South Harbor Blvd.
 Anaheim, CA 92802
 Telephone: (714) 750-3000

Leslie LaManna, CPA, Chair, called the meeting of the CPC to order at 2:51 p.m. on Thursday, March 17, 2016 at the Double Tree Guest Suites Anaheim Resort. Ms. LaManna requested that the roll be called.

CPC Members

Leslie LaManna, CPA, Chair	Present
Jose A. Campos, CPA	Present
Herschel Elkins, Esq.	Absent
Kay Ko	Present
Jian Ou-Yang, CPA	Present
Deidre Robinson	Present
Mark Silverman, Esq.	Absent

CBA Members Observing

Katrina Salazar, CPA, President
 Alicia Berhow
 George Famalett, CPA
 Larry Kaplan
 Kathleen Wright, Esq., CPA

CBA Staff and Legal Counsel

Patti Bowers, Executive Officer
 Deanne Pearce, Assistant Executive Officer
 Rich Andres, Information Technology Staff

Dominic Franzella, Chief, Enforcement Division
Paul Fisher, Supervising Investigative CPA
Nooshin Movassaghi, Legislative Analyst
Corey Riordan, Board Relations Analyst
Gina Sanchez, Chief, Licensing Division
Kristy Schieldge, Legal Counsel, Department of Consumer Affairs (DCA)
Carl Sonne, Deputy Attorney General, Department of Justice (DOJ)
Matthew Stanley, Information and Planning Officer

Other Participants

Jeff De Lyser, CPA, Vice-Chair, Peer Review Oversight Committee
Jason Fox, California Society of Certified Public Accountants
Shelly Jones, DCA Representative
Pilar Oñate-Quintana, The Onate Group
Joseph Rosenbaum, Chair, Enforcement Advisory Committee
Jon Ross, KP Public Affairs

- I. Approve Minutes of the January 21, 2016, CPC Meeting.

It was moved by Mr. Campos and seconded by Ms. Robinson to adopt the minutes of the January 21, 2016, CPC meeting.

Yes: Ms. LaManna, Mr. Campos, Ms. Ko, Mr. Ou-Yang, and Ms. Robinson.

No: None.

Abstain: None.

The motion passed.

- II. Discussion and Possible Action to Make Technical (“Section 100”) or Regulatory Changes to Amend Title 16, California Code of Regulations Sections 20 and 36.1.

Mr. Stanley reported that after review with legal counsel the changes proposed to section 20 were not necessary. The change to section 36.1 is proposed to ensure consistency with Business and Professions Code (BPC) section 5087 regarding the description of licensure requirements for out-of-state licensees which was amended in last year’s omnibus bill.

Mr. Stanley continued that last year, Assembly Bill 181 amended BPC section 5087 to require applicants for California certified public accountant licensure who were licensed in another state to possess a current, active and unrestricted license from the other state. Prior law only required a valid and unrevoked license. Establishing consistency between the statute and the regulations will eliminate potential confusion for applicants and staff helping to ensure the protection of consumers in California.

It was moved by Mr. Campos and seconded by Ms. Robinson that the CBA authorize the Executive Officer to pursue a Section 100 change to amend CBA Regulation section 36.1 or initiate the regular rulemaking process if the Section 100 action is denied by the Office of Administrative Law.

Yes: Ms. LaManna, Mr. Campos, Ms. Ko, Mr. Ou-Yang, and Ms. Robinson.

No: None.

Abstain: None.

The motion passed.

II. Public Comment

No public comments were received.

III. Agenda Items for Next Meeting.

Ms. Ko suggested a review of the Department of Labor's (DOL) Employee Benefits Security Administration report titled "Assessing the Quality of Employee Benefit Plan Audits" and how DOL Employee Retirement Income Security Act of 1974 audits are conducted in California.

Ms. LaManna suggested reviewing specific continuing education requirements as part of a future DOL topic.

There being no further business, the meeting was adjourned at 2:56 p.m.

**DEPARTMENT OF CONSUMER AFFAIRS**

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



LC Item I.
 May 19, 2016

CBA Item X.C.
 May 19-20, 2016

DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

MINUTES OF THE
March 17, 2016
LEGISLATIVE COMMITTEE (LC) MEETING

DRAFT

DoubleTree Guest Suites Anaheim Resort
 2085 South Harbor Blvd.
 Anaheim, CA 92802
 Telephone: (714) 750-3000

Deidre Robinson, Chair, called the meeting of the LC to order at 2:02 p.m. on Thursday, March 17, 2016 at the DoubleTree Guest Suites Anaheim Resort. Ms. Robinson requested that the roll be called.

LC Members

Deidre Robinson, Chair	Present
Herschel Elkins, Esq.	Absent
George Famalett, CPA	Present
Larry Kaplan	Present
Leslie LaManna, CPA	Present
Xochitl León	Absent
Mark Silverman, Esq.	Absent

CBA Members Observing

Katrina Salazar, CPA, President
 Alicia Berhow, Vice-President
 Jose Campos, CPA
 Karriann Farrel Hinds, Esq.
 Kay Ko
 Jian Ou-Yang, CPA
 Michael Savoy, CPA

CBA Staff and Legal Counsel

Patti Bowers, Executive Officer
 Deanne Pearce, Assistant Executive Officer

Rich Andres, Information Technology Staff
Pat Billingsley, Regulatory Analyst
Dominic Franzella, Chief, Enforcement Division
Paul Fisher, Enforcement Supervising Investigative CPA
Nooshin Movassaghi, Legislative Analyst
Corey Riordan, Board Relations Analyst
Gina Sanchez, Chief, Licensing Division
Kristy Schieldge, Legal Counsel, DCA
Carl Sonne, Deputy Attorney General, Department of Justice
Matthew Stanley, Information and Planning Officer

Other Participants

Jason Fox, California Society of Certified Public Accountants
Shelly Jones, DCA Representative
Pilar Oñate-Quintana, The Onate Group
Joseph Rosenbaum, CPA, Chair, Enforcement Advisory Committee

- I. Approve Minutes of the January 21, 2016 Legislative Committee Meeting.

It was moved by Ms. LaManna and seconded by Mr. Famalett to adopt the minutes of the January 21, 2016, LC meeting.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan, and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

- II. Review and Consideration of Possible Positions on Legislation Impacting the California Board of Accountancy.

- A. AB 1566 – Reports to the Legislature

Ms. Movassaghi stated that AB 1566 would require a written report submitted to the Legislature to include a signed statement by the head of an agency stating the factual content of the report are true to the best of his or her knowledge.

Legal Counsel stated that the written report in the proposed language means any document and that this bill needs to have a narrower scope. Ms. LaManna stated that she is concerned with the bill as to who is the head of the agency. The committee discussed various positions.

It was moved by Mr. Famalett and seconded by Mr. Kaplan to recommend that the CBA take a Support if Amended position on AB 1566, with the amendment to read as follows:

“A document, summary, or statement created by the Board in the ordinary course of business and requested by a member of the Legislature.”

Yes: Ms. Robinson, Mr. Famalett, and Mr. Kaplan.

No: Ms. LaManna.

Abstain: None.

The motion passed.

B. AB 1707 – Requirements for Denial of Public Records Request

Ms. Movassaghi stated that AB 1707 would require the response to a Public Records Act (PRA) request to be in writing regardless of whether the request was in writing and to include a list of the names of the documents withheld and the exemption that applies to each document.

Legal Counsel suggested clarifying what “the agency shall identify the specific exemption that applies to a specific record or type of record” means. She noted that the language sounds like the CBA may have to list the specific record that applies to the specific exemption, which could be a problem for the CBA’s investigative files in particular. She concluded that it could be a waiver of confidentiality if we have to list the contents of the investigative file in response to a PRA.

It was moved by Mr. Kaplan and seconded by Ms. LaManna to recommend that the CBA take a Watch position on AB 1707 and direct staff to reach out to the author’s office to express the CBA’s concerns.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

C. AB 1939 – Study of Licensing Requirements

Ms. Movassaghi stated AB 1939 would require the Director of DCA to conduct a study on occupational licensing requirements and whether they create unnecessary barriers to labor market entry or mobility.

She continued that the Little Hoover Commission is conducting hearings on the impact of occupational licensing on upward mobility and opportunities for entrepreneurship, specifically to those with modest means. She stated that according to the author's office, the problem with licensing is that licensing requirements create an unnecessary barrier to entry into a particular field. The author's intent is to study this problem by mandating that DCA report to the Legislature.

It was moved by Ms. LaManna and seconded by Mr. Kaplan to recommend that the CBA take a Watch position on AB 1939.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

D. AB 2560 – Professional Land Surveyors' Act

Ms. Movassaghi stated that AB 2560 is a spot bill and will be used for the CBA's previously approved proposal to grant the CBA the legislative authority to adopt emergency regulations to remove states from the no notice, no fee Practice Privilege program. The proposal was not included in the Senate Business, Professions and Economic Development's annual omnibus bill due to the substantive changes.

There was no action on this bill as the CBA is the sponsor of AB 2560.

E. AB 2853 – Public Records

Ms. Movassaghi stated that AB 2853 is an intent language bill which expresses the intent of the Legislature to amend this bill to include a provision that would clarify that the term "public record," for purposes of the California Public Records Act, includes those writing kept on private cellular phone or other electronic device of an elected official, official, or employee or a public agency if those records relate to the public's business.

During her presentation, she informed the members of an update from the author's office provided after her analysis was written. She stated that the author would amend AB 2853 to state that if requested documents are already available on the Internet, the agency may direct the Public Records requestor to its website.

It was moved by Ms. LaManna and seconded by Mr. Famalett to recommend that the CBA take a Watch position on AB 2853.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

F. AB 2859 – Professions and vocations: retired category: license

Ms. Movassaghi stated that AB 2859 would authorize boards or bureaus within DCA to establish, by regulation, a system for a retired category of license for people who are not actively engaged in the practice of the profession.

She highlighted that the CBA already has its own statute and regulations for retired status application. Amongst other provisions, an applicant must have held a CPA license for at least 20 years and for a minimum of 5 years from the CBA.

It was moved by Ms. LaManna and seconded by Mr. Famalett to recommend that the CBA take a Support if Amended position on AB 2859 and direct staff to request the author's office to exclude entities within DCA that have their own statutes regarding retired license status.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

G. ACR 131 – Professions and vocations: licensing fees: equity

Ms. Movassaghi stated that Assembly Concurrent Resolution (ACR) 131 would encourage DCA and its boards and bureaus to create policies that promote fairness and equity to guarantee that each licensee pays a fair amount.

According to the author, current law for many DCA entities require some licensees to renew their licenses within just a few months after initial licensure.

She highlighted that the CBA has a prorated fee at initial licensure for those who will hold the license for less than a year prior to the first renewal date.

It was moved by Mr. Kaplan and seconded by Ms. LaManna to recommend that the CBA take a Watch position on ACR 131.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

H. SB 1155 – Professions and vocations: licenses: military: service fee waiver

Ms. Movassaghi stated that SB 1155 would require the DCA to establish a program that grants veterans who have been honorably discharged an initial application fee waiver. Current law requires that each board inquire if an applicant has served, or is serving, in the military and expedite and assist veterans with the initial licensure process.

She highlighted that a fiscal loss would be associated with this bill - the \$250 application fee plus the \$120 initial licensing fee, totaling \$370 per application. Annually, the CBA has had fewer than 5 applicants seeking CPA licensure, who have been honorably discharged from the military.

It was moved by Ms. LaManna and seconded by Mr. Famalett to recommend that the CBA take a Support position on SB 1155.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

I. SB 1251 – Publication of state financial obligations

Ms. Movassaghi stated that Senator John Moorlach, the only CPA in the Legislature, and who provided a presentation at the CBA's January 2016 meeting, had requested staff review his bill proposals.

She continued that one of Senator Moorlach's bills, SB 1251 would establish the California Financial Transparency Act of 2016 and would require an unspecified entity of state government to create and maintain a dedicated web page, linked to the homepage of its website that lists specific state financial obligations. This bill would also require the Secretary of State to include in a ballot pamphlet a copy of all the information posted on a dedicated web page, hyperlinked to the homepage of the website of an unspecified entity.

It was moved by Mr. Famalett and seconded by Mr. Kaplan to recommend that the CBA take a Watch position on SB 1251.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

J. SB 1348 – Licensure applications: military

Ms. Movassaghi stated that SB 1348 would require each board with a governing law authorizing veterans to apply military experience and training towards licensure requirements, to modify their application for licensure to advise veteran applicants about their ability to apply that experience and training towards licensure requirements.

She highlighted that there is no specific governing law within the Accountancy Act that authorizes veterans to apply military experience and training towards licensure requirements. She continued that there is no law prohibiting such experience.

It was moved by Mr. Famalett and seconded by Mr. Kaplan to recommend that the CBA take a Support position on SB 1348.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

K. SB 1445 – Taxation

Ms. Movassaghi stated that SB 1445 is an intent language bill that would impose a sales tax on services. Current law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold. She highlighted that the author introduced a similar bill in 2015, SB 8, on which the CBA took a Watch position.

It was moved by Mr. Kaplan and seconded by Ms. Robinson to recommend that the CBA take a Watch position on SB 1445.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

L. Update on Previously Approved Legislative Proposal Regarding Expedited Rulemaking Authority for Practice Privilege Program.

Ms. Movassaghi stated that the Senate Business, Professions and Economic Development Committee introduced its omnibus bill on March 10 as SB 1479. The proposal provides a level of flexibility by changing the current ethics course title requirement to a subject requirement.

It was moved by Ms. LaManna and seconded by Mr. Famalett to recommend that the CBA take a Support position on SB 1479.

Yes: Ms. Robinson, Mr. Famalett, Mr. Kaplan and Ms. LaManna.

No: None.

Abstain: None.

The motion passed.

M. Other bills being watched by the CBA

Ms. Movassaghi stated that this agenda item's purpose was to provide the CBA with a list of bills which may have potential implications on the CBA. She continued that staff would monitor future amendments.

This item was for information purposes, and no action was taken by the LC.

III. Public Comment

No public comments were received.

IV. Agenda Items for Next Meeting.

None.

There being no further business to be conducted, the meeting was adjourned at 2:48 p.m.



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



EPOC Item I
 May 19, 2016

CBA Item X.D.
 May 19-20, 2016

DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

DRAFT

MINUTES OF THE
March 17, 2016
ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE (EPOC) MEETING

DoubleTree Guest Suites Anaheim Resort
 2085 South Harbor Blvd
 Anaheim, CA 92802
 Telephone: (714) 750-3000

Roll Call and Call to Order.

Kathleen Wright, CPA, Chair, called the meeting of the EPOC to order at 12:00 p.m. on Thursday, March 17, 2016 at the DoubleTree Guest Suites Anaheim Resort. Ms. Wright requested that the roll be called.

Members

Kathleen Wright, CPA, Chair	12:00 p.m. – 12:16 p.m.
Alicia Berhow	12:00 p.m. – 12:16 p.m.
George Famalett, CPA	12:00 p.m. – 12:16 p.m.
Karriann Farrell Hinds, Esq.	12:00 p.m. – 12:16 p.m.
Kay Ko	12:00 p.m. – 12:16 p.m.
Xochitl Leon	Absent
Michael Savoy, CPA	12:00 p.m. – 12:16 p.m.

CBA Members Observing

Katrina Salazar, CPA, President
 Jose Campos, CPA
 Larry Kaplan
 Leslie LaManna, CPA
 Jian Ou-Yang, CPA
 Deidre Robinson

CBA Staff and Legal Counsel

Patti Bowers, Executive Officer
 Deanne Pearce, Assistant Executive Officer
 Rich Andres, IT Staff

Pat Billingsley, Regulations Analyst
Paul Fisher, Enforcement Supervising ICPA
Dominic Franzella, Enforcement Chief
Nooshin Movassaghi, Legislative Analyst
Corey Riordan, Board Relations Analyst
Kristy Schieldge, Legal Counsel, DCA
Ben Simcox, Enforcement Manager
Matthew Stanley, Information and Planning Officer

Committee Chairs and Members

Jeff DeLyser, CPA, Vice-Chair, Peer Review Oversight Committee
Joseph Rosenbaum, CPA, Chair, Enforcement Advisory Committee

Other Participants

Jason Fox, California Society of CPAs (CalCPA)
Shelly Jones, Manager, DCA
Pilar Oñate-Quintana, KP Public Affairs
Joseph Petito, The Accountants Coalition

- I. Approval of the Minutes from the November 19, 2015 Enforcement Program Oversight Committee Meeting.

Ms. Wright requested members to review and provide feedback or edits to the November 19, 2015 EPOC Meeting Minutes.

It was moved by Ms. Berhow and seconded by Mr. Famalett to approve the meeting minutes.

Yes: Ms. Wright, Ms. Berhow, Mr. Famalett, Ms. Ko, Mr. Savoy.

No: None.

Abstain: Ms. Farrell Hinds

The motion passed.

- II. Discussion Regarding the Revision Schedule for the Disciplinary Guidelines and Model Orders.

Mr. Franzella stated that the purpose of this item was to request EPOC approval of the schedule for revising the CBA Disciplinary Guidelines and Model Orders (Guidelines) and to provide staff with any input members may have regarding changes to the next iteration of the Guidelines. Mr. Franzella noted that the last time the CBA adopted changes to its Guidelines was in September, 2013. He noted that the purpose of the CBA's review is to ensure the Guidelines remain current and applicable.

Ms. Berhow asked if this would be sufficient time to complete this review, and Mr. Franzella stated he believed the current schedule would be sufficient.

It was moved by Ms. Berhow and seconded by Mr. Famalett to approve the revision schedule for the Guidelines.

Yes: Ms. Wright, Ms. Berhow, Mr. Famalett, Ms. Ko, Mr. Savoy, Ms. Farrell Hinds.

No: None.

The motion passed unanimously.

III. Discussion and Possible Approval of Model Orders for Permanent Restricted Practice for Inclusion in Proposed Amendments to the California Board of Accountancy Disciplinary Guidelines and Model Orders.

Mr. Franzella stated the purpose of this item is to request that the CBA approve the proposed regulatory language for Permanent Restricted Practice Order for inclusion in a future rulemaking associated with the Guidelines. Mr. Franzella emphasized that at this time staff are not asking the CBA to initiate a rulemaking; rather, that the CBA look at the concepts presented and determine if this model order meets its expectations and to direct staff to include it in a future rulemaking.

Mr. Franzella stated the new provisions would allow the CBA, after a hearing and notice for unprofessional conduct, to permanently restrict or limit the practice of a licensee from performing or offering specific services during or after a term of probation until the licensee successfully petitions the CBA to remove the Order. Mr. Franzella noted that, if the CBA adopts this language, staff would have the latitude to employ it on a case-by-case basis in conjunction with the Attorney General, and it could be provided to an Administrative Law Judge (ALJ) for their consideration as appropriate.

Ms. Robinson raised a concern about the impact of permanent restriction on sending a signal to licensees that probation does not give them a pathway to fully regain their recognition. Mr. Franzella stated that the CBA always has the option to non-adopt this restriction during its deliberations on an order from an ALJ, and, without this option, the ALJ might just revoke the license, which would more substantially limit a licensee's ability to practice. Mr. Franzella also noted that the CBA, when adopting this legislation last year, was sensitive to this fact in trying to find methodologies to allow a licensee to continue to practice safely while minimizing consumer risk in areas of concern to the CBA.

Ms. Schieldge stated that this is a new authority in law. She noted that the ALJs prefer to use a template to work from, and this model order gives them such a template. Also, having such a model would help staff in developing cases that go before the CBA.

It was moved by Ms. Wright and seconded by Mr. Famalett to approve the proposed regulatory language for Permanent Restricted Practice Order for inclusion in a future rulemaking associated with the Guidelines.

Yes: Ms. Wright, Ms. Berhow, Mr. Famalett, Ms. Ko, Mr. Savoy, Ms. Farrell Hinds.

No: None.

The motion passed unanimously.

IV. Public Comments.

No public comments.

V. Agenda Items for Next Meeting

No agenda items were proposed.

Adjournment.

There being no further business to be conducted, the meeting was adjourned at 12:16 p.m.



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CALIFORNIA BOARD OF ACCOUNTANCY
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SACRAMENTO, CA 95815-3832
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WEB ADDRESS: <http://www.cba.ca.gov>



MSG Item I.
May 19, 2016

CBA Item X.E.
May 19-20, 2016

**DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)**

DRAFT

**MINUTES OF THE
March 17, 2016
MOBILITY STAKEHOLDER GROUP (MSG) MEETING**

DoubleTree Guest Suites Anaheim Resort
2085 South Harbor Blvd.
Anaheim, CA 92802
Telephone: (714) 750-3000

CALL TO ORDER

Jose Campos, CPA, Chair, called the meeting of the MSG to order at 10:43 a.m. on Thursday, March 17, 2016 at the DoubleTree Guest Suites Anaheim Resort. Mr. Campos requested that the roll be called.

MSG Members

Jose A. Campos, CPA, Chair	Present
Joe Petito, Vice Chair	Present
Donald Driftnier, CPA	Present
Dominic Franzella	Present
Ed Howard, Esq.	Present
Michael Savoy, CPA	Present
Stuart Waldman	Absent

CBA Members Observing

Katrina Salazar, CPA, President
Alicia Berhow
George Famalett, CPA
Laurence (Larry) Kaplan
Kay Ko
Leslie LaManna, CPA
Jian Ou-Yang, CPA
Mark Silverman, Esq.
Kathleen Wright, Esq., CPA

Staff and Legal Counsel

Patti Bowers, Executive Officer

Deanne Pearce, Assistant Executive Officer

Rich Andres, Information Technology Staff

Pat Billingsley, Regulations Analyst

Corey Faiello-Riordan, Board Relations Analyst

Paul Fisher, Enforcement Supervising Investigative CPA

Nooshin Movassaghi, Legislative Analyst

Gina Sanchez, Chief, Licensing Division

Kristy Schieldge, Legal Counsel, DCA

Carl Sonne, Deputy Attorney General, Department of Justice (DOJ)

Matthew Stanley, Information and Planning Officer

Other Participants

Jeff De Lyser, CPA, Vice-Chair, Peer Review Oversight Committee

Jason Fox, California Society of Certified Public Accountants

Shelly Jones, DCA Representative

Pilar Oñate-Quintana, The Onate Group

- I. Approve Minutes of the January 21, 2016 MSG Meeting.

It was moved by Mr. Driftmier; seconded by Mr. Petito and carried unanimously to approve the minutes of the January 21, 2016 MSG Meeting.

Yes: Mr. Campos, Mr. Driftmier, Mr. Franzella, Mr. Howard, Mr. Petito and Mr. Savoy

No: None

Abstain: None

The motion passed unanimously.

- II. The Mobility Stakeholder Group Decision Matrix and Stakeholder Objectives.

Mr. Campos indicated this item is a written report only.

- III. Timeline for Activities Regarding Determination to be Made Pursuant to Business and Professions Code Section 5096.21.

Mr. Campos indicated this item was a written report only.

- IV. Discussion and Possible Action Regarding the Findings of the National Association of State Boards of Accountancy Related to Business and Professions Code Section 5096.21(c)

Mr. Stanley indicated that the CBA chose NASBA to research the enforcement practices of each state to assess whether they are substantially equivalent to the NASBA Enforcement Guidelines. NASBA outlined its criteria in its Objectives for Substantial Equivalency Evaluation and provided the CBA with a list of 29 states that it had identified as substantially equivalent with California being one of the 29. Another 14 were identified, but lacked the required disciplinary history being made available online. The remaining 12 had yet to be identified as substantially equivalent. For the 29 states identified by NASBA as substantially equivalent, staff identified three options for how to proceed. For each state, the CBA may approve it as substantially equivalent, request an audit of NASBA's information, or defer action.

Mr. Stanley stated that NASBA will provide staff with the ability to assess its results of the substantial equivalency identifications by meeting to collectively review states as identified by the CBA. This review will include a summary prepared by NASBA of the specific enforcement practices in the selected jurisdictions, and, when deemed necessary by staff, a confidential review of the underlying documents used to make a particular identification at a meeting between NASBA and staff.

The MSG discussed the framework for staff to use in evaluating NASBA's findings of substantially equivalent states. The MSG stated that in ensuring consumer protection, staff needed to review a fair, representative sample of the NASBA findings.

Mr. Campos suggested that to identify states, categories to consider might be licensee population, and geographic location. He also recommended that staff start the assessment with Washington and Arizona and present the results at the CBA's May 2016 meeting.

The MSG continued the discussion and suggested that the number of prior Practice Privilege holders should be considered as well. In addition, the MSG revised the State Information Sheet for use as a guideline when assessing NASBA's findings.

Mr. Howard suggested staff could independently review the Internet disclosure portion of the findings concurrently with the assessments.

It was moved by Mr. Campos and seconded by Mr. Savoy to recommend that the CBA:

- 1. Set the initial population at 43 – the total of states identified as substantially equivalent by NASBA irrespective of the Internet Disciplinary Disclosure.**
- 2. Direct Staff to review the Internet portion concurrently.**
- 3. Direct staff to recommend an appropriate sample size.**

4. **Conduct an initial assessment of information regarding Washington and Arizona and present to the MSG and CBA at the May meeting.**
5. **Use the State Information Sheet as suggested to be modified to remove the checkboxes and instead provide for an “Evaluation of NASBA’s answers” as a guideline when conducting assessment.**

Yes: Mr. Campos, Mr. Driftmier, Mr. Franzella, Mr. Howard, Mr. Petito and Mr. Savoy.

No: None.

Abstain: None.

The motion passed.

- V. Discussion Regarding the National Association of State Boards of Accountancy’s Activities and CPAVerify

Mr. Stanley reported that at this time there are 51 jurisdictions participating in Accountancy Licensee Database (ALD) and CPAVerify. At the January 2016 meeting, NASBA announced that Michigan was added to the list of participating jurisdictions. There are still four states – Delaware, Hawaii, Utah and Wisconsin – that are not yet participating in ALD and CPAVerify, NASBA continues its efforts to bring these jurisdictions onto the system.

No action was taken on this item.

- VI. Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting.

Mr. Stanley indicated that staff was proposing only one topic for the next MSG meeting. That topic would focus on progress made regarding the comparison of other states enforcement programs to the NASBA Enforcement Guidelines and the results of the initial assessment process.

No action was taken on this item.

There being no further business, the meeting adjourned at 11:54 a.m.