CALIFORNIA BOARD OF ACCOUNTANCY

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CALIFORNIA BOARD OF ACCOUNTANCY PUBLIC MEETING NOTICE FOR THE MOBILITY STAKEHOLDER GROUP, COMMITTEE ON PROFESSIONAL CONDUCT, ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE, LEGISLATIVE COMMITTEE AND CALIFORNIA BOARD OF ACCOUNTANCY MEETINGS

DATE:	Thursday, July 21, 2016	**MOBILITY STAKEHOLDER GROUP MEETING** **TIME:** 10:00 a.m.
DATE:	Thursday, July 21, 2016	**COMMITTEE ON PROFESSIONAL CONDUCT MEETING** **TIME:** 10:30 a.m. Or upon adjournment of the Mobility Stakeholder Group Meeting
DATE:	Thursday, July 21, 2016	**ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE MEETING** **TIME:** 11:00 a.m. Or upon adjournment of the Committee on Professional Conduct Meeting
DATE:	Thursday, July 21, 2016	**LEGISLATIVE COMMITTEE MEETING** **TIME:** 11:45 a.m. Or upon adjournment of the Enforcement Program Oversight Committee Meeting.
DATE:	Thursday, July 21, 2016	**CALIFORNIA BOARD OF ACCOUNTANCY MEETING** **TIME:** 1:30 p.m. to 5:00 p.m.
DATE:	Friday, July 22, 2016	**CALIFORNIA BOARD OF ACCOUNTANCY MEETING** **TIME:** 9:00 a.m. to 12:00 p.m.
PLACE:	**Hilton Los Angeles Airport** **5711 West Century Boulevard** **Los Angeles, CA 90045** **Telephone: (310) 410-4000**	

Enclosed for your information is a copy of the agendas for the Legislative Committee, Enforcement Program Oversight Committee, Mobility Stakeholder Group, Committee on Professional Conduct, and California Board of Accountancy meetings on July 21-22, 2016. For further information regarding these meetings, please contact:

Rebecca Reed, Board Relations Analyst
(916) 561-1716 or rebecca.reed@cba.ca.gov
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815

An electronic copy of this notice can be found at http://www.dca.ca.gov/cba/about-cba/calendar.shtml

The meeting is accessible to individuals who are physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Rebecca Reed at (916) 561-1716, or email rebecca.reed@cba.ca.gov, or send a written request to the California Board of Accountancy Office at 2000 Evergreen Street, Ste. 250, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

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CBA MISSION: To protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards

CALIFORNIA BOARD OF ACCOUNTANCY
MOBILITY STAKEHOLDER GROUP

MEETING AGENDA
Thursday, July 21, 2016
10:00 a.m.

Hilton Los Angeles Airport
5711 West Century Boulevard
Los Angeles, CA 90045
Telephone: (310) 410-4000

Important Notice to the Public

All times indicatedare approximate and subject to change. Agenda items may be discussed and action taken out of order at the discretion of the Mobility Stakeholder Group Chair. The meeting may be cancelled without notice. For verification of the meeting, call (916) 561-1716 or access the California Board of Accountancy's website at http://www.cba.ca.gov.

		CBA Item #
	Call to Order, Roll Call, Establishment of Quorum, and Opening Remarks (**Jose A. Campos, Chair**).	
I.	Approval of Minutes of the May 19, 2016, Mobility Stakeholder Group Meeting.	X.E.
II.	Mobility Stakeholder Group Decision Matrix and Stakeholder Objectives (**Written Report Only**).	IX.D.2.
III.	Timeline for Activities Regarding Determinations to be Made Pursuant to Business and Professions Code Section 5096.21. (**Written Report Only**).	IX.D.3.
IV.	Discussion Regarding the Assessment of the National Association of State Boards of Accountancy's Process for Evaluating and Information Gathering Regarding Accountancy Board Operations for Colorado, Illinois, New York, Oregon and Texas (**Nooshin Movassaghi, Legislative Analyst**).	IX.D.4.
V.	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) (**Matthew Stanley, Information and Planning Officer**).	IX.D.5.

VI. Discussion Regarding the National Association of State Boards of Accountancy's Activities and CPAverify (**Nooshin Movassaghi**). IX.D.6.

VII. Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting (**Nooshin Movassaghi**). IX.D.7.

VIII. Public Comments.*

Adjournment

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the California Board of Accountancy are open to the public. While the California Board of Accountancy intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources or technical difficulties.

*Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the California Board of Accountancy prior to the California Board of Accountancy taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the California Board of Accountancy, but the California Board of Accountancy President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the California Board of Accountancy to discuss items not on the agenda; however, the California Board of Accountancy can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).

California Board of Accountancy members who are not members of the Mobility Stakeholder Group may be attending the meeting. However, if a majority of members of the full board are present at the Mobility Stakeholder Group meeting, members who are not Mobility Stakeholder Group members may attend the meeting only as observers.

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MSG Item I. July 21, 2016
CBA Item X.E. July 21-22, 2016

DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

DRAFT

MINUTES OF THE May 19, 2016 MOBILITY STAKEHOLDER GROUP (MSG) MEETING

Hilton Los Angeles Airport
5711 West Century Boulevard
Los Angeles, CA 90045
Telephone: (310) 410-4000

CALL TO ORDER

Jose Campos, CPA, Chair, called the meeting of the MSG to order at 2:02 p.m. on Thursday, May 19, 2016 at the Hilton Los Angeles Airport. Mr. Campos requested that the roll be called.

MSG Members

Jose A. Campos, CPA, Chair	Present
Joe Petito, Vice Chair	Present
Donald Driftmier, CPA	Present
Dominic Franzella	Present
Ed Howard, Esq.	Absent
Michael M. Savoy, CPA	Present
Stuart Waldman	Present

CBA Members Observing
Katrina L. Salazar, CPA, President
Alicia Berhow,
Herschel Elkins, Esq.
Karriann Farrel Hinds, Esq.
Laurence (Larry) Kaplan
Kay Ko
Leslie LaManna, CPA
Xochitl León
Jian Ou-Yang, CPA
Deidre Robinson
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
Rebecca Reed, Board Relations Analyst
Corey Faiello-Riordan, Board Relations Analyst
Nooshin Movassaghi, Legislative Analyst
Dorothy Osgood, Enforcement Supervising ICPA
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
Maria Caldwell, National Association of State Boards of Accountancy (NASBA) (by telephone)
Jason Fox, California Society of Certified Public Accountants
Stacey Grooms, NASBA (by telephone)
Shelly Jones, DCA Representative
Pilar Oñate-Quintana, The Onate Group
Jon Ross, KP Public Affairs

I. Approve Minutes of the March 17, 2016 MSG Meeting.

It was moved by Mr. Driftmier; seconded by Mr. Savoy to approve the minutes of the March 17, 2016 MSG Meeting.

Yes: Mr. Campos, Mr. Petito, Mr. Driftmier, Mr. Franzella, and Mr. Savoy

No: None

Abstain: None

The motion passed.

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. Stanley provided a summary of where the CBA is in the timeline.

He concluded that staff do not have any recommendations on this item.

No action was taken on this item.

IV. 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.

Mr. Stanley presented the preliminary assessment of NASBA's information regarding Arizona and Washington's enforcement practices to the MSG. He stated that 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.

Mr. Stanley explained that 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.

As previously directed by the CBA, NASBA provided staff a summary of the specific enforcement practices for the two selected jurisdictions. Staff asked one random question from each section of the Guiding Principles of Enforcement to ensure that NASBA considered all the questions as important rather than putting emphasis on one or two questions that may be considered more important than the others. This approach ensured that NASBA was seeking answers to all of the questions.

NASBA's responses were based on a complete analysis of all of the provided data rather than simply a Yes/No check box on a form. Staff stated that the response to the one random question provided a greater context as well as the source of the answer. If staff was not satisfied with the response, staff had the opportunity to pursue additional questions.

Mr. Stanley concluded that based on the results of the assessment and the verification of disciplinary information on states' websites, staff was satisfied with NASBA's identification of Arizona and Washington being substantially equivalent.

This was an informational item and no action was taken by the MSG.

V. 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 reported that NASBA now identifies 32 jurisdictions as substantially equivalent to the Guiding Principles of Enforcement. Staff reviewed CPAverify and state websites to determine which states made the disciplinary history of their licensees publicly available through the Internet and verified that all were correctly noted by NASBA's Listing of Substantially Equivalent States.

After the preliminary assessment of Arizona and Washington, staff recommend an assessment of six more states based on geography, licensee population and number practice privilege holders under the prior program, totaling 15 percent of all jurisdictions. However, after discussion between MSG members, it was determined that 15 percent of 43 jurisdictions deemed substantially equivalent according to NASBA, or seven states, would be more appropriate for the final assessment.

The MSG requested that staff prepare an item for July discussing the next steps that will be taken in the determination process.

It was moved by Mr. Campos, seconded by Mr. Savoy that the CBA direct staff to assess seven states, (Arizona, Colorado, Illinois, New York, Oregon, Texas, Washington) equaling 15 percent of the 43 states which have been identified by NASBA as substantially equivalent, using the same procedures that were used for the preliminary assessment of Arizona and Washington and report results at the July 2016 meeting, and continue to monitor the undetermined states.

Yes: Mr. Campos, Mr. Petito, Mr. Driftmier, Mr. Franzella, Mr. Savoy, and Mr. Waldman.

No: None.

Abstain: None.

The motion passed.

VI. Discussion Regarding the National Association of State Boards of Accountancy's Activities and CPAVerify.

Mr. Stanley stated that 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.

No action was taken on this item.

VII. Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting.

The MSG stated that the topics for the next meeting would be to further discuss the progress made in comparing states to NASBA's Guiding Principles of Enforcement.

In addition, Mr. Driftmier suggested that staff consult with NASBA to determine whether any other jurisdictions are questioning California's substantial equivalency status.

There being no further business, the meeting adjourned at 2:47 p.m.

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MSG Item II. July 21, 2016

CBA Item IX.D.2. July 21-22, 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 do not have a recommendation on this agenda item.

Attachments

1. MSG Decision Matrix
2. Stakeholder Objectives

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Attachment 1

MSG Decision Matrix

Date	Decision
~~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.

Date	**Decision**
September 2015	The MSG approved a legislative proposal to grant emergency rule-making authority to remove states from California's mobility program.
March 2016	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. 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.
May 2016	The MSG directed staff to assess seven states, (Arizona, Colorado, Illinois, New York, Oregon, Texas, Washington) equaling 15 percent of the 43 states which have been identified by NASBA as substantially equivalent. Staff were directed to use the same procedures that were used for the preliminary assessment of Arizona and Washington, report results at the July 2016 meeting, and continue to monitor the undetermined states.

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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.

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MSG Item III. July 21, 2016

CBA Item IX.D.3. July 21-22, 2016

Timeline for Activities Regarding Determinations to be Made Pursuant to Business and Professions Code Section 5096.21

Presented by: Written Report Only

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.

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 do not have a recommendation on this agenda item.

Attachment
Timeline for Practice Privilege Activities Pursuant to Business and Professions Code Section 5096.21

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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

<u>Practice Privilege Final Report to the Legislature</u>

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

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MSG Item IV. July 21, 2016

CBA Item IX.D.4. July 21-22, 2016

Discussion Regarding the Assessment of the National Association of State Boards of Accountancy's Process for Evaluating and Information Gathering Regarding Accountancy Board Operations for Colorado, Illinois, New York, Oregon and Texas

Presented by: Nooshin Movassaghi, Legislative Analyst

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 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.

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 enity to conduct the research, and they have already provided an initial listing of states it has identifed 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 and

the data that was collected by NASBA via two written surveys, several follow-up communications with boards, and website research.

At the May 2016 meeting, the CBA directed staff to assess seven states (Arizona, Colorado, Illinois, New York, Oregon, Texas, Washington) equivalent to 15 percent of the 43 states which have been identified by NASBA as substantially equivalent, using the same procedures that were used for the preliminary assessment of Arizona and Washington and report results at the July 2016 meeting.

Comments

The CBA directed staff to conduct the assessment of the information gathered by NASBA and its evaluation process for Colorado, Illinois, New York, Oregon and Texas, 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 Tuesday, June 21, 2016, staff met with NASBA at the CBA's office to conduct the assessment. In order to encourage candor and open discussions, the specifics of NASBA's information collected from the states were not recorded. However, staff were able to view the raw information for the five states during this assessment.

NASBA provided staff a summary of the specific enforcement practices for the five selected jurisdictions. To validate the data, staff chose one random question from each section of the State Information Sheet. NASBA showed the data answering the question. Staff asked one random question from each section of the State Information Sheet to ensure that NASBA considered all the questions as important rather than putting emphasis on one or two questions that may be considered more important than the others. This approach ensured that NASBA was seeking answers to all of the questions.

NASBA's responses provided a greater context based on a complete analysis of all of the provided data rather than simply a Yes/No check box on a form. If staff was not satisfied with the response, staff had the opportunity to pursue additional questions.

Based on the results of the assessment and the verification of the availability of disciplinary information on the Internet, staff was satisfied with NASBA's identification of Colorado, Illinois, New York, Oregon and Texas being substantially equivalent.

Fiscal/Economic Impact Considerations

There are no fiscal/economic impact considerations.

Recommendation
Staff do not have a recommendation on this agenda item.

Attachments
1. Business and Professions Code Section 5096.21
2. NASBA's Guiding Principles of Enforcement
3. State Information Sheet

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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.*

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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	
Question	Evaluation of NASBA's answers
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	
Question	Evaluation of NASBA's answers
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)	

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.)	
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.)	
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.)	

3. Case Management	
Question	Evaluation of NASBA's answers
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 Compliant? (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	
Question	Evaluation of NASBA's answers
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).	
Question	**Answer**
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?	

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MSG Item V. July 21 2016

CBA Item IX.D.5. July 21-22, 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

No specific action is required on this agenda item.

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.
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 comparision of states' enforcement practices to determine if they are substantially equivalent to the Guiding Principles of Enforcement including identifiying 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 enity 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.

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

Consistant 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 36 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.

The changes from the previous version were Hawaii moving from the "*SE w/o DISC FLAG*" column to the "*SE*" column, Indiana, Vermont, and Wisconsin moving from the "*Undetermined*" column to the "*SE*" column.

In order to meet the fourth condition, the CBA may evaluate the results from the final assessment in **CBA Agenda Item IX.D.4**., and choose from three options for how to

proceed. For each state individually, the CBA may approve it as substantially equivalent, deem it not substantially equivalent, or defer action. The CBA may choose to take any of these three described actions with as many or as few of the listed 36 states as it wishes, or it may choose to pursue other actions.

Fiscal/Economic Impact Considerations
There are no fiscal/economic impact considerations.

Recommendation
Staff do not have a recommendation on this agenda item.

Attachments
1. Business and Professions Code Section 5096.21
2. NASBA's Guiding Principles of Enforcement
3. Objectives for Substantial Equivalency Evaluation
4. NASBA Listing of Substantially Equivalent States

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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 6/13/16			
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		
	36	**10**	**9**

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MSG Item VI. July 21, 2016

CBA Item IX.D.6. July 21-22, 2016

Discussion Regarding the National Association of State Boards of Accountancy's Activities and CPAverify

Presented by: Nooshin Movassaghi, Legislative Analyst

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
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.

NASBA's Eastern Regional Meeting was held on June 7-9, 2016 in Asheville, North Carolina. Its Western Regional Meeting was held on June 22-24, 2016 in Denver,

Colorado. CBA President Katrina L. Salazar, CPA attended both regional meetings and did a joint presentation with Stacey Grooms, Manager of Regulatory Affairs for NASBA, on the CBA's comparison of other states' enforcement programs to the NASBA Guiding Principles of Enforcement.

Fiscal/Economic Impact Considerations
There are no fiscal/economic impact considerations.

Recommendation
Staff do not have a recommendation on this agenda item.

Attachment
None.

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MSG Item VII. July 21, 2016

CBA Item IX.D.7. July 21-22, 2016

Discussion Regarding Proposed Agenda Items for the Next Mobility Stakeholder Group Meeting

Presented by: Nooshin Movassaghi, Legislative Analyst

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:

- Discussion and possible action regarding the final findings made by National Association of State Boards of Accountancy (NASBA) in comparing other states to NASBA's Guiding Principles of Enforcement.

- Discussion regarding information needed to assist the CBA in making the determinations from states not found by the CBA to be substantially equivalent to the NASBA Guiding Principles of Enforcement.

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.

Recommendation
Staff do not have a recommendation on this agenda item.

Attachment
None.