

***PROFESSIONAL CONDUCT AND  
ETHICS FOR CALIFORNIA CPAs***



**Delta Publishing Company**

Copyright © 2008 *by*

DELTA PUBLISHING COMPANY

P.O. Box 5332, Los Alamitos, CA 90721-5332

All rights reserved. No part of this course may be reproduced in any form or by any means, without permission in writing from the publisher.

## **COURSE EDUCATIONAL GOALS**

This course is designed to meet the 8-hour ethics CPE requirement for California. It is designed to provide the CPA with an ethical framework that the CPA can use as a guide to sort through various ethical dilemmas commonly faced in the profession by providing both a conceptual background in ethics and detailed guidance from appropriate laws and regulations for Certified Public Accountants in California. It describes each of the sources of accounting irregularities and recent accounting ethics cases and also explains the Enron and WorldCom debacles and their major reasons. It also covers the AICPA Code of Professional Conduct, standards of professional conduct and business practices adhered to by accountants such as CPAs, CMAs, and CFMs in order to enhance their profession and maximize idealism, justice and fairness when dealing with the public, clients and other members of their profession. The Sarbanes-Oxley Act and its impact on business ethics and the CPA's responsibilities are also summarized. Chapter 4 covers the California Accountancy Act and the Board of Accountancy Regulations and the most recent versions of those codes and regulations are included in this text. A couple of sample cases involving violations and enforcement actions are provided.

## **TABLE OF CONTENTS**

### **Course Learning Objectives**

#### **Chapter 1 Ethics Defined and Recent Accounting Ethics Cases**

- Attitudes toward ethics
- Ethical systems
- Historical Foundations of Law and Ethics
- Select Development of Law and Ethics
- Accounting Ethics cases Bring About New Guidelines and Legislation

#### **Chapter 2 AICPA Ethics**

- Synopses of the Six Principles
- Synopses of the Eleven Rules
- AICPA's Code of Professional Conduct and Other Professional Requirements
  - Rule 101 Independence
  - Rule 102 Integrity and Objectivity
  - Rule 201 General Standards
  - Rule 202 Compliance with Standards
  - Rule 203 Accounting Principles
  - Rule 301 Confidential Client Information
  - Rule 302 Contingent Fees
  - Rule 501 Acts Discreditable
  - Rule 502 Advertising and Other Forms of Solicitation
  - Rule 503 Commissions and Referral Fees
  - Rule 505 Form of Organization and Name
- Interpretations and Rulings
- Consulting services prohibited by Sarbanes-Oxley Act of 2002
- Standards for Tax Services
- Disciplinary Systems Within the Profession
- Corporate Responsibility law (Sarbanes-Oxley act)

#### **Chapter 3 Standards of Ethical Conduct for Practitioners of Management Accounting and Financial Management for Certified Managerial Accountants (CMA) and the Certified In Financial Management (CFM)**

- Competence
- Confidentiality
- Integrity
- Objectivity
- Resolution of Ethical Conflict

## **Chapter 4      California Ethics**

### **California Business & Professions Code (California Accountancy Act)**

- Article 1: Administration
- Article 1.5: Continuing Education
- Article 2: General Powers and Definitions
- Article 3: Application of Chapter
- Article 3.5: Standards of Professional Conduct
- Article 4: Applications, Registrations, and Permits Generally
- Article 5: Certificates, Information and Records
  - Article 5.1 Practice Privileges
  - Article 5.5 Audit Documentation
- Article 6: Disciplinary Proceedings
  - Article 6.5 Administrative Penalties
- Article 7: Prohibitions and Offenses Against the Chapter Generally
- Article 8: Revenue
- Article 9: Accountancy Corporations

### **California Code of Regulations**

- Article 1. General
- Article 2. Examinations
- Article 3. Waiver of Examination
- Article 4. Practice Privileges
- Article 5. Registration
- Article 8. Appeals
- Article 9. Rules of Professional Conduct
- Article 10. Fees
- Article 11. Accountancy Corporations
- Article 12. Continuing Education Rules
  - Article 12.5. Citations and Fines
- Article 13. Denial, Suspension, and Revocation of Certificates, Permits, or Licenses

## **Glossary**

## **Bibliography**

## **COURSE LEARNING OBJECTIVES**

### **CHAPTER 1**

#### **ETHICS DEFINED AND RECENT ACCOUNTING ETHICS CASES**

##### **LEARNING OBJECTIVES:**

After studying this chapter you will be able to:

1. Define ethics.
2. Differentiate between amoral and ethical values.
3. List and characterize two systems of ethics.
4. Differentiate between legal versus ethical codes.
5. Discuss the development of law and ethics.
6. List examples of philosophers who contributed to the development of ethics.
7. Describe each of the sources of accounting irregularities and ethics cases, including the Enron and WorldCom debacles.
8. List major events in connection with corporate governance.

### **CHAPTER 2**

#### **AICPA ETHICS**

##### **LEARNING OBJECTIVES:**

After studying this chapter you will be able to:

1. Differentiate between rulings and principles of the AICPA' Code of Professional Conduct.
2. Briefly describe the six principles.
3. List the eleven rules.
4. Outline ethics rulings on independence.
5. List consulting services prohibited by the Sarbanes-Oxley (SOX) Act of 2002.
6. Outline the standards for tax services
7. Explain disciplinary mechanisms within the profession.
8. List the key features of corporate responsibility law (Sarbanes-Oxley act).

**CHAPTER 3**  
**STANDARDS OF ETHICAL CONDUCT FOR PRACTITIONERS**  
**OF MANAGEMENT ACCOUNTING AND FINANCIAL MANAGEMENT**  
**FOR CERTIFIED MANAGERIAL ACCOUNTANTS (CMA) AND THE CERTIFIED IN**  
**FINANCIAL MANAGEMENT (CFM)**

**LEARNING OBJECTIVES:**

After studying this chapter you will be able to:

1. Describe the level of competence required by accountants (CMAs) and financial managers (CFMs).
2. Distinguish between the concepts of confidentiality and integrity.
3. Outline and clarify a method of resolution of ethical conflict.

**CHAPTER 4**  
**CALIFORNIA ETHICS**

**LEARNING OBJECTIVES:**

After studying this chapter you will be able to:

1. Outline the professional ethics and conduct for California CPAs.
2. Summarize the ethical concepts promulgated in the Code of California Business & Professions and the Code of Regulations.

## **CHAPTER 1**

### **ETHICS DEFINED AND RECENT ACCOUNTING ETHICS CASES**

#### **LEARNING OBJECTIVES:**

After studying this chapter you will be able to:

1. Define ethics.
2. Differentiate between amoral and ethical values.
3. List and characterize two systems of ethics.
4. Differentiate between legal versus ethical codes.
5. Discuss the development of law and ethics.
6. List examples of philosophers who contributed to the development of ethics.
7. Describe each of the sources of accounting irregularities and scandals, including the Enron and Worldcom debacles.
8. List major events in connection with corporate governance.

Ethics is the “science of morals”. A moral is an accepted rule or standard of human behavior. The understanding of “accepted” is “accepted by society”, and accepted only insofar as the behavior in question being behavior that affects others in the society, even if only indirectly. The implication of this definition is therefore that private actions that have no impact on others are a matter for personal morality, which is not of business or organizational concern.

However, the distinction between personal morality and business morality may not always be so clearly defined. This is because individuals bring personal values to their jobs and to the real or perceived problems of moral choice that confront them at work. Moral choices sometimes must be made because of tensions within individuals, between individuals, or between individuals and what they believe to be the values that drive their organizations.

Furthermore, business organizations do not operate in a social vacuum. Because of the ways business organizations can and do affect the lives and livelihoods of society at large, some would argue that business organizations are kind of “moral agents” in society. Therefore managers and general public alike often wrestle with defining exactly what constitutes the ethical way of doing business, and what constitutes proper constraints on individual self-interests, and by whom shall these constraints be imposed.

A further complexity results from the fact that businesses are increasingly becoming global in nature. Different countries have or seem to have vastly different customs and values. Understanding and assessing whether and how these different cultural and ethical conflicts should be taken into account is often most difficult.

#### **ATTITUDES TOWARD ETHICS**



AMORAL:	Condone any actions that contribute to the corporate aim. Getting away with it is the key. No set of values other than greed.
LEGALISTIC:	Obey the letter of the law but not the spirit of it, especially if it conflicts with profits. Ethics ignored until it becomes a problem
RESPONSIVE:	Take the view that there is something to gain from ethical behavior, Using ethics as a tool to attain corporate aim.
EMERGING:	Ethical values becoming part of the culture. Codes of ethics being action documents, and likely to contain statements reflecting core value,
ETHICAL:	Total ethical profile. Everything done is ethical, and the right thing always done by everyone. The ideal.

In general, a key focus of ethics is the concept of integrity (or honesty). Integrity in broad terms will imply that no business-persons in the course of their business functions should be party to the falsification of any facts or information or make any statement which knowingly is misleading, false or deceptive in a material particular.

Another major focus of ethics is professional competence and due care, which implies that business professionals should always perform their functions in accordance with law and regulations. In other words, business transactions and professional functions should not be undertaken unless one possesses the required competence and technical skills.

A more controversial focus is the area of freedom from conflicts of interests. The preferred position of many is that one should always avoid concurrent involvement in any business, occupation or activity, which might result in the compromising of integrity, objectivity and independence of decision making.

### ETHICAL SYSTEMS

Utilitarianism (teleological ethics)	The promotion that the best long-term interest of everyone concerned should be the moral standard: one should take those actions that lead to the greatest balance of good versus bad consequences
Deontology (Kantian ethics)	It deals with the concept of duty and the rightness of acts. It emphasizes maxims, duties, rules, and principles that are so important that they should be followed whatever the consequences.

In defining law and ethics and their relationship to each other it is necessary to distinguish between moral and legal rights and duties. Morally, a person's rights consist of claims that he can justly make to the conditions of well-being; his duties consist of what he can justly contribute to well being. Legal rights and duties - that is, claims and obligations enforceable at law - may or may not be fully in harmony with prevalent moral opinion systems in which law and ethics and religion are closely interwoven. The impact of moral opinion on law varies with the type of political structure and influence of public opinion.

In free societies the ultimate justification of law is that it serves moral ends. But the dependence of law on moral principles must not be taken to imply that there is a set of moral principles which can be laid down for guidance. However, most free societies are coming to be more or less consistent in principles that draw the line between law and morals. The task of ethics becomes two-fold: to bring out what is involved in the notion of a principle or norm of action and to recognize ideals that serve as agencies of guidance and control.

A number of consistent principles recognized in modern society are the individual, responsibility and equity. The end of law is to secure the greatest possible general individual self-assertion. In the Judeo-Christian ethic responsibility is a given: the best ordering of human society in which the individual may come to full manhood and satisfying existence. On the basis of equitable doctrine we can say confidently that morality is inseparable from the legal order; that right and wrong is part of the legal order.

### **HISTORICAL FOUNDATIONS OF LAW AND ETHICS**

The great religions of the world gave birth to several concepts that evolved into structural precepts for society. A commonality of precepts evolved with the passing of tribal customs and tribal belief systems and the rise of the great religions of the world.

"The monotheistic idea of God unifies and coordinates the spiritual goods of the race. The unity of GOD involves the unity of all classes of men. This is a long step toward equality. The sense of sin became part and parcel of the common consciousness. It is a leveler and equalizer." For the good of the tribal society now becomes for the good of the individual. It must come to pass that a given society, if it is to retain the right to exist, must be continually extending the experience of its best things to men who were at one time outside, the pale of the best. The principle of individuality, once established, draws after it the principle of progress." "If it amounts to this, that wherever you find man, you find the eternal goods, and therefore the highest worth. The scale of market prices for the common man is forever disarranged by the discovery in him of something that is above price."

Two of the primary maxims in ethics are the utilitarian rule "Each man is to count for one, nobody for more than one". The second is Kant's--Always treat humanity, whether in yourself or another, as a person, and never as a thing."

"The only ground for counting every body as one, and nobody as more than one is the presence in all men of a something or other which possesses such value that existing social forms and

economic accumulations cannot bid against it."

"The social question is the moral question, first, because its ultimate root is a choice between divergent ideals of the state, that , between different ways of viewing and organizing the total human life in time and space; and secondly, because, as a consequence, the question concerning the worth of the labor turns into the question concerning the worth of the laborer". The history of conscience is the history of the individual where 'conscience' means knowing along with " ...nothing can be good for one man that is not law for all men."

## **SELECT DEVELOPMENT OF LAW AND ETHIC**

This section will review the historical evolution of law and ethics through select excerpts of legal philosophy from Plato to Hegel.

**PLATO:** Plato maintained that all wrong doing is involuntary and arises from ignorance since right conduct is happiness, and wrong conduct is unhappiness, and no one therefore would willingly choose wrong conduct which would lead to unhappiness. Plato's resolution was to make a distinction between acts which were remediable in damages and acts which require punishment between injury and wrongdoing. If there had been a wrongdoing, the guilty person must not only pay for the injury, but must also be punished,...the court must teach him virtue.

Plato endeavored to extend his ideas of code making from the civil to the criminal field, and to devise a penal code based upon rational principles. In the history of jurisprudence, no one has been more fully aware of the necessity of the reign of law for any state which desires to realize the ultimate values of happiness and well-being for its citizens.

**ARISTOTLE:** Aristotle assigned to jurisprudence what must always be its main task, the establishment of a rational legal order for a given society. "Every art and every inquiry and similarly every action and pursuit, is thought to aim at some good; and for this reason the good has rightly been declared to be that at which all things aim." Law may also be a means in the inculcation of established ethical ideals and the promotion of new ones. The precepts of the law are to live honorably, not to hurt another, to give each man his due." He further maintained that the state must train and educate its citizen in the spirit of the law - for there is no merit in the most valuable laws if citizens are not trained and educated early. "If a man is to lead the good life he must practice it a long time."

Aristotle left a powerful legacy on the law of property, contract, inheritance, possession, crime and punishment and tort.

**CICERO:** Cicero established a bridgehead between ancient and modern legal thought that was to be dominant in Western thinking. Justice is one; it binds all human society, and is based on one law, which is right reason applied to command and prohibition. Cicero's jurisprudence embraced a humanitarian ideal....that what people have always sought is equality of rights before the law. Laws were invented to speak to all men at all times in one and the same voice. He paved the way for identification of law and morality.

**ST. THOMAS AQUINAS:** "Law is defined by St. Thomas as an ordinance of reason for the common good, made by him who has care of the community, promulgated." His definition is an attempt to embrace all the law, the eternal, the natural as well as the human; there is an effort to include what is regarded as ethically necessary. Law is a rule or measure of Acts whereby one is induced to act or restrained from acting . The elements of law...insist that it is a form of reason, holds that it must be made for the common good, by the guardian of the community, and to teach men to lead the good life.

St. Thomas stated several principles that are inherent in the law: Law binds one to Act. Therefore, the first principle of human acts is the reason-modern substitutes for reasons have become utility, authority, experience. A second principle for common law asserts that choice between alternative rules of law shall rest on a deliberate balancing of possible ends and means. Third, the law must be for the common good. It rests on the ethical ideas that laws are rules of conduct which have as their final end the realization of happiness. Since, there are no limits to the good at which law aims, it is not restricted to the good of a particular person but always directed to the common good. Finally laws must be promulgated or made known to the people. Man should be informed of the laws he was expected to obey.

St. Thomas' argument for law as a necessity of human society is entirely an ethical one. The approach today attempts to show law in some sense as an essential constituent of society, generally, altogether apart from its function as an instrument in the promotion of ethical conduct. When the observance of the letter of the law is against the equality of justice and public good it is equitable to disregard it.

**FRANCIS BACON:** For Francis Bacon, there was only one end of law and that was the happiness of the citizens. He asserted that private rights were dependent ultimately for their security upon the preservation of public law extended to everything that affected the well being of the state. In Rome private law was that part which looked to the interests of individuals.

Bacon's ultimate achievement or ideal was that certainty was the primary necessity of law. The best law leaves the least to the discretion of the judge, and this can come about only if the laws are certain. Bacon's first remedy to achieve certainty is the basis of the theory of precedents and is therefore the root of the common law system of case law.

**HOBBS:** Hobbes distinguished law and right as complete opposites to each other. Right is the liberty which the laws leave us. The laws are the restraints by which we agree mutually to abridge one another's liberty. Hobbes emphasized the idea that morality was based on instructed prudence. In thinking of law he thus took his departure from neither the ethical nor the rational - his idea culminated in the doctrine that no positive law can be unjust. He admitted of the validity of ethical rules and conceded that they were anterior to the establishment of the state. Hobbes' idea became one of the most powerful weapons for the analysis of legal phenomena ever devised.

**SPINOZA:** His views contributed to the welfare of our social existence in that they taught social cooperation and contentment . He felt the attainment of virtuous habits is something for each man to achieve for himself if he can. Morality is not the business of the state--which is concerned solely

with security. The roots of law in Spinoza's system is uniformity. He stated that "the moral judgment is determined by what a man would do if he were free to do it," and hence it is only necessary that he should think himself to be free in order to justify moral responsibility. Moral responsibility rests solely on the attitude displayed in so-called "choice".

**LEIBNIZ:** His central idea was that law should be taught both as a science and as a practical discipline. He insisted upon the necessity of a liberal education for the lawyer. When we train students in the law we are instructing them in one of the most vital functions of a culture – "the maintenance and development of a dominant order of society". For Leibniz God is the foundation of all-natural Right, God's existence serves as sufficient guarantee of the highest possible legal and moral condition in the universe. His philosophy was to exalt enlightenment, education and learning. He conceived justice as a communal virtue, that is a virtue which preserves the community. Leibniz defined six types of communities: the marital community, the family community of master and servant, the community of the household, the civil community comprising the city, province and the state and finally the community of God - the church. The aim of the community was to attain happiness. For Leibniz the end of the law emphasized two tasks—one, a proper consideration of the human being and second, the attainment of the common end as the measure of social values.

**LOCKE:** Locke believed he could, through reason, frame a set of moral rules which would be universally applicable. He took the position that human reason needed the assistance of religion in order to work out a system of ethics. At the heart of Locke's theory of civil society was the idea of the law. The great and chief end of men uniting into commonwealths, and putting themselves under government, is the preservation of their property. Law to Locke was a branch of ethics, and laws in their essence were moral rules. He did not think of law as a command but as that which is set up by authority as a rule for the measure of conduct. In Locke's system the capacity of Supreme Power is fiduciary - it establishes a pattern to which behavior should conform--which associates rewards and penalties for conformity or infractions.....the end of law is not to abolish or restrain, but to preserve and enlarge freedom. Where there is no law there is no freedom.

**HUME:** Hume based his studies on human nature. In his system justice serves both an ethical and a sociological function. In ethics ...what is approved is pleasant or promotes human happiness. A legal system to be socially useful must adhere strictly to its rules even at the expense of injustice in individual cases. Hume advanced the contention that public utility is the sole origin of legal justice and the sole foundation of its merit. For example a criminal has fewer rights than an innocent man but he is nevertheless accorded some measure of protection by law. Hume distinguished many of the separate ideas which jurists now find in the concept "LAW". Property in the broad sense employed by Hume embraced the individual's rights to life, liberty and health. Hume's solution of why men obey law is essentially a sociological and not an ethical one. He attempted to show that morality was founded on feeling and not reason. Justice can be understood only on the basis of sympathy for the welfare of human life.

**KANT:** Kant developed his system of law on principles that originate in reason. The Kantian rule became the celebrated injunction: "Every man is free to do that which he wills provided he infringes not the equal liberty of any other man." (Herbert Spencer). Kant's conception of right became what he termed Universal Law of Right: Every action is right which in itself or in the

maxim on which it proceeds, is such that it can exist along with the freedom of the will of each and all in action. Kant made a sharp distinction between ethics and law. Ethics as distinguished from law, does not impose upon me the obligation to make the fulfillment of rights a maxim of my conduct. Kant assigned possession two meanings, physical possession and rational or juridical possession. He stated anyone who would assert the right to a thing as his, must be in possession of it as an object. "The property right is essentially a guarantee of the exclusion of other persons from the use of handling the thing. To enforce this right the holder must be able to assert his right." Kant defines moveable property as everything that can be destroyed. Kant limits the right of taking possession of the soil to the extent of the capacity to defend it. Kant's important contribution is his idea that right is a thing that presupposes a collective will of all united in a relation of common possession. One of his most influential ideas is his theory of contract. Kant calls the transference of property to another its "alienation", and the act of united wills of two persons, by which what belongs to one passes to another, he terms "contract".

Kant held that four juridical acts are involved in every contract--two preparatory; an offer followed by an indication that the offer will be accepted; these two are followed by a promise and an acceptance. In civil law Kant's separation of offer and promise still prevail. By contract, Kant held, "I acquire the promise of another, as distinguished from the thing promised." His concept of the Criminal law turns on the idea of retributive justice. He defined crime as any transgression of the public law which makes him who commits it incapable of being a citizen.

**FICHTE:** For Fichte the basis of law is the idea of the legal relation. The conception of law is the conception of a relation between human beings. He defines this relationship as the compulsion upon each individual to restrict his freedom in recognition of the possibility of the freedom of others. He calls this the "relation of legality". In no sense is jurisprudence to be connected with morality. Jurisprudence is not a branch of ethics. Law merely permits but morality commands. Fichte's law is a law of freedom.

Individuals are free to accept or reject it. The end of law is a community of free beings. All positive laws follow the principle of right. They cannot be arbitrary and they must be such as every rational being would make them. Fichte reached the conclusion that natural law, or a legal relation between men, is not possible except in a commonwealth and under positive law. He asserted to supporting propositions: "all law is purely the law of reason", and "all law is the law of the state". Man separates himself from his citizenship in order to elevate himself with absolute freedom to morality; but in order to do so he becomes a citizen.

**HEGEL:** Hegel emphasized two ideas--will and personality. "Be a person and respect others as persons." From the ideas of will and personality he developed three categories of right -- possession of property, contract and wrongdoing and crime. Hegel's system is based upon a principle of knowledge, reason, which acts universally. The ethical rules which are to guide individuals must be given a universal form.

### **ACCOUNTING SCANDALS BRING ABOUT NEW GUIDELINES AND LEGISLATION**

The past several years have included a number of high-profile corporate scandals: Enron, Tyco International, K-mart, and WorldCom (now MCI). While these are the most glaring, there are many more companies whose shareholders and employees have suffered as stock prices have

fallen, such as Cisco, Nokia, Lucent Technologies, and most internet-related businesses. Here is a list of developments in finance and accounting and a series of corporate accounting scandals on the heels of the Enron debacle that have led to new sweeping accounting guidelines, proposals, and legislation. Each of these developments is discussed below.

### **POINTS OF CONTROVERSY**

During the past decade, the role of financial executives—primarily CFOs—has changed from that of primarily an accountant and controller to that of a “business partner” and “strategist.” Due to the pressures on them in their emerging role as strategic partners, the CFO and finance team can also lose their objectivity and independence. This shift might have prompted the CFOs to use aggressive accounting and reporting practices. A CFO.com survey ([www.cfo.com](http://www.cfo.com) or *CFO Magazine*, August 13, 2002) reveals that 17 percent of all respondents report being pressured to misrepresent their results by their companies' CEOs during the past five years. A key factor in recent corporate scandals was a failure of financial functions to spot the signs of malpractice.

Over the past two years, volumes of shareholder wealth evaporated as the audited financial statements of certain companies were revealed as creative fiction. The most distressing example is the scandal surrounding Enron Corp.: the Houston-based energy trader overstated profits and hid debt from investors for years, its audit committee permitted obfuscation in public disclosures, and auditors at Arthur Andersen (one of the world's “Big Five” accounting firms, a group that also includes Ernst & Young, PricewaterhouseCoopers, Deloitte & Touche, and KPMG) approved Enron's false financial statements. After Enron's malady came to light, Andersen employees went so far as to destroy documents. The fact that Enron's imaginative accounting went on for so long exposes an end-to-end failure of the system — and, predictably, the tab has been left with investors, creditors and employees.

More detailed sources of accounting irregularities and scandals are summarized below.

### **Moving Debt off the Balance Sheet**

The accounting technique made infamous by Enron (and the main reason for its downfall) was its use of special purpose entities (SPE) to move debt off its balance sheet. A lot of debt was carried, but not reflected on its balance sheet. Much of it was collateralized with Enron stock. As the stock price fell, the house of cards came down.

Many U.S. companies have for a long time used special-purpose entities to finance projects in a way that allows tax benefits without visibly impairing balance sheets. This is perhaps the most dangerous accounting gimmick, because it is very difficult to determine from financial filings exactly when a company has entered into these agreements. The lack of disclosure makes it impossible for investors to determine how much the company must pay to fully service its debt or to fulfill other contractual obligations.

### **Earnings "Management" and the Use of Pro Forma Results**

Many companies have used the “complicated accounting ledger domain” to avoid disappointing investors and brokerage analysts from quarter to quarter, potentially at the expense of a long-term focus. Companies use so-called pro forma earnings to spruce up their results. The problem with pro forma results is that they are too often promotional, eliminating the negative and emphasizing

the positive. Companies in the tech sector perfected the practice, but it has spread well beyond Silicon Valley.

### **Overstated Pension Plan Assumptions**

Pension plan accounting is complicated, esoteric and not entirely logical. But what every shareholder needs to understand is that most companies have obligations to fund their pension plan to a certain level. Any shortfall must eventually be made up by contributions from the company's coffers. During the bull market of the past few years, companies were able to cut back on contributions, as gains in the stock market helped keep pension plans healthy. But even as stock prices stumbled, or fell dramatically, many firms kept on predicting robust growth of their pension investments to help boost their bottom line.

Some companies are using rosy projected returns for their employee pension plans to buff their financial statements. Many firms still assume 9 percent to 10 percent annual returns on their pension plans in coming years, when 5 percent would be more realistic. The higher the assumed long-term returns, the lower the annual pension plan contributions a company is required to make in the near term. Instead, money that would have been earmarked for a pension plan accrues to the company's bottom line.

### **Underreporting of Executive Compensation**

Most major companies do not treat the costs of employee stock options as an official expense on income statements. That has contributed to an overstatement of earnings in recent years. When options involve no charge to earnings, they are considered a "cheap" form of compensation--when in fact they represent a cost to shareholders. A recent survey found company after company that would have seen reported earnings slashed by as much as 200 percent had they been forced to expense stock option plans.

### **Revenue Accounting**

Basic accounting practices must be the bedrock of every finance department and one of the most basic issues is revenue recognition — when to recognize revenue, at what amount and the degree of provision for future reversals. Many of the recent failures came from this issue. Enron, acting as a broker between sellers and buyers of energy, took sales credits for the total size of the transaction rather than only the fee involved, which made the company's size and growth rate look much stronger than it really was. Global Crossing and Qwest Communications, among other companies, bought and sold capacity from each other and took sales credit at both ends, overstating both companies' revenues.

### **Expense Accounting**

The basic tenet of the matching principle in accounting is that expenses must be matched with their corresponding revenues. It doesn't always happen — for example, research and development expenditure is written off when incurred even though the product sales to which it relates may occur many years later. However, the accounting intent is to match. WorldCom clearly violated the matching principle by considering the fees paid for line usage bought from local carriers every month as a capital expenditure, not an operating expense.

### **Channel Stuffing**



Another gray area involves “inventory management.” Old tricks include “channel stuffing”—or shifting surplus finished goods to distributors’ shelves. Nothing will destroy a company’s ability to meet analysts’ earnings expectations more than having a warehouse full of unsold goods. Rather than come clean and tell shareholders they have not met sales expectations, some companies are tempted to move their merchandise to the market knowing that much of it is going to come back unsold or will have to be sold at a massive discount. Investors looking for evidence of channel stuffing should look for large changes to stated inventory levels, or an increase in the contingencies set aside for bad accounts.

The most powerful example of the practice was the fall from grace of Al Dunlap, the former head of Sunbeam Corp. He allegedly moved millions of dollars in merchandise onto the hands of distributors and retailers using discounts and other inducements. That, along with the use of cash reserves to pump up the company’s operating earnings, resulted in a record-breaking \$189 million in reported earnings in fiscal 1992. But when the scheme was uncovered, Sunbeam was forced to restate its earnings from the fourth quarter of 1996 to the first quarter of 1998; the SEC alleges that \$60 million of that record-breaking profit was the result of accounting fraud. CFO magazine (January 15, 2002) stated that “Chainsaw” Al Dunlap agreed to pay \$15 million to settle a shareholder lawsuit alleging inflated stock prices. Sunbeam’s auditor at the time was Anderson.

### **Inappropriate Earnings Management Practices**

*Earnings management* includes both legitimate and less than legitimate efforts to smooth earnings over accounting periods or to achieve a forecasted result. It is the responsibility of the audit committee members to identify, by appropriate questioning and their good faith judgment, whether particular earnings management techniques, accounting estimates and other discretionary judgments are legitimate or operate to obscure the true financial position of the company. The line between appropriate earnings management techniques and “cooking the books” can be a blurry one, notwithstanding the plethora of detailed rules that are currently in place to deter malfeasance. If audit committees fail to make this distinction, further intrusive regulation could follow. There will always be a temptation to manage earnings inappropriately because meeting projections and “guidance” suits everyone, from executives whose compensation may be based on earnings-driven performance measures, to holders of options and Wall Street analysts.

The following are some of the techniques, which were being used by some companies inappropriately to manage earnings in response to analyst and market pressure:

- Deliberately overstating one-time “big bath” restructuring charges to provide a cushion to satisfy future Wall Street earnings estimates;
- Misusing acquisition accounting, particularly improper write-offs of acquired in-process research and development, to overstate future earnings inappropriately;
- Over-accruing charges for items such as sales returns, loan losses or warranty costs when the company is profitable and using those reserves to smooth future earnings when the company is not so profitable — known as “cookie jar reserves”;
- Prematurely recognizing revenue — for instance, before a sale is complete, before a product is delivered to a customer or at a time when it is possible that the customer may still terminate, void or delay the sale;
- Improperly deferring expenses to improve reported results;

- Misusing the materiality concept to mask inappropriate accounting treatment.

### **Auditor Independence**

Auditors must recognize that their ultimate client is not management. In fact, they're supposed to serve shareholders. But in practice, auditors are paid by the very companies whose books they're supposed to scrutinize. And in recent years, that relationship has become even more complicated. The Big Four routinely perform lucrative management, information technology, tax and other consulting work for the companies they audit.

According to the Investor Responsibility Research Center (IRRC) ([www.irrc.com](http://www.irrc.com)), a Washington D.C.-based advocacy group for institutional investors, large accounting firms receive just 28 percent of their fees from auditing work. Non-audit fees significantly exceed the amount paid for auditing services.

### **Corporate Governance Issue**

A company's audit committee has a myriad of responsibilities, the most important being to oversee the presentation and honesty of financial statements. Members are appointed by the board of directors. The problem is, many company audit committees include directors who also serve on the executive team. Because management are insiders who are paid out of the funds of the company, there's a need for a check on management. Audit committees comprising directors should not be tied to management in any way. More corporations are complying in the wake of Enron—but until the guidelines become mandatory, some could continue to ignore them.

## **CORPORATE GOVERNANCE**

In the heels of corporate scandals including the Enron debacle in 2002, a series of sweeping changes are being sought, such as forcing boards to have a majority of independent directors, granting audit committees power to hire and fire accountants, banning sweetheart loans to officers and directors, and requiring shareholders' approval for stock option plans.

### **Landmarks in Corporate Governance**

The following is a list of key landmarks that transpired in chronological order, in corporate governance.

#### *November 2001*

**Enron**, one of the world's largest energy companies, admits to irregularities in its accounts between 1997 and 2000, reporting that the special-purpose entities (SPEs) should have been consolidated on its balance sheet, substantially reducing earnings for those years. On December 2, Enron files for bankruptcy.

#### *January 2002*

**Andersen**, the Chicago-based accounting firm and auditor of Enron, admits shredding or deleting thousands of documents relating to Enron. In 2001, Enron paid Andersen \$25 million for audit services and another \$27 million for non-audit services. On June 15, a court finds Andersen guilty of obstructing justice.

### *March 2002*

U.S. telecommunications group WorldCom admits that the SEC is conducting an informal investigation into its accounting practices. Founder and chief executive **Bernie Ebbers** steps down in April, followed by CFO Scott Sullivan in June, amid claims of a \$3.8 billion fraud at the company.

### *April 2002*

**Eliot Spitzer**, the attorney general for the State of New York, presents the results of an investigation into conflicts of interest among Wall Street analysts. He reveals internal e-mails from investment banks showing that analysts denigrated companies in private while issuing public recommendations to buy.

### *July 2002*

The U.S. Congress passes the **Sarbanes-Oxley Act**, the most significant change to U.S. business regulations in 70 years. The Act creates tough new penalties for corporate fraud, prevents accounting firms from offering consulting services to audit clients and places restrictions on financial analysts.

### *January 2003*

The U.K.'s **Higgs Report**, a government-sponsored review of non-executive directors, proposes reforms to corporate governance rules to strengthen the role of independent directors. The Smith Report published at the same time, clarifies the relationships between auditors, boards and audit committees.

### *May 2003*

Investors revolt against **GlaxoSmithKline's pay policy** for CEO Jean-Pierre Gamier, which included a two-year notice period and a generous severance package. This is the first time U.K. shareholders have rejected a compensation package. It signals a new readiness for intervention among institutional investors.

### *July 2003*

**Microsoft** announces that it will henceforth reflect the cost of stock option awards in its accounts, becoming the first large technology company to do so, it will also cease awards of stock options to employees instead awarding restricted stock that would pass into employees' ownership after five years.

### *July 2003*

**Alan Greenspan**, chairman of the Federal Reserve, warns Congress that a "pervasive sense of caution" is stifling entrepreneurial risk-taking investment and job creation. William Donaldson, chairman of the SEC, the chief financial regulator in the U.S., voices concern about "the loss of risk-taking zeal."

### *August 2003*

In his report on corporate governance reforms at MCI (formerly, WorldCom), former SEC chairman **Richard Breeden** recommends 77 measures to prevent corporate governance failure at the company including all board members except the CEO to be independent and one new director to be nominated each year.

*September 2003*

A public uproar over the **NYSE's CEO Richard Glasso's** \$139.5 million payout of accumulated benefits and other savings and additional \$48 million obliged Glasso to resign on September 17, 2002, and changes in the board are expected to follow. Just one month before, SEC Chairman William H. Donaldson had taken on the issue in the bluntest possible terms. "One of the great, as-yet-unsolved problems in the country today is executive compensation and how it is determined," he told a National Press Club audience in August. Regulators and shareholders want compensation committees to explain why CEOs make so much.

*September 2003*

New York State Attorney General Eliot Spitzer, Massachusetts regulators and the SEC are on a rampage against mutual fund firms for allowing illegally market-timed trades. The first to be charged: **Putnam Investments**.

*May, 2004*

The SEC ruled that mutual fund managers must report any personal trading they do in the funds they oversee, counting on greater disclosure to help prevent trading abuses that plunged the industry into scandal last year. In a separate action, the SEC ordered mutual fund companies to clearly inform customers of discounts for which they may qualify; the agency had found that many customers missed out on lower rates they should have gotten. The SEC and the National Assn. of Securities Dealers levied penalties of \$21.5 million on 15 firms, including **Wachovia Securities**, **UBS Financial Services** and **American Express Financial Advisors**, to settle charges that they did not provide breakpoints to eligible customers in 2001 and 2002.

*March 29, 2005*

Regulatory investigations launched by the Securities and Exchange Commission and New York State Attorney General Eliot Spitzer into financial deals **AIG** structured for customers forced **American Insurance Group Inc. (AIG)** Chairman Maurice "Hank" Greenberg to retire, effective either March 30 or 31. Greenberg, 79, is generally credited with building **AIG** into a global insurance powerhouse during his 37 years at the company. But he leaves amid a hornet's nest of controversy. Those deals include transactions related to finite insurance products—a nontraditional insurance offering.

*May 25, 2006*

**Enron** former chief executive **Jeffrey Skilling** and founder **Kenneth Lay** were both found guilty Thursday of conspiracy and fraud in the granddaddy of all corporate fraud cases. On the sixth day of deliberations, a jury of eight women and four men convicted the former executives of misleading the public about the true financial health of Enron, whose collapse in late 2001 symbolized the wave of corporate fraud that swept the United States early this decade. Skilling was found guilty on 19 counts of conspiracy, fraud, false statements and insider trading. He was found not guilty on nine counts of insider trading. Lay was found guilty on all six counts of conspiracy and fraud. In a separate bench trial, Judge Sim Lake ruled Lay was guilty of four counts of fraud and false statements. (Click [here](#) for the defendants' reactions) Both Lay and Skilling could face 20 to 30 years in prison, legal experts say. And Lay will also face an additional hefty term in prison for his conviction in the bank fraud case.

*September 26, 2006*

Former **WorldCom Corp.** chief **Bernard Ebbers** starts a 25-year federal prison sentence on Tuesday for his role in the \$11 billion (â, -8.6 billion) accounting fraud that toppled a company he had built from a tiny telecommunications firm to an industry giant.

*February 14, 2007*

The founder and former chairman of **Take-Two Interactive Software Inc.**, publisher of the “Grand Theft Auto” video games, became the first CEO to be convicted of backdating stock options to boost their value. Companies open themselves up to a host of possible criminal penalties by backdating options, such as falsification of business records, wire fraud, and mail fraud. More than 130 companies are under investigation by U.S. authorities for backdating or otherwise manipulating stock option grants, the biggest corporate-fraud probe in decades. To date, more than 60 executives and directors have lost their jobs.

## **CHAPTER 2**

### **AICPA ETHICS**

#### **LEARNING OBJECTIVES:**

After studying this chapter you will be able to:

1. Differentiate between rulings and principles of the AICPA' Code of Professional Conduct.
2. Briefly describe the six principles.
3. List the eleven rules.
4. Outline ethics rulings on independence.
5. List consulting services prohibited by the Sarbanes-Oxley (SOX) Act of 2002.
6. Outline the standards for tax services
7. Explain disciplinary mechanisms within the profession.
8. List the key features of corporate responsibility law (Sarbanes-Oxley act).

This chapter covers the AICPA's *Code of Professional Conduct*, Statements on Standards for Consulting Services, and the disciplinary systems within the accounting profession. This chapter has six subunits. The first section is a condensed but comprehensive summary of the AICPA Code of Conduct. The second section contains summaries of AICPA Ethics Interpretations and Professional Ethics Rulings under the 11 Rules of Conduct. The third section addresses Statements on Standards for Tax Services. The fourth section lists some of the consulting services prohibited by the Sarbanes-Oxley (SOX) Act of 2002. The fifth section covers disciplinary systems within the profession. The final section outlines the key features of the SOX.

### **AICPA's CODE OF PROFESSIONAL CONDUCT**

It consists of two sections: Principles and Rules. The six principles, which provide the framework for the rules, are goal-oriented and aspirational but nonbinding.

#### **Synopses of the Six Principles**

1. *Responsibilities.* Members should exercise sensitive professional and moral judgments when carrying out their professional responsibilities. Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism. A distinguishing mark of a profession is acceptance of its responsibility to the public.
2. *The Public Interest.* Members should act to benefit the public interest, honor the public trust, and demonstrate commitment to professionalism. The AICPA adopted the ethical standards because a distinguishing mark of a profession is an acceptance of responsibility to the public.

3. *Integrity.* Members should perform all professional responsibilities with the highest sense of integrity to maintain public confidence.
4. *Objectivity and Independence.* A member should maintain objectivity and be free of conflicts of interest. A member in public practice should be independent in fact and appearance when providing attestation services. Objectivity is a state of mind, a quality that lends itself to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest.
5. *Due Care.* A member should follow the profession's technical and ethical standards, strive for improved competence and quality services, and discharge professional responsibility to the best of the member's ability. Members must adequately plan and supervise any activity for which they are responsible.
6. *Scope and Nature of Services.* A member in public practice should follow the Principles of the *Code of Professional Conduct* in determining the nature and scope of services.

### **Synopses of the Eleven Rules**

**Rule 101 — *Independence.*** A member in public practice should be independent when performing professional services as required by standards-setting bodies.

- (1) In this context, rules of the state boards of accountancy, state CPA societies, the Independence Standards Board, the SEC, the General Accounting Office, and other bodies may be relevant.
- (2) Relevant AICPA standards-setting bodies are the Auditing Standards Board (ASB), Accounting and Review Services Committee, and Management Consulting Services Executive Committee. The foregoing bodies are all authorized to promulgate attestation standards.
- (3) The ASB issues Statements on Auditing Standards. Thus, SAS 1 is consistent with the requirement for auditors to maintain an independence in mental attitude. To inspire public confidence, an auditor must not only be independent (intellectually honest) but also be recognized as independent (free of any obligation to, or interest in, the client).
- (4) The fourth general attestation standard likewise requires practitioners to maintain an independence in mental attitude when performing attest engagements.
- (5) Under Statements on Standards for Accounting and Review Services, an accountant may not report on a review of the financial statements of a nonpublic entity if (s)he is not independent.

- (6) According to the AICPA's Statements on Standards for Attestation Engagements, a practitioner must also be independent to examine or apply agreed-upon procedures to prospective financial statements.
- (7) SEC independence regulations were revised in accordance with the Sarbanes-Oxley Act of 2002.
- (a) Audit committees must preapprove the services performed by accountants (permissible nonaudit services and all audit, review, and attest engagements). Approval must be either explicit or in accordance with detailed policies and procedures. If approval is by the latter, the audit committee must be informed, and no delegation of its authority to management is allowed. However, preapproval is not needed for nonaudit services representing less than 5% of the annual amount paid to the accountant if (1) the services were not recognized as nonaudit at the time of the engagement, and (2) the audit committee approves prior to completion of the audit.
  - (b) An issuer must disclose in its proxy statement or annual filing fees paid to the accountant segregated into four categories: (1) audit, (2) audit-related, (3) tax, and (4) all other. The disclosure is for the two most recent years and must describe the services in (2)-(4).
  - (c) The lead and concurring (reviewing) audit partners must rotate every 5 years, with a 5-year time-out period. Other audit partners must rotate every 7 years, with a 2-year time-out.
  - (d) An accountant is not independent if, during the audit and the period of the professional engagement, any audit partner (excluding specialty partners such as tax partners) earns or receives compensation for selling services (excluding audit, review, or attest services) to the audit client.
  - (e) Conflicts of interest. An accounting firm is not independent with respect to an audit client if a former partner, principal, shareholder, or professional employee accepts employment with a client if (s)he has a continuing financial interest in the firm or is in a position to influence the firm's operations or financial policies. Moreover, an accounting firm is not independent if a CEO, CFO, controller, or person in an equivalent position for an issuer was employed by that firm and participated in any capacity in the audit of that issuer during the year before the beginning of the audit.
  - (f) Communications with the audit committee by the accounting firm must include (1) all critical accounting policies and practices; (2) all material alternative accounting policies and practices within GAAP that were discussed with management; and (3) other material written communications with management, such as management representations and schedules of unadjusted audit differences. These communications must be prior to filing the audit report with



the SEC.

**COMMENTARY:** Compilation engagements are documented in compilation reports, however, if they lack independence, the report must be modified and disclose the lack of independence.

**Rule 102 — *Integrity and Objectivity.*** A member shall maintain objectivity and integrity, be free of conflicts of interest, not knowingly misrepresent facts, and not subordinate his/her judgment to others when performing professional services.

**COMMENTARY:** Integrity can often be difficult to interpret due to faulty omissions or commissions that are often a result of honest error or a lack of integrity.

**Rule 201 — *General Standards.*** A member shall comply with the following:

- (1) Undertake only those services that the member can reasonably expect to complete with professional competence.
- (2) Exercise due professional care when performing professional services.
- (3) Adequately plan and supervise performance of professional services.
- (4) Obtain sufficient relevant data to provide a reasonable basis for conclusions in relation to any professional service.
  - (a) **Proficiency.** Auditors must have adequate technical training and proficiency. According to SAS 1, both education and experience, as well as proper supervision, are necessary. Objectivity and independent judgment are necessary in the preparation of the audit opinion. An auditor must have experience and seasoned judgment to accept final responsibility for an audit opinion.
  - (b) Due professional care must be exercised in the planning and performance of the audit and the preparation of the report. According to SAS 1, an auditor should have the degree of skill commonly possessed by other auditors and must exercise it with reasonable care and diligence. An auditor should also exercise professional skepticism. The exercise of due professional care allows the auditor to obtain reasonable assurance. Absolute assurance is impracticable due to characteristics of fraud such as concealment by collusion, withheld or falsified documentation, or management override of controls.

**Rule 202 — *Compliance with Standards.*** A member who performs professional services must comply with promulgated standards.

**Rule 203 — *Accounting Principles.*** A member shall not express an opinion or make an affirmative statement about conformity with GAAP or state that (s)he is not aware of any

material modifications that should be made to achieve conformity with GAAP, given any departure from an accounting principle promulgated by bodies designated by the AICPA Council to establish such principles that has a material effect on the financial statements or data taken as a whole. However, if the member can demonstrate that, due to unusual circumstances, the financial statements or data would have been misleading without a departure from GAAP, the member can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons compliance with the principle would be misleading.

**Rule 301 — Confidential Client Information.** A member in public practice cannot disclose confidential client information without the client's consent. However, this Rule does not affect a CPA's obligations

- (1) To comply with a validly issued and enforceable subpoena or summons or with applicable laws and regulations
- (2) To discharge his/her professional obligations properly under Conduct Rules 202 and 203
- (3) To cooperate in a review of the CPA's professional practice under AICPA or state CPA society or board of accountancy authorization
- (4) To initiate a complaint with or respond to any inquiry made by the professional ethics division, trial board of the AICPA, or an investigative or disciplinary body of a state society or board of accountancy

**COMMENTARY:** The rule recognizes that the confidentiality of client information is not always privileged information. An auditor can be held accountable to respond to a subpoena or court order.

**Rule 302 — Contingent Fees.** A contingent fee is established as part of an agreement under which the amount of the fee is dependent upon the finding or result.

- (1) The receipt of contingent fees by a member is prohibited when the member performs an audit, a review, a compilation when the report will be used by third parties and the report does not disclose the CPA's lack of independence, or an examination of prospective financial information.
- (2) A contingent fee is not permitted for preparing an original or amended tax return or claim.
- (3) Fees are not deemed to be contingent if fixed by courts or other public authorities, or in tax matters, if they are based on the results of judicial proceedings or the findings of governmental agencies.

**COMMENTARY:** Contingency fees are considered to be infringements of a CPAs ability to be independent. However, if the contingency fee is determined by a government agency, court or public authority then it is not considered to be detrimental to the CPA's independence.

**Rule 501 — *Acts Discreditable.*** A member shall not commit an act that is discreditable to the profession. Withholding as a result of nonpayment of fees for a completed engagement certain information contained in the client's books would not be considered such an act. The member's duty to return client records is absolute. However, the duty to return other information not related to the client's books and records is not absolute. Although the client's financial information may be incomplete as a result, if fees for a completed engagement have not been paid, such other information may be withheld. Thus, the duty to return is conditional upon payment of fees with respect to information such as adjusting, closing, combining, or consolidating entries and information normally found in books of original entry and general or subsidiary ledgers.

**Rule 502 — *Advertising and Other Forms of Solicitation.*** A member in public practice shall not seek to obtain clients by advertising or other forms of solicitation done in a false, misleading, or deceptive manner. Solicitation through coercion, overreaching, or harassing conduct is prohibited.

**Rule 503 — *Commissions and Referral Fees.*** A member in public practice shall not accept a commission for recommending or referring to a client any product or service, or for recommending or referring any product or service to be supplied by a client, if the member performs for that client an audit, a review, a compilation when a third party will use the financial statement and the report does not disclose the CPA's lack of independence, or an examination of prospective financial information.

- (1) Permitted commissions must be disclosed to any person or entity to whom the member recommends a product or service.
- (2) A member who accepts a referral fee for recommending services of a CPA or who pays a referral fee to obtain a client must disclose the arrangement to the client. A referral fee is compensation for recommending or referring any service of a CPA to any person. Referral fees are not considered commissions.

**Rule 505 — *Form of Organization and Name.*** A member may practice public accounting only in a form of organization allowed by law or regulation that conforms with resolutions of the AICPA Council.

- 1) The firm name must not be misleading.
- 2) Names of past owners may be included in the name of the successor organization.
- 3) A firm cannot designate itself as "members of the AICPA" unless all CPA owners are members.

**Definitions.** The following are summaries of selected ethics definitions.

- *Attest engagement* — One that requires independence.
- *Attest engagement team* — Participants in the engagement, including partners who perform concurring or second reviews and all employees and contractors retained by the firm, but excluding specialists.
- *Close relatives* — Parents, siblings, or nondependent children.
- *Covered member* — (1) An individual on the attest engagement team or who is able to influence the engagement, (2) a partner or manager who provides at least 10 hours of nonattest services to a client, (3) a partner in the office where the lead engagement partner primarily practices in relation to the engagement, (4) the firm (including its benefit plans), and (5) an entity that can be controlled by the foregoing parties.
- *Financial institution* — An entity that normally makes loans to the public.
- *Firm* — A form of organization permitted by law or regulation that is consistent with the resolutions of the AICPA’s Council and practices public accounting. The term “firm” includes partners except for the purposes of Rule 101.
- *Immediate family* — A covered member’s spouse, equivalent of a spouse, or dependents.
- *Individual in a position to influence the attest engagement* — One who (1) evaluates the attest engagement partner or recommends his/her compensation; (2) directly supervises or manages that partner, including all levels above such supervisor or manager; (3) consults with the engagement team about technical or industry-related issues; or (4) participates in or oversees quality control for the engagement, including all senior levels.
- *Joint closely held investment* — An investment in any entity or property by the member and (1) the client, (2) the client’s officers or directors, or (3) an owner who can exercise significant influence if the investment permits such parties to control the entity or property.
- *Key position* — One in which an individual is primarily responsible for (1) significant accounting functions supporting material financial statement components, or (2) for the preparation of the statements. A key position is also one able to influence financial statement content, for example, director, CEO, CFO, general counsel, chief accountant, director of internal audit, or treasurer.
- *Normal lending procedures, terms, and requirements* — Those reasonably comparable with those for similar loans to others from the financial institution in the period when a commitment was made for a loan to a covered member.
- *Period of the professional engagement* — This period starts at the earlier of when the

member signs an initial engagement letter to perform attest services or begins to perform. It continues for the entire professional relationship and does not end with the issuance of a report and start again with the next year's engagement. It ends with the later of notification by the member or client or by issuance of a report.

*Note:* Common law does not recognize privileged communication between a CPA and client. In some states and in some federal tax matters, however, the auditor may be protected by a privilege created by statute.

## **INTERPRETATIONS AND RULINGS**

Interpretations and rulings are presented for each of the eleven Rules. The Interpretations are in outline format followed by brief summaries of the Rulings.

### **Rule 101 — *Independence.***

#### **A. Interpretation 101-1 (Interpretation of Rule 101)**

1. Independence is impaired if, during the period of the professional engagement, a covered member

- 1) Had a direct financial interest or a material indirect financial interest in the client.
- 2) Was a trustee of any trust or executor of any estate that had a direct or material indirect financial interest in the client AND (1) the covered member's position conferred investment authority, (2) the trust/estate owned more than 10% of the client, or (3) the interest of the trust/estate was more than 10% of its total assets.
- 3) Had any joint, closely held investment that was material to the covered member.
- 4) Had a loan to or from a client, any of its officers or directors, or an individual owning at least 10% of the client. Exceptions are grandfathered loans and certain other permitted loans.

2. Independence is impaired if, during the period of the professional engagement, a firm partner or professional employee, such individual's immediate family, or a group of these individuals acting together owned more than 5% of the client.

3. Independence is impaired if, during the period covered by the financial statements or during the period of the professional engagement, a firm, or partner or professional employee of the firm, was

- 1) Also associated with the client as an officer, director, employee, promoter, underwriter, or voting trustee, or in a management capacity.
- 2) A trustee for any pension or profit-sharing trust of the client.

4. An individual may have been employed by the client or associated with the client in a capacity

listed in Interpretation 101-3. Independence is impaired if (1) the employment or association overlapped the engagement, and (2) the individual participated in the engagement or was able to influence it. Independence is also impaired if the individual was otherwise a covered member relative to the client unless the individual dissociates from the client by

- 1) Ending any relationship described in Interpretation 101-3.
- 2) Disposing of any direct or material indirect financial interest in the client,
- 3) Collecting or repaying any loans to or from the client (except as permitted under the rules for grandfathered loans),
- 4) Ceasing participation in any client-sponsored employee benefit plan (unless the client is legally required to allow participation and the individual pays the full cost), and
- 5) Liquidating or transferring any vested benefits in a client plan as soon as legally permitted. This is not required if a large penalty would result.

5. A covered member's immediate family is subject to Rule 101. However, independence is not impaired solely because

- 1) An immediate family member was employed by the client in a non-key position.
- 2) As part of his or her employment, an immediate family member of one of the following participated in a benefit plan that is a client, is sponsored by a client, or invests in a client if the plan is offered to all similarly situated employees:
  - a) A partner or manager who provided at least 10 hours of nonattest services to the client
  - b) Any partner in the office where the lead engagement partner primarily practiced in relation to the engagement

6. Independence is impaired if an individual who is participating on the engagement team, who can influence the engagement, or who is a partner in the office where the lead engagement partner primarily practices, has a close relative who

- 1) Occupied a key position with the client,
- 2) Held a material financial interest in the client that was known to the individual, or
- 3) Held a financial interest that permitted significant influence over the client.

7. Because listing all situations in which an appearance of a lack of independence might arise is not feasible, members also should consider whether a relationship between the member and the client or an associate of the client might lead to a reasonable conclusion that independence is lacking.

8. Under Rule 101, materiality is determined by aggregating the interests of the covered member and his/her immediate family.

## **B. Interpretation 101-2 (Employment or association with attest clients)**

A former partner or professional employee (POPE) of the firm who is employed by or associated with an attest client in a key position impairs the firm's independence unless

- (1) Amounts due to the former POPE are not material to the firm, and the payment formula is fixed during the payout period. Retirement benefits may also be adjusted for inflation, and interest may be paid.
- (2) The former POPE cannot influence the firm's operations or financial policies.
- (3) Once employed or associated with the client, the former POPE does not participate or appear to participate in, and is not associated with, the firm, regardless of compensation, for example, by consulting, use of an office, or inclusion in membership lists.
- (4) The engagement team considers the risk that the POPE's knowledge of the audit plan will reduce audit effectiveness.
- (5) The firm assesses when team members can effectively deal with the POPE.
- (6) The engagement is reviewed to determine whether team members maintained professional skepticism in dealings with the POPE.

A team member's consideration of employment or association with the client impairs independence absent prompt reporting to the firm and removal from the team.

### **C. Interpretation 101-3 (Performance of nonattest services)**

- 1) Before a member and his or her firm performs nonattest services (such as tax or consulting services) for an attest client, (s)he must comply with Interpretation 101-3 to avoid impairment of independence. If the applicable independence rules of an authoritative body (e.g., the SEC or a state board of accountancy) are more restrictive, the member must comply with them.
- 2) General Requirements. Performing management functions or making management decisions impairs independence, but providing advice, research, and recommendations does not.
  - a) The member should be satisfied that the client will make an informed judgment about the results of nonattest services and be able to designate a competent employee (preferably a senior manager) to oversee the services; evaluate their adequacy and results; make management decisions and perform management functions; accept responsibility for results; and establish and maintain internal controls.
  - b) The member and client should agree about the objectives and limitations of the engagement, the services to be performed, and mutual responsibilities.

The understanding should be documented in writing. This requirement does not apply to routine services, those provided before the client became an attest client, and those performed before 2005.

- 3) General activities that impair independence include
  - a) Exercise or possession of authority over transactions on a client's behalf
  - b) Preparing source documents evidencing transactions
  - c) Custody of client assets
  - d) Supervision of client employees in normal activities
  - e) Determining member recommendations to be implemented
  - f) Reporting to the board on behalf of management
  - g) Service as a stock transfer or escrow agent, registrar, or general counsel
- 4) Examples of nonattest services that may not impair independence if the general requirements are met include bookkeeping, disbursement, benefit plan administration (e.g., preparing participant account valuations and statements), investment advisory, finance, executive search, business risk consulting, and IT (but designing a system or operating a network impairs independence).
- 5) An appraisal, valuation, or actuarial service impairs independence if the results are material to the financial statements and significant subjectivity is involved. For example, a valuation for a business combination, but not an actuarial valuation for a pension liability, usually involves significant subjectivity. Furthermore, appraisal, valuation, and actuarial services not performed for financial statement purposes do not impair independence if the other requirements of Interpretation 101-3 are satisfied.
- 6) Internal audit assistance services impair independence unless the member ensures that the client understands its responsibility for internal control and managing the internal audit function. Accordingly, the member must ensure that the client designates a competent individual to oversee internal audit; determines the scope, risk, and frequency of its activities; evaluates its findings; and evaluates the adequacy of its procedures.
  - a) The member should be satisfied that the client's governing body is informed about his/her role so that it can develop proper guidelines.
  - b) The member may assist in preliminary risk assessment, preparation of the audit plan, and recommendation of priorities.
  - c) Independence is impaired if the member, among other things, performs an ongoing monitoring or control function, determines which control recommendations are adopted, reports to the board on behalf of management, approves or is responsible for the overall audit work plan, or is a client employee or manager (or the equivalent).
  - d) Services that are normal extensions of the external audit scope (e.g., confirming receivables or analyzing balances) and engagements under the



attestation standards do not impair independence.

- 7) SEC regulations promulgated under the Sarbanes-Oxley Act of 2002 prohibit auditors of public companies from performing certain nonaudit services:
- a) Appraisal and other valuation services.
  - b) Designing and implementing financial information systems.
  - c) Internal auditing or actuarial functions unless the firm reasonably concludes it will not examine such work during the financial statement audit.
  - d) Management services.
  - e) Human resource services.
  - f) Bookkeeping if the firm also conducts an audit.
  - g) Expert services not pertaining to the audit.
  - h) Investment banking or advisory services.
  - i) Broker-dealer services.

**D. Interpretation 101-4 (Honorary directorships and trusteeships of non-for-profit organizations)**

A member in an honorary position will not impair independence if (s)he is associated with the financial statements of a not-for-profit organization that (s)he allows to use his/her name on letterheads and circulated materials to lend prestige to the organization. However, the member should not be able to vote or participate in board or management decisions and should be identified as an honorary director or trustee.

**E Interpretation 101-5 (Loans from financial institution clients)**

- 1) Grandfathered loans. Independence is not impaired by (a) unsecured loans that are not material to the covered member's net worth or (b) secured loans (including home mortgages) provided that the loans were obtained from a financial institution under its normal lending procedures, terms, and requirements. However, loans are grandfathered only if
- a) They were kept fully current at all times after the borrower became a covered member, and the terms did not change in a way not allowed in the original agreement.
  - b) They were obtained
    - i) From a financial institution before it became a client requiring independence;
    - ii) From a client not requiring independence and were sold to one requiring independence;
    - iii) Prior to February 5, 2001 and satisfied the requirements of the Interpretation then effective;
    - iv) During the period from February 5, 2001 through May 31, 2002, and

- the covered member complied with SEC regulations then effective;  
or
- v) After May 31, 2002 from a client requiring independence before the borrower became a covered member relative to the client.
- 2) The date a grandfathered loan is obtained is the date a loan commitment or line of credit was granted.
- 3) The collateral for a secured grandfathered loan must equal or exceed the remaining balance of the loan during its term. If the loan exceeds the value of collateral, this excess must not be material to the covered member's net worth.
- 4) In the case of a limited partnership in which covered members have a combined interest exceeding 50% or a general partnership in which covered members control the partnership, the loan is ascribed to each covered member based on his/her legal liability as a limited or general partner. Even if this amount is zero, renegotiating the loan or entering into a new loan that is not an "other permitted loan" is deemed to impair independence.
- 5) Other permitted loans. The following loans are permitted even if the client is one for which independence is required, provided that they are obtained under normal lending procedures, terms, and requirements and are always kept current:
- a) Automobile loans and leases collateralized by the automobile
  - b) Loans fully collateralized by the cash surrender value of insurance
  - c) Loans fully collateralized by cash deposits
  - d) Credit cards and overdraft reserve accounts with an aggregate outstanding balance of \$10,000 or less on a current basis by the payment due date

#### **F. Interpretation 101-6 (Effect of actual or threatened litigation)**

- 1) Litigation between client and member
- a) Independence is impaired when litigation is begun by
    - i) The present management alleging deficiencies in audit work
    - ii) The member alleging management fraud or deceit
  - b) An expressed intention by the management to litigate against the member for alleged deficiencies in audit work will impair independence if it is probable that the claim will be filed.
  - c) Independence is not impaired when the threatened or actual litigation is not related to the audit and the amount is not material. Examples include disputes over billings for services and results of tax advice.
- 2) Litigation by security holders (primary litigation)
- a) Shareholders may bring a class action against the client company or its

management without impairing independence. Often the member and the client are both defendants, but if cross-claims are filed, adverse interests may arise and independence may be impaired.

- b) Cross-claims filed by the client to protect a right to legal redress in the event of a future adverse decision do not impair independence in the absence of a significant risk of a material settlement.
  - c) Cross-claims against the member by an underwriter do not impair independence if no similar claims are made by the client.
  - d) Cross-claims filed against the member by persons who are also officers or directors of other clients do not usually impair independence with respect to the other clients.
- 3) Other third-party litigation
- a) Litigation may be commenced against the member by a creditor or insurer that alleges reliance on financial statements of the client. This litigation does not affect independence if the client is not the plaintiff or is a nominal plaintiff. Independence may be impaired if the third party (e.g., an insurance company) is also a client of the member and there is a significant risk of a material settlement.
- 4) If a reasonable person would conclude that litigation poses an unacceptable risk of impairment of independence, the member should disengage or disclaim an opinion for lack of independence.

**G. Interpretation 101-8 (Financial interests in nonclients having investor or investee relationships with the client)**

- 1) Independence is impaired when
- a) A member has a direct or material indirect financial interest in the nonclient if the investee is material to the investor.
  - b) A member has a material interest in a nonclient who is an immaterial investee of the client investor.
  - c) A member can exercise significant influence over a nonclient investor who has an immaterial interest in the client investee.
- 2) Independence is not impaired if a member did not know about the financial interests described above.

**H. Interpretation 101-10 (Effect on independence of relationships with entities included in governmental financial statements)**

- 1) A financial reporting entity's basic financial statements (BFS) issued in accordance with U.S. GAAP include the government-wide statements (reporting governmental activities, business-type activities, and discretely

presented component units), fund financial statements (reporting major funds, nonmajor governmental and enterprise funds, internal service funds, blended component units, and fiduciary funds), and other entities disclosed in the notes of the BFS. Disclosures should be made in the notes to the BFS about related organizations, joint ventures, jointly governed organizations, etc.

2) An auditor of the BFS of the entity must be independent of it. Nevertheless, a primary auditor need not be independent with respect to any fund, component unit, or disclosed entity if (s)he explicitly relies on reports by other auditors on such fund, etc. Moreover, (s)he need not be independent of a disclosed entity if the reporting entity is not financially accountable for it and the required disclosure does not include financial information.

a) Neither the covered member nor a member of his/her immediate family should occupy a key position with a fund, component unit, or disclosed entity.

3) An auditor of the statements of a fund, component unit, or disclosed entity who is not auditing the primary government must be independent only of the statements reported on. Nevertheless, the covered member or a member of his/her immediate family may not occupy a key position with the primary government.

#### **I. Interpretation 101-11 (Independence and attest engagements)**

1) This interpretation applies only to engagements, other than examinations and reviews, covered by SSAEs when the use of the report is restricted.

2) The following covered members and their immediate families must be independent in relation to the responsible party:

a) An individual on the attest engagement team.

b) An individual who directly supervises or manages the attest engagement partner.

c) Individuals who consult with the attest engagement team about technical or industry-related matters specific to the engagement.

3) Independence is impaired if the firm had a material relationship with the responsible party prohibited under Rule 101.

4) A firm may provide nonattest services to the responsible party that are prohibited due to an association as an employer, director, officer, promoter, voting trustee, or pension trustee. However, if they do not relate directly to the subject matter

of the attest engagement, independence is not impaired.

- 5) When the party that engages the firm is not the responsible party or associated therewith, individuals on the attest engagement need not be independent of the party that engaged the firm. However, they should consider their responsibilities regarding conflicts of interest.

#### **J. Interpretation 101-12 (Independence and cooperative arrangements with clients)**

- 1) Independence is impaired if, during the engagement or at the time of expressing an opinion, a member's firm had any material cooperative arrangement with the client.
  - a) A cooperative arrangement means joint participation in a business activity.

#### **K. Interpretation 101-14 (Effect of APSs on independence rules)**

- 1) The independence rules for an alternative practice structure (APS) apply to all structures in which "the 'traditional firm' engaged in attest services is closely aligned with another organization, public or private, that performs other professional services." For example, a CPA firm may be sold to another entity having subsidiaries or divisions such as a bank, an insurance company, a broker-dealer, and entities providing nonattest services (tax, management consulting, etc.). The owners and employees of the CPA firm become employees of one of the parent's subsidiaries or divisions and may offer nonattest services. Moreover, the original owners of the acquired CPA firm create a new CPA firm to offer attest services. The majority ownership of the new firm must be held by CPAs, but it leases employees, offices, and equipment from the parent, which may also provide advertising and perform back office functions. The owners of the new CPA firm pay a negotiated amount for such services.
- 2) In the example above, the term "member or a member's firm" includes the new CPA firm (the firm) and any leased or employed person or entity.
- 3) When two or more new CPA firms are "closely aligned" with another organization, issues arise as to whether owners of one perform services or have significant economic interests in another. Thus, if an owner of one performs services for another, (s)he is deemed to be an owner of both. Similar issues arise regarding managers (leased or otherwise).
- 4) In an APS, persons and entities included in "member or a member's firm"

are closely aligned with other persons and entities. The latter include direct superiors who can directly control the activities of an owner or manager. A direct superior is an immediate superior who can direct the activities of an owner or manager so as to be able to directly or indirectly derive a benefit. Direct superiors are subject to the same independence rules as persons included in “member or a member’s firm.”

5) An indirect superior (defined to include a spouse, cohabitant, or dependents of an indirect superior) is one or more levels above a direct superior and does not have a direct reporting relationship with the new CPA firm’s owners and managers. Less restrictive standards apply to indirect superiors and to other entities in the consolidated group.

- a) These parties may not have a relationship involving a direct financial interest or an indirect material financial interest with an attest client of the new CPA firm that is material.
  - b) These parties also should not exercise significant influence over the attest client.
  - c) Other entities in the consolidated group and their employees may not be promoters, underwriters, directors, officers, or voting trustees of an attest client. However, with the foregoing exceptions, indirect superiors and other consolidated entities may provide services to an attest client that a member could not without impairing independence.
- 6) The new CPA firm may not perform a service requiring independence for any entity in the consolidated group.
- 7) Independence is impaired with regard to an attest client who exercises significant influence over, or has a material investment in, the parent.
- 8) Referrals within the consolidated group are subject to the provisions regarding conflicts of interest.

## **Ethics Rulings on Independence — Rule 101.**

### **Independence Not Impaired**

- 
- 1. Membership in a client trade association provided the member is not an officer or a director, or in a position equivalent to management.
  - 2. The member provides advisory services for a client.

3. A member is designated to serve as an executor of an individual's estate that owns the majority of the stock of a corporation. Independence with respect to the corporation is not impaired unless the member serves as executor.
4. A CPA is a director of a federated fund-raising organization, e.g., United Way, and audits local charities receiving funds. Independence with respect to the charities is not impaired unless the organization exercises managerial control over them.
5. A CPA has a pro rata share of securities in a social club, unless (s)he is on the governing board or takes part in management.
6. A member serves on a citizens' committee advising a county and on another committee advising the state where the county is located.
7. A CPA's ownership of shares in a mutual fund that holds some of a client's shares. Independence becomes impaired if the indirect interest becomes material or the CPA has significant influence over the mutual fund.
8. A member and a client bank serve in a co-fiduciary capacity with respect to an estate, provided the estate assets are not material.
9. A client financial services company has custody of a covered member's assets (not in depository accounts); services are provided under its normal procedures, terms, and requirements; and any assets subject to risk of loss are immaterial to the member's net worth.
10. Independence is not impaired if a member audits an employee benefit plan unless a partner or professional employee of the firm had significant influence over the employer(s); was in a key position with the employer; or was associated with the employer as a promoter, underwriter, or voting trustee.
11. The mere servicing of a member's loan by a client financial institution.
12. When a covered member has a checking or savings account, certificate of deposit, or money market account in a client financial institution, provided the amounts are fully insured. Uninsured amounts do not impair independence if they are immaterial or if they are reduced to an immaterial balance within 30 days. A firm's independence is not impaired if the probability is remote that the depository institution will have financial difficulty.
13. Membership in a client credit union if all the following are met:
  1. Each member qualifies to join the credit union without regard to the professional services.
  2. The member's vote must not have significant influence over policies.
  3. Loans must be limited to grandfathered and other permitted loans made under normal procedures, terms, and requirements.
  4. Any deposits with the credit union must meet the conditions in number 12.
14. A member's service as treasurer of a mayoral campaign organization. Independence is

impaired with respect to the organization itself, but not the political party of the candidate or the city.

15. If a member leases property to or from a client under an operating lease with terms comparable to those of similar leases, and all amounts are paid in accordance with the lease. If, however, the lease is a capital lease, independence would be impaired unless the lease is tantamount to a permitted loan.
16. Inclusion of a clause in an engagement letter providing for member indemnification by the client.
17. A predispute agreement with a client to use alternative dispute resolution (ADR) techniques.
18. Commencement of an ADR proceeding. However, Interpretation 101-6 applies, and independence may be impaired if the proceeding is sufficiently similar to litigation because the parties have material adverse interests, e.g., in binding arbitration.
19. Performing extended audit services regarding reporting on internal control if management assumes responsibility for control, and management does not rely on the member's work as the primary basis for its assertion.

---

### **Independence Impaired**

---

1. Acceptance of more than a token gift from a client.
2. The member signs or cosigns checks or purchase orders or exercises general supervision to ensure compliance as a representative of a creditors' committee in control of a debtor corporation.
3. The member serves as an elected legislator in a municipal body at the same time as (s)he is performing an audit of that body.
4. With respect to a foundation and an estate if the member is a trustee of the foundation that is the beneficiary of the estate.
5. A CPA serves on the board of directors of a client nonprofit social club.
6. A CPA is on a client's committee that administers the deferred compensation program.
7. A CPA is a director of a company and an auditor of the profit sharing and retirement trust.
8. A CPA owns an immaterial amount of bonds in a municipal authority (considered a loan).
9. With respect to a common interest realty association (CIRA) as a result of owning or leasing realty. But no impairment occurs if the CIRA has governmental functions, the CPA's annual assessment is immaterial, sale of the CIRA or common assets does not result in a distribution to the member, CIRA creditors have no recourse to the member, and the CPA is not a manager or employee of the CIRA.



10. A CPA owns an investment club that holds a client's shares (a direct financial interest).
11. A member of a university's faculty audits the student senate fund (the member will audit functions performed by the university, which is his/her employer).
12. If billed or unbilled fees, or a note arising from the fees, for client services rendered more than 1 year before the current year's report date remain unpaid. Not applicable if the client is in bankruptcy.
13. When a CPA is on the board of directors of a fund-raising organization; unless the position is honorary.
14. If a member's retirement or savings plan has a direct or material indirect financial interest in a client.
15. A direct financial interest in a client whether or not the interest is placed in a blind trust.
16. For both partnerships, when two limited partnerships have the same general partner and a member has a material interest in one of the partnerships.
17. The use of partners, shareholders, and professional employees from another firm that is not independent of the client. Their work can be used in the same manner as that of internal auditors.
18. A CPA's service on a client's advisory board unless it
  - a. Is in fact advisory.
  - b. Has no authority to make management decisions, and
  - c. Is distinct from the board of directors with few common members.
19. A CPA who is not independent may not express an audit opinion or issue a review report, but (s)he may issue a compilation report disclosing the lack of independence.
20. A member who is a general partner in a partnership that invests in a client. If the member is a limited partner, independence would not be impaired unless the interest in the client is material.
21. If a member is a limited partner in a limited partnership (LP) and the client is a general partner, the member lacks independence with respect to the LP, the client if the client has a material interest in the LP, and a subsidiary of the LP if the member's interest is material.
22. A member's joint interest in a vacation home with a principal shareholder of a client will be considered a "joint closely held business investment" (even if it is only intended for personal use) if the interest is material.
23. Unless a loan from a nonclient subsidiary of a client parent is "grandfathered" or "permitted" under Interpretation 101-5, it impairs independence with respect to the parent. However, a loan from a nonclient parent does not impair independence with respect to a client subsidiary if the subsidiary is not material to the parent.

24. If a report was issued when a member was independent, (s)he may reissue it or consent to its use when his/her independence is impaired provided (s)he did not do any post-audit work (not including reading subsequent statements or inquiries of subsequent auditors) while not independent.
25. Agreeing to indemnify a client for losses arising from lawsuits, etc., that relate directly or indirectly to client acts impairs independence.
26. When a member has significant influence over an entity with significant influence over a client.
27. Independence is impaired with respect to the client and the plan if a member participates in a client's health and welfare plan. But, if participation arises from permitted employment of the immediate family of the covered member, no impairment occurs provided the plan is offered to all employees in equivalent positions.
28. When investment contributions by a member are invested or managed by a nonclient firm that offers financial services products (FSP5) that allow the member to direct his/her investment, independence is impaired if the FSP is invested in that client, whether or not the member directs the investment (a direct interest). If the member does not have authority to direct the investment, and the FSP invests in the client, an indirect interest results. If it is material to the member, independence is impaired. If the FSP invests only in the member's clients, the interest is direct, and independence is impaired.
29. A member's performing investment management or custodial services for an employee benefit plan sponsored by a client impairs independence regarding the plan. Independence is also impaired regarding the client-sponsor of a defined benefit plan if the assets involved are material to the plan or sponsor. Independence is not impaired regarding a client-sponsor of a defined contribution plan if the member performs no management functions and does not have custody of the assets.
- 

**Rule 102— *Integrity and Objectivity.***

- a. Interpretation 102-1. Knowing misrepresentations of facts include knowingly making materially false and misleading entries in financial statements or records, failing to make corrections in materially false or misleading statements or records when the member has such authority, or signing a document with materially false and misleading information.
- b. Interpretation 102-2. If a conflict of interest arises that could impair objectivity When a member performs a professional service, Rule 102 will not prohibit the service if disclosure is made to and permission is obtained from the appropriate parties. However, an independence objection cannot be overcome by disclosure and consent. The following are examples of situations in which objectivity may be impaired:

- 1) Performing litigation services for the plaintiff when the defendant is a client
  - 2) Providing tax or personal financial planning (PFP) services to both parties to a divorce
  - 3) Suggesting that a PFP client invest in a business in which the member has an interest
  - 4) Providing tax or PFP services to family members with conflicting interests
  - 5) Performing consulting services for a client that is a major competitor of a company in which the member has a significant financial interest, occupies a management position, or exercises influence
  - 6) Serving on a board of tax appeals that hears matters involving clients
  - 7) Providing services in connection with a real estate purchase from a client
  - 8) Referring a tax or PFP client to a service provider that refers clients to the member under an exclusive arrangement
  - 9) Referring a client to a service bureau in which the member or a partner in the member's firm has a material interest
- c. Interpretation 102-3. In dealings with an employer's external accountant, a member must be candid and not knowingly misrepresent facts or fail to disclose material facts.
- d. Interpretation 102-4. If a member and his/her supervisor have a dispute about statement preparation or recording of transactions, the member should do nothing if the supervisor's position is an acceptable alternative and does not materially misrepresent the facts.
- 1) If the member concludes that a material misstatement would result, (s)he should consult the appropriate higher level(s) of management and should consider documenting relevant matters.
  - 2) If, after such discussions, the member concludes that action was not taken, (s)he should consider the continuing relationship with the employer, the obligation to communicate with third parties, and the desirability of consulting legal counsel.
- e. Interpretation 102-5. Educational services, e.g., teaching and research, are professional services subject to Rule 102.

- f. Interpretation 102-6. Professional services involving client advocacy are governed by the Code, e.g., Rules 201, 202, 203, and 102. If independence is required for a service, Rule 101 also applies.
  - 1) If the service stretches the bounds of performance standards, exceeds sound and reasonable professional practice, or compromises credibility, and therefore poses an unacceptable risk of injury to the member's or the firm's reputation, the propriety of accepting the engagement should be considered.

### **Ethics Rulings on Integrity and Objectivity — Rule 102.**

- 
- 1. A member in public practice should not ordinarily serve as a director of a bank if it engages in significant transactions with his/her clients. The rules on confidential client information and conflict of interest may be violated.
  - 2. The use of the CPA designation by a member not in public practice if it implies the member is independent of his/her employer is an intentional misrepresentation. The member should clearly indicate the employment title in any transmittal in which (s)he uses the CPA designation. If the member states that a financial statement conforms with GAAP, Rule 203 applies.
  - 3. A member is a director of a federated fund-raising organization from which local charities that are clients (with significant relationships with the member) receive funds. If the significant relationship is disclosed and consent is received from the appropriate parties, performance of services not requiring independence is allowed.
  - 4. A company approaches a member to provide PFP or tax services for its executives, who consent to the arrangement and are aware of any relationship the member has with the company. The result of the services could be recommendations adverse to company interests. Rule 102 and Rule 301 do not prohibit acceptance of the engagement if the member believes (s)he can perform objectively. The member should consider informing all parties of possible results. The member should also consider responsibilities to the company and to the executives under Rule 301.
  - 5. Service as an expert witness does not constitute client advocacy.
  - 6. If a member is an officer, director, or principal shareholder of an entity having a loan to or from a client, independence is impaired with respect to that client if the member controls the entity, unless the loan is specifically permitted. If the member does not control the entity, the guidance in the interpretations should be considered. Disclosure and consent may therefore overcome the conflict-of-interest objection and permit the performance of the professional service for the client, provided the member believes it can be done with objectivity.
- 

### **Rule 201 — General Standards.**

- a. Interpretation 201-1. A member should have the competence to complete professional services according to professional standards and with reasonable care and diligence.
  - 1) Competence involves technical qualifications and the ability to supervise and evaluate the work. It relates to knowledge of standards, techniques, and technical subject matter and to the ability to exercise sound judgment.
  - 2) In some cases, additional research and consultation is a normal part of performing services. However, if a member cannot gain sufficient competence, (s)he should suggest the engagement of someone competent.

**Rule 202 — *Compliance with Standards. No interpretations.***

**Rule 203 — *Accounting Principles.***

- a. Interpretation 203-1. Professional judgment should be used in determining what constitutes unusual circumstances requiring a departure from established principles to prevent the financial statements or data from being misleading. Events that may justify such departures are new legislation or evolution of a new form of business transaction. An unusual degree of materiality or conflicting industry practices ordinarily do not justify departures.
- b. Interpretation 203-2. The body designated to establish accounting principles for nongovernmental entities is the FASB. Unsuperseded SFASs, ARB5, and APB Opinions are accounting principles within the meaning of Rule 203. The GASB, with respect to Statements of Governmental Accounting Standards, is the designated body for state and local governments. The Federal Accounting Standards Advisory Board (FASAB), with respect to its Statements of Federal Accounting Standards adopted and issued beginning in March 1993, is the designated body for federal governmental entities.
- c. Interpretation 203-4. Rule 203 applies to all members regarding any affirmative statement about GAAP conformity.
  - 1) Thus, Rule 203 applies to members who sign client reports to regulatory agencies, creditors, or auditors that contain such representations.

**Ethics Rulings on General and Technical Standards — Rules 201, 202, 203.**

- 
- 1. The member has a responsibility to make sure that a subcontractor (s)he has selected has the professional qualifications and skills needed.

2. A member is not required to be able to perform all the services of a newly hired systems analyst. But the member must be qualified to supervise and evaluate the specialist's work.
  3. If a member submits financial statements in his/her capacity as an officer, shareholder, partner, director, or employee to a third party, the member's relationship to the entity should be clearly communicated. No implication of independence should be made. Rule 203 applies if the communication states that the financial statements conform with GAAP. If the member acts as a public practitioner or submits the statements on his/her public practitioner's letterhead, (s)he should comply with applicable standards, including disclosure of lack of independence.
  4. Rule 203 applies to members who perform litigation support services.
- 

### **Rule 301 — *Confidential Client Information***

- a. Interpretation 301-3. The rule against disclosure of confidential information does not prohibit the review of a member's professional practice pursuant to a purchase, sale, or merger of the practice. However, appropriate precautions (e.g., a written confidentiality agreement) should be taken so that the prospective buyer does not disclose any confidential client information.

### **Rule 302 — *Contingent Fees.***

- a. Interpretation 302-1. An example of circumstances in which a contingent fee is not allowed is the preparation of an amended income tax return for a client claiming a refund of taxes because of an inadvertent omission of a proper deduction.
  - 1) Examples of circumstances in which a contingent fee is allowed include
    - a) Representation of a client in an examination by a revenue agent
    - b) Representation of a client who is obtaining a private letter ruling
    - c) Filing an amended tax return claiming a refund based on a tax issue that is the subject of a test case involving a different taxpayer

### **Ethics Rulings on Responsibilities to Clients — Rules 301 and 302.**

---

1. A member may use an outside service to process tax returns provided (s)he takes all necessary precautions to prevent the release of confidential information.
2. A member may give a client's profit and loss percentages to a trade association provided the member has permission from the client.
3. A member who withdrew from an engagement because of fraud on a client's tax return should suggest that the successor obtain permission from the client to reveal the reasons for

leaving.

4. A member may use a records-retention agency to store client records, but the responsibility for confidentiality still lies with the member.
5. A member may work for a municipality in verifying that proper amounts of taxes have been paid by the area businesses. Members are prohibited from releasing any confidential information obtained in their professional capacity.
6. A member may reveal a client's name without permission unless disclosure would constitute release of confidential information.
7. A member performing a consulting service must maintain the confidentiality of nonclient outside sources. If the client does not agree to this arrangement, the member should withdraw.
8. Knowledge and expertise obtained from a prior engagement may be used on behalf of a current client provided that the details of the other engagement are not revealed without permission.
9. A member who prepares a joint tax return should consider both spouses to be clients. After the spouses have divorced, the member will not violate Rule 301 if (s)he releases information to either spouse. But the legal implications should be discussed with an attorney.
10. A contingent fee or commission is considered to be received when the performance of related services is complete and the fee or commission is determined.
11. Rule 301 does not prohibit a member from releasing confidential client information to the member's liability insurance carrier solely to assist the defense against a claim against the member.
12. A member may make disclosures necessary to initiate, pursue, or defend legal or alternative dispute resolution proceedings. Rule 301 does not prohibit compliance with laws or regulations.
13. A member who provides investment advisory services for an attest client for a percentage of the investment portfolio violates Rule 302 unless the fee is a specified percentage of the portfolio, the dollar amount of the portfolio is determined at the beginning of each quarterly (or longer) period and is adjusted only for the client's additions or withdrawals, and the fee arrangement is not renewed more often than quarterly.
14. Providing investment advisory services to the owners, officers, or employees of an attest client or to a nonattest client employee benefit plan sponsored by an attest client for a contingent fee does not violate Rule 302. Referring for commission the products or services of a nonclient or a nonattest client to the foregoing parties does not violate Rule 503 if the commission is disclosed to them. However, the member should consider the possible conflict of interest and also Rule 301.
15. See Ethics Ruling 25 under Rule 503.

## **Rule 501 — Acts *Discreditable***

- a. Interpretation 501-1. Client records must be returned after a client demands them even if fees have not been paid. This ethical standard applies even if the state in which the member practices grants a lien on certain records in his/her possession.
  - 1) Client records are defined as “any accounting or other records belonging to the client that were provided to the member by or on behalf of the client.”
  - 2) However, “a member’s workpapers — including, but not limited to, analyses and schedules prepared by the client at the request of the member — are the member’s property, not client records, and need not be made available.”
  - 3) Moreover, the duty to return is not absolute regarding certain other information. Examples include adjusting, closing, combining, and consolidating entries; information usually found in the journals and ledgers; and tax and depreciation carryforward information. When the engagement is complete, this information should be made available upon request in the medium in which it is requested if it exists in that medium. But information need not be converted from a nonelectronic format to an electronic one. Furthermore, the information need not be provided if all fees due the member have not been paid.
- b. Interpretation 501-2. When a court or administrative agency has made a final determination that a member has violated an antidiscrimination law, (s)he is deemed to have committed an act discreditable.
- c. Interpretation 501-3. In a governmental audit, failure to adhere to applicable audit standards, guides, procedures, statutes, rules, and regulations is an act discreditable to the profession unless the report discloses the failure and the reasons therefore.
- d. Interpretation 501-4. Negligently making, or permitting or directing another to make, materially false and misleading entries in the financial statements or records; negligently failing to correct materially false and misleading statements when the member has such authority; or negligently signing, or permitting or directing another to sign, a document with materially false and misleading information is an act discreditable.
- e. Interpretation 501-5. A member must follow GAAP and the requirements of governing bodies, commissions, or regulatory agencies when preparing financial statements or related information or in performing attest services for



entities subject to their jurisdiction. A material departure from the requirements is an act discreditable unless the member discloses the reasons.

- f. Interpretation 501-6. Solicitation or knowing disclosure of May 1996 or later CPA examination questions or answers is an act discreditable.
- g. Interpretation 501-7. Failing to comply with laws regarding timely filing of personal or firm tax returns or timely remittance of taxes collected for others is an act discreditable.

**Rule 502 — *Advertising and Other Forms of Solicitation.***

- a. Interpretation 502-2. False, misleading, or deceptive acts are prohibited because they are against public interest. These prohibited activities include
  - 1) Creating false expectations of favorable results
  - 2) Implying the ability to influence any court, regulatory agency, or similar body
  - 3) Representing that specific services will be performed for a stated fee when it is likely at the time of the representation that the fees will be substantially increased and the client is not advised of the possibility
  - 4) Other representations that would cause a reasonable person to misunderstand or be deceived
- b. Interpretation 502-5. Members are permitted to render services to clients of third parties. If the third party obtained its clients through advertising, the members must ascertain that all promotional efforts were within the Rules of Conduct. Members must not do through others what they are prohibited from doing themselves.

**Rule 503 — *Commissions and Referral Fees. No interpretations.***

**Rule 505 — *Form of Organization and Name.***

- a. According to the relevant AICPA Council Resolution, a member may practice public accounting only in a firm or organization with certain characteristics.
  - 1) If such an entity performs any audit under the SASs, a review under the SSARs, or an examination of prospective information under the SSAEs or holds itself out as a firm of CPAs, an entity must have the following attributes:
    - a) CPAs must own a majority of the firm in terms of financial interests and voting rights.
    - b) A non-CPA owner, including an investor or commercial enterprise,

must be actively engaged in providing services to clients as his/her/its principal occupation.

- c) A CPA must have ultimate responsibility for all services provided.
  - d) A non-CPA owner must have a baccalaureate degree.
  - e) Non-CPA owners cannot hold themselves out to be CPAs, must abide by the Code, must complete the work-related CPE requirements, and are ineligible for AICPA membership.
  - f) Owners must own their equity in their own right.
  - g) Ownership must be transferred to the firm or to other qualified owners within a reasonable time if the owner ceases to be actively engaged in the firm.
- 2) The characteristics of all other entities are considered to be whatever is legally permissible except as indicated in 3) below.
- 3) If a firm or organization not meeting the foregoing requirements performs compilations under SSARs, a CPA must have ultimate responsibility for any such services and for each business unit performing such services. Moreover, any compilation report must be signed individually by a CPA.
- b. Interpretation 505-2. A member in the practice of public accounting may own an interest in a separate business that performs the services for which standards are established. If the member, individually or with his/her firm or members of the firm, controls the separate business (as defined by U.S. GAAP), the entity and all its owners and employees must comply with the Code. Absent such control, the member, but not the separate business, its other owners, and its employees, would be subject to the Code.
- c. Interpretation 505-3. The overriding focus of the Council Resolution, the Code, and other AICPA requirements is that CPAs remain responsible, financially and otherwise, for the attest work performed to protect the public interest. However, in the context of alternative practice structures (APSs), CPAs may own the majority of financial interests in the attest firm, but substantially all revenues may be paid to another entity in return for services and the lease of employees, equipment, etc. Nevertheless, given the previously mentioned safeguards, if the CPA-owners of the attest firm remain financially responsible under state law, they are deemed to be in compliance with the financial-interests requirement of the Resolution.

## **Ethics Rulings on Other Responsibilities and Practices — Rules 501 -503, and 505.**

---

1. A firm may arrange with a bank to collect notes issued by a client in payment of fees.
2. A CPA employed by a firm with one or more non-CPA practitioners must obey the Rules of Conduct. If the CPA becomes a partner, (s)he is responsible for compliance with the Rules of Conduct by all associated practitioners.
3. A CPA who teaches a course is responsible for determining that promotional efforts are within Rule 502.
4. A member not in public practice who is controller of a bank may use the CPA title on bank stationery and in paid advertisements.
5. A member who is an attorney and a CPA may use a letterhead with both titles on it.
6. A member interviewed by the press should observe the Rules of Conduct and not provide information that the member could not publish.
7. A member may serve as a director of a consumer credit company if (s)he does not audit the company and avoids conflicts of interest.
8. Although members may share an office, have the same employees, etc., they should not use a letterhead with both their names unless a partnership exists.
9. CPA firms that wish to form an association are not allowed to use the title of an association (e.g., Smith, Jones & Associates) because the public may believe a true partnership exists instead of an association. Each firm should use its own letterhead indicating the others as correspondents.
10. A CPA and a non-CPA who dissolve their partnership should sign an audit report, after dissolution, in a way not implying a partnership.
11. The title “nonproprietary partner” should not be used by someone who is not a partner because it is misleading.
12. A member may have his/her own CPA practice and be a partner of a public accounting firm all other members of which are noncertified.
13. A partnership may continue to practice using the managing partner’s name as the firm name after (s)he withdraws. “And Company” should be added to the partnership name.
14. If a CPA forms a partnership with a non-CPA, the CPA is responsible for the non-CPA’s violation of the Code.
15. A firm may use an established firm name in different states even though the roster of partners differs.
16. When two partnerships merge, they may retain a title that includes a retired or former

partner's name.

17. A newsletter, tax booklet, etc., not prepared by the member or member's firm (member) may be attributed to the member if the member has a reasonable basis to believe the information attributed to the member is not false, misleading, or deceptive.
18. If a CPA in public practice forms a separate business that centralizes billing services for physicians, the CPA must comply with the Rules of Conduct because this service is of a type performed by public accountants.
19. CPA firms that are associated for joint advertising and other purposes should practice under their own names and indicate the association in other ways.
20. A CPA is not required to give the client a prepared tax return if the engagement to prepare the return is terminated prior to completion. Only the records originally provided by the client must be returned.
21. The designation "Personal Financial Specialists" may only be used on a letterhead when all partners or shareholders have the AICPA-awarded designation. However, the individual members holding the designation may use it after their names.
22. A member is permitted to purchase a product and resell it to a client. Any profits collected are not considered a commission because the member had title to the product and assumed the risks of ownership.
23. A member may contract with a computer hardware maintenance servicer to support a client's computer operations and charge a higher fee to the client than the servicer charges the member.
24. A member's spouse may provide services to the member's attest client for a contingent fee or refer products or services for a commission to or from the member's attest client, provided the spouse's activities are separate from the member's practice and the member is not significantly involved. However, a conflict of interest issue may arise.
25. A CPA may not refer for commissions products to clients through distributors and agents when the CPA is performing any of the services described in Rule 503. If the services are not being provided by the CPA, (s)he may refer the products provided (s)he discloses the commissions to the clients
26. Individuals associated with a client may be involved in an internal dispute, and each may request client records and other information. The CPA is under an obligation to supply certain information specified by Interpretation 501-1. This obligation is satisfied by turning over any required information to the designated client representative.
27. A CPA in partnership with non-CPA5 may sign the firm name to a report and below it affix his/her name with the CPA designation. However, it must be clear that the partnership does not consist entirely of CPAs.
28. Unless permitted by contract, if the relationship of a member who is not an owner of a firm is terminated, (s)he may not take or retain originals or copies from the firm's client files or

proprietary information without permission.

29. See Ethics Ruling 14 under Rule 302.

---

## **CONSULTING SERVICES PROHIBITED BY SARBANES-OXLEY ACT OF 2002**

Title II of the Sarbanes-Oxley Act of 2002 prohibits most “consulting” services outside the scope of practice of auditors.

(a) These services are prohibited even if pre-approved by the issuer’s audit committee.

(b) Prohibited services include:

- Bookkeeping and related services,
- Design and implementation of financial information systems,
- Appraisal or valuation services (including fairness opinions and contribution-in-kind reports), (*Note:* The valuations relate to financial statement items and not valuations per se.)
- Actuarial services,
- Internal audit outsourcing, *Note:* “Operational” internal audits are allowed.
- Services that provide any management or human resources,
- Investment or broker/dealer services, and
- Legal and “expert services unrelated to the audit.”
- Any other service that the board determines, by regulation, is impermissible.

(c) Services Not Prohibited. Firms, however, may provide tax services (including tax planning and tax compliance) or others that are not listed, provided the firm receives pre-approval from the board. However, certain tax planning products, like tax avoidance services, may be considered prohibited nonaudit services.

## **STANDARDS FOR TAX SERVICES**

The AICPA has issued eight Statements on Standards for Tax Services. The statements are enforceable under the AICPA’s *Code of Professional Conduct*.

### **SSTS No. 1 — *Tax Return Positions***

- a. An AICPA member should not recommend a position unless (s)he has a good faith belief that the position has a realistic possibility of being sustained if challenged. A member may reach such a position on the basis of well-reasoned articles or treatises or pronouncements of the taxing authority.
- b. A member should not prepare or sign a return if (s)he knows it takes a position that cannot be recommended as stated in a. above.

- c. Despite a. and b., a member may recommend a position that is not frivolous (knowingly advanced in bad faith and improper) if (s)he advises disclosures. The member may prepare or sign a return containing such a position if the position is properly disclosed.
- d. A member should advise the taxpayer of possible penalties associated with the recommended tax return position.
- e. A member should not recommend a position that
  - 1) Exploits the taxing authority's audit selection process, or
  - 2) Is advanced solely to obtain leverage in the bargaining process.
- f. A member has the right and responsibility to be an advocate for the taxpayer. A taxpayer has no obligation to pay more taxes than legally owed.

**SSTS No.2— *Answers to Questions on Returns***

- a. A member should make a reasonable effort to obtain appropriate answers to all questions on a tax return before signing as preparer.
- b. Examples of reasonable grounds for omitting an answer
  - 1) Information is not readily available, and the answer is insignificant with respect to taxable income or loss or the tax liability.
  - 2) Genuine uncertainty exists as to the meaning of the question in relation to the particular return.
  - 3) The answer to the question is voluminous, and the return states that the data will be supplied upon examination.
- c. A taxpayer is not required to explain on the return the omission of an answer when reasonable grounds exist for the omission. The member should consider whether the omission causes the return to be incomplete.

**SSTS No. 3— *Certain Procedural Aspects of Preparing Returns***

- a. A member may rely without verification on information provided by the taxpayer or third parties. Reasonable inquiries should be made if information appears to be incorrect, incomplete, or inconsistent on its face or on the basis of other facts known. Prior returns should be consulted if feasible.
- b. Inquiries should be made to determine whether the taxpayer has met requirements to maintain books, records, or documentation to support deductions.
- c. A member who prepares a return should consider information known from another taxpayer's return if it is relevant, its consideration is necessary, and its use does not violate any law or rule of confidentiality.

**SSTS No.4— *Use of Estimates***

- a. A member may use the taxpayer's estimates if it is impracticable to obtain exact data, and the estimates are reasonable under the facts.
- b. Estimates should be presented so as not to imply greater accuracy than exists.
- c. The taxpayer is responsible for providing the estimated data.
- d. Appraisals and valuations are not considered estimates.

**SSTS No.5— *Departure from a Position Previously Conducted in an Administrative Proceeding or Court Decision***

- a. The treatment of an item as determined in an administrative proceeding or a court decision does not restrict the recommendation of a different tax treatment in later years, unless the taxpayer is bound to a specified treatment in the later year.

**SSTS No.6— *Knowledge of Error: Return Preparation***

- a. The member should inform the taxpayer upon becoming aware of an error in a previously filed return or that the taxpayer did not file a required form.
- b. The member should recommend measures to take.
- c. The member is not obligated to inform the taxing authority and may not do so without the taxpayer's permission, unless required by law.
- d. If the member is requested to prepare a return when the taxpayer has not corrected a previous year's error, the member should consider whether to continue a professional relationship with the taxpayer or withdraw.
- e. If the member prepares the current return, the member should take reasonable steps to ensure that the error is not repeated.

**SSTS No.7— *Knowledge of Error: Administrative Proceedings***

- a. The responsibilities are the same as stated in SSTS No. 6 except that they relate to representation of a taxpayer in an administrative proceeding.
- b. The taxpayer's agreement must be obtained to disclose the error to the taxing authority.
- c. Errors include a position on a return that no longer meets these standards (SSTS No. 1) because of retroactive legislation, judicial decisions, or administrative

pronouncements. An error does not include an item with an insignificant effect.

### **SSTS No. 8— *Form and Content of Advice to Clients***

- a. When providing tax advice to a taxpayer, a member should use judgment to ensure that the advice reflects professional competence and meets the taxpayer's needs.
- b. When advising or consulting on tax matters, the member should follow SSTS No. 1.
- c. A member is not obligated to communicate with the taxpayer when subsequent developments affect previous advice. However, (s)he is obligated to do so when helping to implement the plans associated with the advice or when undertaking the obligation by specific agreement.
- d. Tax advice can be in any form. However, important, unusual, or complicated transactions should be in writing.

NOTE: Members may use a trade name as long as it is not deceptive or misleading. "Pay Less" may be construed as misleading for a tax service.

### **DISCIPLINARY SYSTEMS WITHIN THE PROFESSION**

- 1. The AICPA's disciplinary mechanisms include the Professional Ethics Division and a joint trial board..
  - a. The Professional Ethics Division investigates ethics violations. It imposes sanctions in less serious cases. For example, it may require an AICPA member to take additional CPE courses as a remedial measure.
  - b. More serious infractions come before a joint trial board panel, which can acquit, admonish (censure), suspend, or expel a member. It may also take such other disciplinary, remedial, or corrective action as it deems to be appropriate. The *CPA Letter* publishes information about suspensions and expulsions.
    - 1) A decision of a trial board panel may be appealed to the full trial board. The determination of this body is conclusive.
    - 2) Upon the member's exhaustion of legal appeals, automatic expulsion without a hearing results when a member has been convicted of, or has received an adverse judgment for,
      - a) Committing a felony
      - b) Willfully failing to file a tax return
      - c) Filing a fraudulent tax return on the member's or a client's behalf
      - d) Aiding in preparing a fraudulent tax return for a client



- 3) Automatic expulsion also occurs when a member's CPA certificate is revoked by action of any governmental agency, e.g., a state board of accountancy.
- 4) Expulsion from the AICPA or a state society does not bar the individual from the practice of public accounting.
  - a) A valid state-issued license is required to practice.
  - b) Thus, violation of a state code of conduct promulgated by a board of accountancy is more serious than expulsion from the AICPA because it may result in revocation of the CPA certificate.

c. Joint Ethics Enforcement Program (JEEP)

- 1) The AICPA and most state societies have agreements that permit referral of an ethics complaint either to the AICPA or to a state society.
- 2) The AICPA handles matters of national concern, those involving two or more states, and those in litigation.
  - a) JEEP also promotes formal cooperation between the ethics committees of the AICPA and of the state societies.

2. The SEC, IRS, and PCAOB may also discipline accountants.

- a. The SEC may seek an injunction from a court to prohibit future violations of the securities laws. Moreover, under its Rule of Practice 2(e), the SEC may conduct administrative proceedings that are quasi-judicial.
  - 1) Pursuant to such proceedings, it may suspend or permanently revoke the right to practice before the SEC, including the right to sign any document filed by an SEC registrant, if the accountant
    - a) Does not have the qualifications to represent others
    - b) Lacks character or integrity
    - c) Has engaged in unethical or unprofessional conduct
    - d) Has willfully violated, or willfully aided and abetted the violation of, the federal securities laws or their rules and regulations
  - 2) Suspension by the SEC may also result from

- a) Conviction of a felony, or a misdemeanor involving moral turpitude
  - b) Revocation or suspension of a license to practice
  - c) Being permanently enjoined from violation of the federal securities acts
- 3) Some Rule 2(e) proceedings have prohibited not only individuals but also accounting firms from accepting SEC clients.
- 4) Under the Securities Law Enforcement Act of 1990, the SEC may impose civil penalties in administrative proceedings of up to \$100,000 for a natural person and \$500,000 for any other person. Furthermore, the SEC may order a violator to account for and surrender any profits from wrongdoing and may issue cease-and-desist orders for violations.
- b. The IRS may prohibit an accountant from practicing before the IRS if the person is incompetent or disreputable or does not comply with tax rules and regulations.
  - 1) The IRS may also impose fines.
- c. The PCAOB was established by the Sarbanes-Oxley Act of 2002.
  - 1) A firm's registration application must contain information about a firm's quality control and a description of all actions pending against it. This information may have a great effect on enforcement actions and potential punishments. Moreover, the firm must give consent to cooperate with PCAOB investigations.
  - 2) The PCAOB has rule-making authority regarding quality control, ethics and auditing standards. These rules, especially those governing quality control, will have great relevance to enforcement actions.
  - 3) The PCAOB will inspect large firms annually and report violations to the SEC and state authorities. All attestation engagements, notably those in litigation, may be reviewed. The inspection also involves a quality control assessment. Furthermore, the inspection report must include the firm's response. The firm then has twelve months to correct the reported weaknesses.
  - 4) The PCAOB has substantially the same investigatory scope with respect to accountants as the SEC. The PCAOB may request that the SEC issue subpoenas to third parties, and it may deregister any uncooperative firm.
  - 5) The PCAOB has no injunctive power, but it may institute administrative proceedings. It may seek disassociation of a person from a registered firm, suspension (temporary or permanent) of the firm's registration, or a penalty of up to \$15 million. The extreme cases in which the harshest penalties may be imposed include repeated instances of negligent misconduct. By contrast, the SEC may impose the severest punishments when the firm has engaged in just

one instance of highly unreasonable conduct.

3. State boards of accountancy and state CPA societies also have codes of ethics and/or rules of conduct.
  - a. State boards are governmental agencies that license CPAs to use the designation “Certified Public Accountant” and prohibit non-CPAs from performing the attest function. They can suspend or revoke licensure through administrative process.
    - 1) Like the AICPA, state boards have trial boards to conduct administrative hearings.
  - b. State societies are voluntary, private organizations that can admonish, suspend, or expel members.

NOTE: A CPA may not claim to be endorsed by the Institute. A member may, however, state that (s)he is a member.

**CORPORATE RESPONSIBILITY LAW (SARBANES-OXLEY ACT)**  
**([www.whitehouse.gov/infocus/corporateresponsibility/](http://www.whitehouse.gov/infocus/corporateresponsibility/))**

President George W. Bush signed the Sarbanes-Oxley Act of 2002 (Public Law 107-204) on Tuesday, July 30, 2002. Congress presented the act to the president on July 26, 2002, after passage in the Senate by a 99-0 vote and in the House by a 423-3 margin.

As enacted, the law will directly impact the following groups:

1. CPAs and CPA firms auditing public companies;
2. Publicly traded companies, their employees, officers, and owners—including holders of more than 10 percent of the outstanding common shares. This category would include CPAs employed by publicly traded companies as chief financial officers (CFOs) or in the finance department;
3. Attorneys who work for or have as clients publicly traded companies; and
4. Brokers, dealers, investment bankers and financial analysts who work for these companies.

The Act changes how publicly traded companies are audited, and reshapes the financial reporting system. This Act adopts tough new provisions to deter and punish corporate and accounting fraud and corruption, ensures justice for wrongdoers, and protects the interests of workers and shareholders.

This law improves the quality and transparency of financial reporting, independent audits, and accounting services for public companies. It also:

- Creates a Public Company Accounting Oversight Board ([www.pcaobus.org](http://www.pcaobus.org)) to enforce professional standards, ethics, and competence for the accounting profession;
- Strengthens the independence of firms that audit public companies;
- Increases corporate responsibility and the usefulness of corporate financial disclosure;
- Increases penalties for corporate wrongdoing;
- Protects the objectivity and independence of securities analysts; and
- Increases Securities and Exchange Commission resources.

Under this law, CEOs and chief financial officers must personally vouch for the truth and fairness of their company's disclosures. And those financial disclosures will be broader and better than ever before.

Corporate officials will play by the same rules as their employees. In the periods when workers are prevented from buying and selling company stock in their pensions or 401 (k)s, corporate officials will also be banned from any buying or selling.

Corporate misdeeds will be found and punished. This law authorizes new funding for investigators and technology at the SEC to uncover wrongdoing. The SEC will now have the administrative authority to bar dishonest directors and officers from ever again serving in positions of corporate responsibility. The penalties for obstructing justice and shredding documents are greatly increased.

## Specifics

### New Public Company Accounting Oversight Board (PCAOB)

- The law establishes a five-member accounting oversight board that is subject to Securities and Exchange Commission (SEC) oversight.
- Though the board oversees accounting firms, only two members of the board may be CPAs.
- The SEC will appoint the board.
- Duties of the board include registering public accounting firms that prepare audit reports; and establishing or adopting auditing, quality control, ethics and independence standards.
- The board also inspects, investigates and disciplines public accounting firms and enforces compliance with the act.
- **Registration with the Board Is Mandatory.** For public accounting firms, foreign or domestic, that participate in the preparation or issuance of any audit report with respect to a public company. Registration and annual fees collected from each registered CPA firm will go towards the costs of processing and reviewing applications and annual reports.
- **Seven-Year Record Retention Requirement.** PCAOB must adopt a rule to require registered CPA firms to prepare and maintain audit work papers and other information

related to an audit for at least seven years in sufficient detail to support the conclusions reached in the audit report. (A separate criminal provision requires retention of all audit and review workpapers for five years from the end of the fiscal year in which the audit or review was completed.)

- **Cooperation with CPA Groups.** The board will cooperate with professional accountant groups and advisory groups to increase the effectiveness of the standards setting process. (The PCAOB may cooperate, but authority to set standards rests with the PCAOB, subject to SEC review.)
- **Annual Inspections.** Inspection of registered public accounting firms shall occur annually for every registered public accounting firm that regularly provides audit reports for more than 100 issuers (at least once every three years for registered firms that audit fewer than 100 issuers).
- **Investigations.** The board may investigate any act, omission or practice by a registered firm or an individual associated with a registered firm for any possible violation of the act, the board's rules, professional standards, or provisions of the securities laws relating to the preparation and issuance of audit reports.
  - (a) The board may require testimony or documents and information (including audit work papers) from a registered firm or individual associated with a registered firm or in the possession of any other person.
- Sanctions for violations that the board finds may include:
  - (a) Suspension or revocation of a registration;
  - (b) Suspension or bar of a person from further associating with any registered public accounting firm;
  - (c) Limitations on the activities of a firm or person associated with the firm; and
  - (d) Penalize the firm up to \$2 million per violation, up to a maximum of \$15 million.
  - (e) Individuals employed or associated with a registered firm who violate the act can face penalties that range from required additional continuing professional education (CPE) or training, disbarment of the individual from further association with any registered public accounting firm, or even a fine up to \$100,000 for each violation, up to a maximum of \$750,000.
  - (1) A portion of the penalties collected will go to accounting scholarships.
- **Funding.** The law also provides independent funding for the Financial Accounting Standards Board (FASB). While the SEC and American Institute of CPAs (AICPA) both have recognized FASB as the standard setting body for accounting principles, federal authority to issue auditing, quality control, ethics and independence standards may seriously impact the AICPAs' role in official pronouncements.
  - (a) **Source.** The budget for the board and FASB will be payable from "annual accounting support fees" set by the board and approved by the Commission. The fees will be collected from publicly traded companies and will be determined by dividing the average monthly equity market capitalization of the company for the preceding fiscal year by the average monthly equity market capitalization of all such companies for that year.

### Other Requirements for CPA Firms

- **Audit Reports Require Concurring Partner Review.** Requires a concurring or second partner's review and approval of all audit reports and their issuance.
- **"Revolving Door" Employment of CPAs with Audit Clients Is Banned.** A registered CPA firm is prohibited from auditing any SEC registered client whose chief executive, CFO, controller or equivalent was on the audit team of the firm within the past year.
- **Audit Partner Rotation Required.** Audit partners who either have performed audit services or been responsible for reviewing the audit of a particular client must be rotated every five consecutive years. CPAs should read carefully the requirements for rotation of both the partner-in-charge and the concurring review partner for certain organizational constraints.
  - (a) **No Firm Rotation Requirement.** Firm rotation is not required. However, the U.S. Comptroller General will study and review the potential effects of mandatory rotation and will report its findings to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.
- **CPA Firms Are Required to Report Directly to the Audit Committee.**
- **CPA Firm Consolidations to Be Studied.** The U.S. Comptroller General will conduct a study analyzing the impact of the merger of CPA firms to determine if consolidation leads to higher costs, lower quality of services, impairment of auditor independence, or lack of choice.
- **Corporate and Criminal Fraud Accountability.** Changes to the securities laws can penalize anyone found to have destroyed, altered, hid or falsified records or documents to impede, obstruct or influence an investigation conducted by any federal agency, or in bankruptcy, with fines or up to 20 years imprisonment, or both.
- **Current Requirements for Audit Firms.** Accountants are required to maintain all audit or review workpapers for a period of five years from the end of the fiscal period in which the audit or review was concluded.
- **Additional Rules.** The law requires the SEC to promulgate rules and regulations on the retention of any and all materials related to an audit, including communications, correspondence and other documents created, sent or received in connection with an audit or review.
  - (a) **Penalties.** For violating the requirement or the rules that will be developed will result in a fine, or up to 10 years imprisonment, or both.

### Internal Control Report.

Under Section 404 of the act, management must establish and document internal control procedures and include in the annual report a report on the company's **internal control over financial reporting**. This report is to include

1. A statement of management's responsibility for internal control;

2. Management's assessment of the effectiveness of internal control as of the end of the most recent fiscal year;
3. Identification of the framework used to evaluate the effectiveness of internal control (such as the report of the Committee of Sponsoring Organizations);
4. A statement about whether significant changes in controls were made after their evaluation, including any corrective actions; and
5. A statement that the external auditor has issued an attestation report on management's assessment.

Because of Section 404, two audit opinions are expressed: one on **internal control** and one on the **financial statements**. The auditor must attest to and report on management's assessment.

The auditor must evaluate whether the structure and procedures

- Include records accurately and fairly reflecting the firm's transactions.
- Provide reasonable assurance that transactions are recorded so as to permit statements to be prepared in accordance with GAAP.

The auditor's report also must describe any material weaknesses in the controls. The evaluation is not to be the subject of a separate engagement but be in conjunction with the audit of the financial statements.

#### Of Note to Industry Members—Requirements for Corporations, Their Officers and Board Members

- **No Lying to the Auditor.** The act makes unlawful for an officer or director or anyone acting for a principal to take any action to fraudulently influence, coerce, manipulate or mislead the auditing CPA firm.
- **Code of Ethics for Financial Officers.** The SEC is mandated to issue rules adopting a code of ethics for senior financial officers.
- **Financial Expert Requirement.** The SEC is required to issue rules requiring a publicly traded company's audit committee to be comprised of at least one member who is a financial expert.
- **Audit Committee Responsible for Public Accounting Firm.** The Act vests the audit committee of a publicly traded company with responsibility for the appointment, compensation and oversight of any registered public accounting firm employed to perform audit services.

**NOTE:** The Act requires that the audit committee of a public company hire and pay the external auditors.

- **Audit Committee Independence.** Requires audit committee members to be members of the board of directors of the company, and to otherwise be independent.
- **CEOs & CFOs Required to Affirm Financials.** Chief executive officers (CEOs) and CFOs must certify in every annual report that they have reviewed the report and that it

does not contain untrue statements or omissions of material facts.

(a) **Penalty for Violation.** If material noncompliance causes the company to restate its financials, the CEO and CFO forfeit any bonuses and other incentives received during the 12-month period following the first filing of the erroneous financials.

- **CEOs & CFOs Must Enact Internal Controls.** CEOs and CFOs will be responsible for establishing and maintaining internal controls to ensure they are notified of material information.
- **Penalties for Fraud.** The Act also has stiffened penalties for corporate and criminal fraud by company insiders. The law makes it a crime to destroy, alter or falsify records in a federal investigation or if a company declares bankruptcy. The penalty for those found guilty includes fines, or up to 20 years imprisonment, or both.
- **Companies Affected by the Act.** Publicly traded companies affected by the Act are those defined as an “issuer” under Section 3 of the Securities Exchange Act of 1934, whose securities are registered under Section 12 of the 1934 Act. An issuer also is considered a company that is required to file reports under Section 15(d) of the Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933.
- **Debts Not Dischargeable in Bankruptcy.** Amends federal bankruptcy law to make non-dischargeable in bankruptcy certain debts that result from a violation relating to federal or state securities law, or of common law fraud pertaining to securities sales or purchases.
- **Expanded Statute of Limitations for Securities Fraud.** For a civil action brought by a non-government entity or individual, an action involving a claim of securities fraud, deceit or manipulation may be brought not later than the earlier of two years after discovery or five years after the violation.
- **No Listing on National Exchanges for Violators.** The SEC will direct national securities exchanges and associations to prohibit the listing of securities of a noncompliant company.
- **No Insider Trading.** No insider trading is permitted during pension fund blackout periods. The insider must forfeit any profit during this period to the company.
- **SEC Rules on Enhanced Financial Disclosures.**
  - (a) Off-Balance Sheet Transactions: All quarterly and annual financial reports filed with the SEC must disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities. Disclosure must be made on significant aspects relating to financial condition, liquidity, capital expenditures, resources, and components of revenue and expenses.
  - (b) Pro Forma Figures: Pro forma financial information in any report filed with the SEC or in any public release cannot contain false or misleading statements or omit material facts necessary to make the financial information not misleading.



- **No Personal Loans.** No personal loans or extensions of credit to company executives either directly or through a subsidiary, except for certain extensions of credit under an open-ended credit plan or charge card, home improvement and manufactured home loans, or extensions of credit by a broker or dealer to its employee to buy, trade or carry securities.  
(a) The terms of permitted loans cannot be more favorable than those offered to the general public.

#### **Criminal Penalties Enhanced\***

<b>BEHAVIOR</b>	<b>SENTENCE</b>
The alteration, destruction, concealment of any records with the intent of obstructing a federal investigation.	Fine and/or up to 10 year's imprisonment.
Failure to maintain audit or review "workpapers" for at least five years.	Fine and/or up to 5 year's imprisonment.
Anyone who "knowingly executes, or attempts to execute, a scheme" to defraud a purchaser of securities.	Fine and/or up to 10 year's imprisonment.
Any CEO or CFO who "recklessly" violates his or her certification of the company's financial statements.  If violation is willful.	Fine of up to \$1,000,000 and/or up to 10 years imprisonment.  Fine of up to \$5 million and/or up to 20 years imprisonment.
Two or more persons who conspire to commit any offense against or to defraud the U.S. or its agencies.	Fine and/or up to 10 year's imprisonment.
Any person who "corruptly" alters, destroys, conceals, etc., any records or documents with the intent of impairing the integrity of the record or document for use in an official proceeding.	Fine and/or up to 20 year's imprisonment.
Mail and wire fraud.	Increase from 5 to 20 years imprisonment.
Violating applicable Employee Retirement Income Security Act (ERISA) provisions.	Various lengths depending on violation.

\* Source: Sarbanes-Oxley Act of 2002 and New York City Office of the Comptroller.



**CHAPTER 3**  
**STANDARDS OF ETHICAL CONDUCT FOR PRACTITIONERS**  
**OF MANAGEMENT ACCOUNTING AND FINANCIAL MANAGEMENT**  
**FOR CERTIFIED MANAGERIAL ACCOUNTANTS (CMA) AND THE CERTIFIED IN**  
**FINANCIAL MANAGEMENT (CFM)**

**LEARNING OBJECTIVES:**

After studying this chapter you will be able to:

1. Describe the level of competence required by accountants (CMAs) and financial managers (CFMs).
2. Distinguish between the concepts of confidentiality and integrity.
3. Outline and clarify a method of resolution of ethical conflict.

Practitioners of management accounting and financial management have an obligation to the public, their profession, the organizations they serve, and themselves, to maintain the highest standards of ethical conduct. In recognition of this obligation, the Institute of Management Accountants (IMA) has promulgated the following standards of ethical conduct for practitioners of management accounting and financial management. Adherence to these standards, both domestically and internationally, is integral to achieving the *Objectives of Management Accounting*. Practitioners of management accounting and financial management shall not commit acts contrary to these standards nor shall they condone the commission of such acts by others within their organizations.

**Competence**

Practitioners of management accounting and financial management have a responsibility to:

- Maintain an appropriate level of professional competence by ongoing development of their knowledge and skills.
- Perform their professional duties in accordance with relevant laws, regulations, and technical standards.
- Prepare complete and clear reports and recommendations after appropriate analyses of relevant and reliable information.

**Confidentiality**

Practitioners of management accounting and financial management have a responsibility to:

- Refrain from disclosing confidential information acquired in the course of their work except when authorized, unless legally obligated to do so.
- Inform subordinates as appropriate regarding the confidentiality of information acquired in the course of their work and monitor their activities to assure the maintenance of that confidentiality.
- Refrain from using or appearing to use confidential information acquired in the course of

their work for unethical or illegal advantage, either personally or through third parties.

### **Integrity**

Practitioners of management accounting and financial management have a responsibility to:

- Avoid actual or apparent conflicts of interest and advise all appropriate parties of any potential conflict.
- Refrain from engaging in any activity that would prejudice their ability to carry out their duties ethically.
- Refuse any gift, favor, or hospitality that would influence or would appear to influence their actions.
- Refrain from either actively or passively subverting the attainment of the organization's legitimate and ethical objectives.
- Recognize and communicate professional limitations or other constraints that would preclude responsible judgment or successful performance of an activity.
- Communicate unfavorable as well as favorable information and professional judgments or opinions.
- Refrain from engaging in or supporting any activity that would discredit the profession.

### **Objectivity**

Practitioners of management accounting and financial management have a responsibility to:

- Communicate information fairly and objectively.
- Disclose fully all relevant information that could reasonably be expected to influence an intended user's understanding of the reports, comments, and recommendations presented.

### **Resolution of Ethical Conflict**

In applying the standards of ethical conduct, practitioners of management accounting and financial management may encounter problems in identifying unethical behavior or in resolving an ethical conflict. When faced with significant ethical issues, practitioners of management accounting and financial management should follow the established policies of the organization bearing on the resolution of such conflict. If these policies do not resolve the ethical conflict, such practitioners should consider the following courses of action:

- Discuss such problems with the immediate superior except when it appears that the superior is involved, in which case the problem should be presented initially to the next higher managerial level. If satisfactory resolution cannot be achieved when the problem is initially presented, submit the issues to the next higher managerial level. If the immediate superior is the chief executive officer, or equivalent, the acceptable reviewing authority may be a group such as the audit committee, executive committee, board of directors, board of trustees, or owners. Contact with levels above the immediate superior should be initiated only with the superior's knowledge, assuming the superior is not involved. Except where legally prescribed, communication of such problems to authorities or individuals not employed or engaged by the organization is not considered appropriate.
- Clarify relevant ethical issues by confidential discussion with an objective advisor (e.g.,

IMA Ethics Counseling Service) to obtain a better understanding of possible courses of action.

- Consult your own attorney as to legal obligations and rights concerning the ethical conflict.
- If the ethical conflict still exists after exhausting all levels of internal review, there may be no other recourse on significant matters than to resign from the organization and to submit an informative memorandum to an appropriate representative of the organization. After resignation, depending on the nature of the ethical conflict, it may also be appropriate to notify other parties.

(*Source*: Statement on Management Accounting 1C (Revised), Objectives: Standards of Ethical Conduct for Practitioners of Management Accounting and Financial Management, April 1997, pp. 69-70).

## **CHAPTER 4**

### **CALIFORNIA ETHICS**

#### **LEARNING OBJECTIVES:**

After studying this chapter you will be able to:

1. Outline the professional ethics and conduct for California CPAs.
2. Summarize the ethical concepts promulgated in the Code of California Business & Professions and the Code of Regulations.

The California Board of Accountancy currently regulates all California licensees and Public Accounting firms including: Individuals, partnerships and corporations practicing as public accountants, certified public accountants and public accounting firms.

The California Board of Accountancy is unique in its authority to license and discipline not only individuals but CPA firms by its authority of the California Accountancy Act.

- The California Board offers and conducts the following activities.
- Qualifies California candidates for the National Uniform CPA Examination.
- Certifies, licenses, and renews licensees of individual CPAs and PAs.
- Registers CPA partnerships, PA partnerships and corporations.
- Receives and investigates complaints.
- Takes enforcement action against licensees for violations of Board statutes and regulations.
- Monitors licensees' complaints with continuing education requirements.
- Reviews the work products of CPAs, PAs and CPA firms to ensure adherence to professional standards.
- The Board offers an online Web site to verify the status of practicing licensees, and check whether there have been any enforcement actions against the licensee and how long he or she has been practicing.
- The Board confirms which CPAs are licensed to perform a full range of accounting services including signing reports on attest engagements, audits, and review of financial statements.
- The Board identifies those CPAs authorized to perform a full range of accounting services including accounting compilation preparation, management advisory, tax consulting services but will not be authorized to sign reports on attest engagements.
- The board provides invaluable information to consumers.

The California Accountancy Act can be found in the Business and Professions Code beginning at Section 5000. The sections are grouped based on topic and are in Section number order for ease of use. Below is a listing of the articles in the act. The Accountancy Act is available on the

Board's website at [www.dca.ca.gov/cba/acnt\\_act.htm](http://www.dca.ca.gov/cba/acnt_act.htm). You may log onto the Board's website and research any of the Act or Regulations that you feel would benefit your practice. You are encouraged to explore the Board's website, in particular, the link on the site to "Accountancy Act and Regulations" which will help you remain updated at all times.

**CALIFORNIA BUSINESS & PROFESSIONS CODE**  
**(California Accountancy Act)**  
**DIVISION 3. Professions and Vocations Generally**  
**CHAPTER 1. Accountants**

**Article 1: Administration**

Section Title

5000 Existence of Board of Accountancy  
5000.1 Public Protection Priority  
5000.5 Public Board Members.  
5001 Board Members Qualifications and Oath  
5002 Board Members Tenure  
5003 Board Officers  
5004 Tenure of Officers  
5006 Continuance in Office of Board Officers  
5007 Duties of Officers  
5008 Reports Prepared by Board  
5009 Register of Licensees  
5010 Regulations  
5011 Offices of Board  
5012 Board Seal  
5013 Board Records and Use in Evidence  
5015 Employees of Board  
5015.6 Executive Officer; Powers and Duties  
5016 Board Meetings and Quorum  
5017 Executive Sessions and Open and Public Meetings  
5018 Professional Rules and Standards  
5019 Rules Printed on Applications  
5020 Administrative Committee  
5021 Tenure of Administrative Committee  
5022 Administrative Committee Reports and Appeals From Its Actions  
5023 Certified Public Accountant Qualifications Committee  
5024 Other Committees  
5025.1 Accountants to Assist in Investigations  
5025.2 Expenditure Authority - Enforcement and Litigation  
5025.3 Encumbrances for Contracts - Period of 24 Months

**Article 1.5: Continuing Education**

5026 Continuing Education

5027 Continuing Education Regulations  
 5028 Exceptions from Continuing Education Requirements  
 5029 Continuing Education Committee  
**Article 2: General Powers and Definitions**  
 5030 “Board” Defined  
 5031 “Committee” Defined  
 5032 “State” Defined  
 5033 “Certified Public Accountant” Defined  
 5033.1 “License” Includes “Certificate”  
 5034 “Public Accountant” Defined  
 5035 “Person” Defined  
 5035.1 “Firm” Defined  
 5035.2 “Client” Defined  
 5035.3 “Firm” Includes  
 5036 Preparation of State Documents  
 5037 Ownership of Accountant’s Work Papers  
 5037.1 Construction of Licensees’ Obligations Under Section 5037  
 5038 Partial Invalidity of Chapter  
 5040 Voluntary Taxpayer Contribution  
**Article 3: Application of Chapter**  
 5050 Practice Without Permit, Temporary Practice  
 5050.1 Consent to Board’s Jurisdiction.  
 5050.2 Discipline of Out-of-State or Foreign Accountant of Firm.  
 5051 “Public Accountancy” Defined  
 5052 Person Excepted  
 5053 Exceptions of Certain Employees and Assistants; Attorney at Law Excepted  
 5055 Title of Certified Public Accountant  
 5056 Title of Public Accountant  
 5058 Use of Confusing Titles or Designations Prohibited  
 5058.1 Titles in Conjunction with Certified Public Accountant or Public Accountant  
**Article 3.5: Standards of Professional Conduct**  
 5060 Name of Firm  
 5061 Commissions  
 5062 Report Conforming to Professional Standards  
 5062.2 Restrictions on Accepting Employment With an Attest Client  
 5063 Reportable Events  
 5063.1 Reporting by Courts  
 5063.2 Reporting by Insurers  
 5063.3 Disclosure of Confidential Information Prohibited  
**Article 4: Applications, Registrations, and Permits Generally**  
 5070 Public Accountancy Permits and Certificates  
 5070.5 Expiration of Permits; Renewal; Continuing Education Requirements  
 5070.6 Renewal of Expired permit and Effective Date of Renewal of Such Permits



5070.7 Failure to Renew Within Five Years  
5070.8 Expiration of Suspended or Revoked Permits  
5072 Requirements for Registration as a Partnership  
5073 Partnership Applications  
5076 Peer Review  
5078 Offices Not Under Personal Management of Certified Public Accountant or Public Accountant; Supervision  
5079 Nonlicensee Ownership of Firms  
**Article 5: Certificates, Information and Records**  
5080 Granting of Certified Public Accountant Certificates  
5080.1 Personal Appearance of Applicant Before Board  
5081 Requirements for Admission to Certified Public Accountant Examination  
5081.1 Educational Requirements Pursuant to Section 5090(b)  
5082 Certified Public Accountants Examination  
5082.1 Administration of Certified Public Accountant Examination  
5082.2 Reexamination  
5082.3 Qualification for Examination for Foreign Applicants  
5082.4 Qualification for Examination by Canadian Chartered Accountant  
5082.5 Passage of the Exam in Another State  
5083 Experience Requirements Pursuant to Section 5090(b)  
5084 One Year Experience Credit for Education Pursuant to Section 5090(b)  
5086 Existing Certified Public Accountant Certificates  
5087 Licensure Requirements: Out-of-State Licensee  
5088 Out-of-State Certified Public Accountant Applying for California License. (Operative until January 1, 2006.)  
Out-of-State Certified Public Accountant Applying for California License. (Operative on and after January 1, 2006.)  
5090 Transition.  
5092 Pathway 1  
5093 Pathway 2  
5094 Accredited Schools  
5095 Providing Attest Services  
**Article 5.1 Practice Privileges**  
5096 Practice Privilege General Requirements  
5096.1 Practice Without Notice  
5096.2 Denial of a Practice Privilege  
5096.3 Discipline of a Practice Privilege  
5096.4 Administrative Suspension of a Practice Privilege  
5096.5 Signing Attest Reports  
5096.6 Delegation of Authority, Executive Officer  
5096.7 Definitions  
5096.8 Investigative Powers  
5096.9 Authority to Adopt Regulations

5096.10 Expenditure Authority to Implement Practice Privileges

5096.11 Sunset Date of This Article

5096.12. Limited Firm Practice.

5096.13. Firm Information.

5096.14. Safe Harbor Extension.

5096.15. Practice Privilege Fees.

**Article 5.5 Audit Documentation**

5097 Audit Documentation Requirements

5098 Audit Documentation Regulations

**Article 6: Disciplinary Proceedings**

5100 Discipline in General

5101 Discipline of Partnership

5102 Powers and Proceedings

5103 Investigations

5104 Relinquishment of Certificate or Permit

5105 Delinquency in Payment of Renewal Fee

5106 Conviction Defined

5107 Payment of Disciplinary Costs; Conditional Renewal

5108 Subpoenas

5109 Jurisdiction Over Expired, Cancelled, Forfeited, Suspended, or Surrendered License.

5109.5 Report to the Legislature.

5110 False Statements on Application; Exam Cheating

5111 Cheating Defined

5112 Procedure; Limitation on Actions

5113 Readmission to the Examination

5115 Petitions for Reinstatement or Reduction of Penalty

**Article 6.5 Administrative Penalties**

5116 Administrative Penalties General Provisions

5116.1 Administrative Penalties – All Accountancy Act Violations

5116.2 Administrative Penalties – Specified Accountancy Act Violations

5116.3 Administrative Penalties – Subversion of the Examination

5116.4 Procedure for Administrative Penalties

5116.5 Judgment Ordering Payment of Administrative Penalty

5116.6 Definition of “License”

**Article 7: Prohibitions and Offenses Against the Chapter Generally**

5120 Violations as Misdemeanor

5121 Evidence of Violation

5122 Injunctions

**Article 8: Revenue**

5130 Application Fee

5131 Fee for Examination

5132 Disposition of Moneys

5133 Accountancy Fund Appropriation; Compensation of Board Members, Per Diem Expenses

5134 Fees

**Article 9: Accountancy Corporations**

5150 "Accountancy Corporation" Defined

5151 Application for Registration as Corporation

5152 Corporation Reports

5152.1 Accountancy Corporation Renewal of Permit to Practice

5154 Directors, Shareholders, and Officers Must Be Licensed

5155 Disqualified Shareholder Nonparticipation

5156 Unprofessional Conduct

5157 Board May Formulate Rules and Regulations Re: Accountancy Corporations

5158 Practice of Public Accountancy; Management

**FAQs**

**Q:** Are complaints filed against a licensee public information?

**A:** No. Complaints are not public information. However, if a complaint results in a citation or enforcement action, the citation or enforcement action is public information.

**BUSINESS AND PROFESSIONS CODE**

**SECTION 5000-5025.3**

5000. There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 15 members, seven of whom shall be licensees, and eight of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter. The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint members representing a cross section of the accounting profession with at least two members representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2012, deletes or extends the dates on which this section becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to reports or studies specified in this chapter and those issues identified by the Joint Committee on Boards, Commissions, and Consumer Protection and the board regarding the implementation of new licensing requirements.

5000.1. Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the

protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

5000.5. No public member shall be a current or former licensee of the board or an immediate family member of a licensee, or be currently or formerly employed by a public accounting firm, bookkeeping firm, or firm engaged in providing tax preparation as its primary business, or have any financial interest in the business of a licensee. Each public member shall meet all of the requirements for public membership on the board as set forth in Chapter 6 (commencing with Section 450) of Division 1.

5001. (a) Except as provided in subdivision (b), each member of the board, except the public members, shall be actively engaged in the practice of public accountancy and shall have been so engaged for a period of not less than five years preceding the date of his appointment. Each member shall be a citizen of the United States and a resident of this state for at least five years next preceding his appointment, and shall be of good character. Within 30 days after their appointment, the members of the board shall take and subscribe to the oath of office as prescribed by the Government Code and shall file the same with the Secretary of State. (b) One licensee member appointed by the Governor may be an active educator within a program that emphasizes the study of accounting within a college, university, or four-year educational institution.

5002. Each member shall be appointed for a term of four years and shall hold office until the appointment and qualification of his successor or until one year shall have elapsed since the expiration of the term for which he was appointed, whichever first occurs. Vacancies occurring shall be filled by appointment for the unexpired term of a person licensed in the same capacity as the person being replaced. No person shall serve more than two terms consecutively. The Governor shall remove from the board any member, except a public member, whose permit to practice has become void, revoked or suspended. The Governor may, after hearing, remove any member of the board for neglect of duty or other just cause.

5003. The officers of the board are a president, vice president and a secretary-treasurer.

5004. The president, vice president, and secretary-treasurer shall be elected by the board for a term of one year from among its members at the time of the annual meeting. The newly elected president, vice president, and secretary-treasurer shall assume the duties of their respective offices at the conclusion of the annual meeting at which they were elected.

5006. The officers of the board shall continue in office until their successors are elected and qualify.

5007. The president shall preside at all meetings of the board, and in the event of his absence or inability to act, the vice president shall preside. Other duties of the president, vice president, and the duties of the secretary-treasurer, shall be such as the board may prescribe.

5008. The board shall, from time to time, but not less than twice each year, prepare and distribute to all licensees, a report of the activities of the board, including amendments to this chapter and regulations adopted by the board, and may likewise distribute reports of other matters of interest to the public and to practitioners.

5009. The board shall compile and maintain, or may have compiled and maintained on its behalf, a register of licensees that contains information that the board determines is necessary for the purposes for which the board was established. The board shall make the register available to any licensee and to the public.

5010. The board may adopt, repeal, or amend such regulations as may be reasonably necessary and expedient for the orderly conduct of its affairs and for the administration of this chapter. The regulations shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

5011. The board shall designate the location of its principal office and may establish branch offices in other locations.

5012. The board shall have a seal.

5013. The board shall keep records of all proceedings and actions by and before the board and before its committees. In any proceeding in court, civil or criminal, copies of those records certified as correct by the executive officer of the board under seal of the board shall be admissible in evidence and shall be prima facie evidence of the correctness of the contents thereof.

5015. The board may employ clerks, examiners and, except as provided by Section 159.5, other assistants in the performance of its duties, and pay salaries and necessary expenses.

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

5016. A majority of the board shall constitute a quorum for the transaction of any business at any meeting of the board for which a notice of at least seven days is given by the president or executive officer. Notice of meetings may be waived in writing either before or after the meeting by unanimous consent of all members. The board shall meet at the call of the president and executive officer, but not less than twice each year. Any two members of the board may request

the executive officer to call a special meeting, and the executive officer, upon receiving that notice, shall call a meeting pursuant to the procedure prescribed herein.

5017. All meetings of the board shall be open and public, except that the board may hold executive sessions to deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code.

The members of the board may hold executive sessions to prepare, approve, grade, or administer examinations and shall have jurisdiction or vote over these functions of preparing, approving, grading, or administering examinations in executive session as provided for in Section 11126 of the Government Code.

5018. The board may by regulation, prescribe, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession. In addition to the requirements contained in Chapter 4 (commencing with Section 11370) of Part 1 of Division 3 of Title 2 of the Government Code, a copy of the rules shall be mailed to every holder of a license under this chapter at least 30 days prior to a date named for a public hearing held for the purpose of receiving and considering objections to any of the proposed provisions. Every licensee of the California Board of Accountancy in this state shall be governed and controlled by the rules and standards adopted by the board.

COMMENTARY: Board regulation changes are published and mailed to all state licensed CPA's on a regular basis.
---

5019. The rules of professional conduct adopted by the board shall be printed as a part of the application blanks for both certificates and registration and every applicant for either a certificate or registration shall subscribe thereto when making an application.

5020. The board may, for the purpose of obtaining technical expertise, appoint an administrative committee of not more than 13 licensees to provide advice and assistance related to the functions specified in Section 5103. The committee shall act only in an advisory capacity, shall have no authority to initiate any disciplinary action against a licensee, and shall only be authorized to report its findings from any investigation or hearing conducted pursuant to this section to the board, or upon direction of the board, to the executive officer.

5021. The members of the administrative committee shall hold office for one year.

5022. The committee shall make recommendations and forward its report to the board for action on any matter on which it is authorized to act. Any applicant for registration as a certified public accountant who is aggrieved by any action taken by the committee with respect to his or her qualifications may appeal to the board in accordance with rules or regulations prescribed by the board. The board on the appeal may give an oral or written examination as an aid in determining whether the applicant is qualified under the terms of this chapter.

5023. The board may establish an advisory committee of its own certified public accountant members or other certified public accountants of the state in good standing, to perform either of the following advisory duties:

- (a) To examine all applicants for the license of certified public accountant.
- (b) To recommend to the board applicants for the certified public accountant license who fulfill the requirements of this chapter.

5024. The board may create and appoint other advisory committees consisting of public accountants or certified public accountants of this state in good standing and who need not be members of the board for the purpose of making recommendations on matters as may be specified by the board.

5025.1. (a) The board may contract with and employ certified public accountants and public accountants as consultants and experts to assist in the investigation and prosecution of judicial and administrative matters.

(b) Contracts made pursuant to this section are not subject to Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, except that the board shall apply the standards set forth in Section 19130 in awarding personal service contracts under this section.

(c) Notwithstanding any other provision of law, the board may contract with these consultants and experts on a sole source basis.

(d) If a person, not a regular employee of the board, is hired or under contract to provide expertise to the board in the evaluation of the conduct of a licensee, and that person is named as a defendant in a civil action for defamation, tortious interference with prospective business advantage, or other civil causes of action directly resulting from opinions rendered, statements made, or testimony given to the board, its committees, staff, legal counsel, or other representatives, or in any proceeding instituted by the board or to which the board is a party, the board shall provide for representation required to defend that person in that civil action and shall indemnify that person for any judgment rendered against him or her. This right of defense and indemnification shall be the same as, and no greater than, the right provided to a public employee pursuant to Section 825 of the Government Code. Nothing herein shall be construed as expanding or limiting any immunity from liability otherwise provided by law.

(e) On or before June 1 of each year, the board shall report to the appropriate policy and fiscal committees of each house of the Legislature the terms of the contract or contracts entered into each fiscal year pursuant to this section. The report shall include the cost, services, terms and duration provided under each contract, the identity of the firms or individuals awarded any contract, and data demonstrating the cost effectiveness of the board's sole-source contracting in the investigation and prosecution of the board's enforcement programs.

5025.2. (a) The Legislature finds that there are occasions when the California Board of Accountancy urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient expenditure authority to obtain the

necessary additional resources for urgent litigation and enforcement matters, the board is unable to adequately protect the public. Therefore, it is the intent of the Legislature that, apart from, and in addition to, the expenditure authority that may otherwise be established, the California Board of Accountancy shall be given the increase in its expenditure authority in any given current fiscal year that is authorized by the Department of Finance pursuant to the provisions of subdivision (b) of this section, for costs and services in urgent litigation and enforcement matters, including, but not limited to, costs for professional and consulting services and for the services of the Attorney General and the Office of Administrative Hearings.

(b) Notwithstanding Control Section 27.00 of the annual Budget Act, Section 11006 of the Government Code, and the amount listed in the annual Budget Act for expenditure, the Department of Finance shall authorize up to two million dollars (\$2,000,000) in additional expenditures for the California Board of Accountancy upon a showing by the board that those funds are necessary for public protection and that the shortfall was not anticipated. These additional expenditures shall be payable from the Accountancy Fund for purposes of the board's litigation or enforcement activities in any given current fiscal year.

5025.3. (a) Whenever the board enters into a contract for litigation or enforcement purposes, including, but not limited to, contracts pursuant to Section 5025.1, funds may be encumbered in the fiscal year the contract is executed and expended at any time during the subsequent 24 months commencing with the last day of the fiscal year in which the contract is executed.

(b) Notwithstanding Section 13340 of the Government Code, funds encumbered for a contract pursuant to subdivision (a) of this section are continuously appropriated without regard to fiscal year, however, the appropriation is limited to the period for which funds are authorized to be encumbered under subdivision (a).

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5026-5029**

5026. The Legislature has determined it is in the public interest to require that certified public accountants and public accountants licensed under provisions of this chapter comply with continuing education requirements adopted by the board as a prerequisite to the renewal of public accountancy licenses on and after December 31, 1974.

5027. The board shall by regulation prescribe, amend, or repeal rules including, but not limited to, all of the following:

(a) A definition of basic requirements for continuing education.

(b) A licensee who plans, directs, or approves any financial or compliance audit report on any governmental agency shall complete a minimum of 24 hours of qualifying continuing education in the area of governmental accounting and auditing or related subjects during the two-year license renewal period.

(c) A licensee who provides audit, review, other attestation services, or issues compiled financial statement reports shall, during the two-year license renewal period, complete a



minimum of 24 hours of qualifying continuing education in the area of accounting and auditing related to reporting on financial statements.

(d) A licensee with a valid permit to practice public accountancy shall, within a six-year period, complete a continuing education course on the provisions of this chapter and the rules of professional conduct.

(e) A licensee on inactive status shall complete the continuing education course required by subdivision (d) prior to reentering public practice.

(f) A delineation of qualifying programs for maintaining competency.

(g) A system of control and compliance reporting.

In exercising its power under this section for the interests of consumer protection, the board shall establish standards which will assure reasonable currency of knowledge as a basis for a high standard of practice by licensees. The standards shall be established in a manner to assure that a variety of alternatives are available to licensees to comply with the continuing education requirements for renewal of licenses and taking cognizance of specialized areas of practice.

5028. The board may, in accordance with the intent of this article, make exceptions from continuing education requirements for licensees not engaged in public practice, or for reasons of health, military service, or other good cause; provided, however, that if such licensee returns to the practice of public accounting he shall meet such continuing education requirements as the board may determine.

5029. The board may establish an advisory continuing education committee of nine members, six of whom shall be certified public accountants, two of whom shall be board members, one of whom is a public member of the board, and one of whom shall be a public accountant, to perform any of the following duties:

(a) To evaluate programs and advise the board as to whether they qualify under the regulations adopted by the board pursuant to subdivision (f) of Section 5027. Educational courses offered by professional accounting societies shall be accepted by the board as qualifying if the courses are approved by the committee as meeting the requirements of the board under the regulations.

(b) To consider applications for exceptions as permitted under Section 5028 and provide a recommendation to the board.

(c) To consider other advisory matters relating to the requirements of this article as the board may assign to the committee.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5030-5040**

5030. "Board" means the California Board of Accountancy.

5031. "Committee" means any committee created under the provisions of Article 1 (commencing at Section 5000).

5032. "State" when not specifically referring to this State, means any state, territory or insular possession of the United States, or the District of Columbia.

5033. "Certified public accountant" means any person who has received from the board a certificate of certified public accountant and who holds a valid permit to practice under the provisions of this chapter.

5033.1. For purposes of this chapter, "license" shall also include "certificate."

5034. "Public accountant" means any person who has registered with the board as a public accountant and who holds a valid permit for the practice of public accountancy.

5035. "Person" includes individual, partnership, firm, association, limited liability company, or corporation, unless otherwise provided.

5035.1. "Firm" means a sole proprietorship, a corporation, or a partnership.

5035.2. "Client", as used in any context in this chapter, means any person for whom public accountancy services are performed or to whom financial products, financial services, or securities are sold or provided at the licensee's public accountancy practice or through referral to any other location or business in which the certified public accountant has a material interest.

5035.3. For purposes of subdivision (b) of Section 5050 and Sections 5054 and 5096.12, "firm" includes any entity that is authorized or permitted to practice public accountancy as a firm under the laws of another state.

5036. Whenever any statute requires that any reports, financial statements, and other documents for any department, division, board, commission, or agency of this state be prepared by certified public accountants, the requirement shall be construed to mean a licensee or licensees with a valid permit to practice public accountancy.

5037. (a) All statements, records, schedules, working papers and memoranda made by a licensee or a partner, shareholder, officer, director, or employee of a licensee, incident to, or in the course of, rendering services to a client in the practice of public accountancy, except the reports submitted by the licensee to the client and except for records which are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. No such statement, record, schedule, working paper, or memoranda shall be sold, transferred, or bequeathed, without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners or stockholders or new partners or stockholders of the licensee, or any combined or merged firm or successor in interest to the licensee.

(b) A licensee shall furnish to his or her client or former client, upon request and reasonable notice:

(1) A copy of the licensee's working papers, to the extent that those working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(2) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of documents of the client when they form the basis for work done by him or her.

COMMENTARY: A licensee who prepared income tax returns for a client is not required to provide additional copies under applicable California accountancy statutes and regulations. However, licensees are required to return tax records provided by the client and provide a copy of the licensee's working papers that support information on the tax returns. A former client may request additional copies, however, if available, from the Internal Revenue Service (IRS) and/or the Franchise Tax Board (FTB).

5037.1. Nothing in subdivision (k) of Section 17406 of the Financial Code or subdivision (a) of Section 17406.1 of the Financial Code shall be construed to impair or impede a licensee's rights, duties, and obligations under Section 5037.

5038. If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

5040. The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns, including accountants, to inform their clients in writing, prior to the completion of any state income tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5050-5058.1**

5050. (a) Except as provided in subdivisions (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state, provided that an individual providing services under

this subdivision may not solicit California clients, may not assert or imply that the individual is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients, may not assert or imply that the firm is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. This subdivision shall become inoperative on January 1, 2011.

(c) Nothing in this chapter shall prohibit a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country, and lawfully practicing therein, from temporarily engaging in the practice of public accountancy in this state incident to an engagement in that country, provided that:

(1) The temporary practice is regulated by the foreign country and is performed under accounting or auditing standards of that country.

(2) The person does not hold himself or herself out as being the holder of a valid California permit to practice public accountancy or the holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

**COMMENTARY:** The CPA Web Trust provides approval and assurance of electronic commerce activities. An evaluation is made of commerce web sites to determine if they satisfy standards set by the American Institute of CPAs (in the United States) and the Canadian Institute of Chartered Accountants (in Canada). The CPA Web Trust informs prospective customers that a CPA has performed an appraisal of a Web site's policies and controls, and that the site is in conformity with appropriate conditions and practices.

**CASE OF VIOLATION(S):**

**Violation(s) Charged**

Business and Professions Code, Division 3, Chapter 1, §§ 5050 and 5100 (g). California Code of Regulations, Title 16, Division 1, §§ 87 and 94.

**Cause For Discipline**

Ms. H engaged in the practice of public accountancy with an expired license during the period from May 1, 2003, through August 18, 2004. Ms. H failed to complete at least 80 hours of qualifying continuing education prior to the expiration of her CPA license on May 1, 2003, and May 1, 2005, and willfully violated the accountancy laws.

**Board Actions**

Revocation stayed with three years' probation, via decision after Non-Adoption of Proposed Decision. Ms. H's license is suspended for 180 days. Ms. H is required to reimburse the Board \$6,000 for its investigation and prosecution costs. Other standard terms of probation.

5050.1. (a) Any person that engages in any act that is the practice of public accountancy in this state consents to the personal, subject matter, and disciplinary jurisdiction of the board. This subdivision is declarative of existing law.

(b) Any person engaged in the practice of public accountancy under subdivision (a) is deemed to have appointed the regulatory authority of the state or foreign jurisdiction that issued the person's permit, certificate, license or other authorization to practice as the person's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by or before the board against or involving that person.

5050.2. (a) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the holder of an authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act that would be a violation of this code or grounds for discipline against a licensee or holder of a practice privilege, or ground for denial of a license or practice privilege under this code. The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply to this section. Any person whose authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 has been revoked may apply for reinstatement of the authorization to practice under subdivision (b) or (c) of Section 5050, subdivision (b) of Section 5054, or Section 5096.12 not less than one year after the effective date of the board's decision revoking the authorization to practice unless a longer time, not to exceed three years, is specified in the board's decision revoking the authorization to practice.

(b) The board may administratively suspend the authorization of any person to practice under subdivision (b) or (c) of Section 5050, subdivision (a) of Section 5054, or Section 5096.12 for any act that would be grounds for administrative suspension under Section 5096.4 utilizing the procedures set forth in that section.

5051. Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of this chapter if he or she does any of the following:

(a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.

(b) Maintains an office for the transaction of business as a public accountant.

(c) Offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional services that involve or require an audit, examination, verification, investigation, certification, presentation, or review of financial transactions and accounting records.

(d) Prepares or certifies for clients reports on audits or examinations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports that are to be used for publication, for the purpose of obtaining credit, for filing with a court of law or with any governmental agency, or for any other purpose.

(e) In general or as an incident to that work, renders professional services to clients for compensation in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data.

(f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports, all as a part of bookkeeping operations for clients.

(g) Prepares or signs, as the tax preparer, tax returns for clients.

(h) Prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans.

(i) Provides management consulting services to clients. The activities set forth in subdivisions (f) to (i), inclusive, are "public accountancy" only when performed by a certified public accountant or public accountant, as defined in this chapter.

A person is not engaged in the practice of public accountancy if the only services he or she engages in are those defined by subdivisions (f) to (i), inclusive, and he or she does not hold himself or herself out, solicit, or advertise for clients using the certified public accountant or public accountant designation. A person is not holding himself or herself out, soliciting, or advertising for clients within the meaning of this section solely by reason of displaying a CPA or PA certificate in his or her office or identifying himself or herself as a CPA or PA on other than signs, advertisements, letterhead, business cards, publications directed to clients or potential clients, or financial or tax documents of a client.

5052. Nothing in this chapter shall apply to any person who as an employee, independent contractor, or otherwise, contracts with one or more persons, organizations, or entities, for the purpose of keeping books, making trial balances, statements, making audits or preparing reports, all as a part of bookkeeping operations, provided that such trial balances, statements, or reports are not issued over the name of such person as having been prepared or examined by a certified public accountant or public accountant.

Nothing contained in this chapter shall affect, limit or be construed as affecting or limiting the rights of any public accountant who met the requirements of prior statutes and who was registered with the board as a public accountant on or before December 31, 1955.

5053. Nothing contained in this chapter precludes a person who is not a certified public accountant or public accountant from serving as an employee of, or an assistant to, a certified public accountant or public accountant or partnership or a corporation composed of certified public accountants or public accountants holding a permit to practice pursuant to this chapter if the employee or assistant works under the control and supervision of a certified public accountant, or a public accountant authorized to practice public accountancy pursuant to this chapter and if the employee or assistant does not issue any statement over his or her name.

This section does not apply to an attorney at law in connection with his or her practice of law.

5054. (a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state

may prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).

5055. Any person who has received from the board a certificate of certified public accountant may, subject to Section 5051, be styled and known as a "certified public accountant" and may also use the abbreviation "C.P.A." No other person, except a firm registered under this chapter, shall assume or use that title, designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a certified public accountant.

5056. Any person who has received from the board a certificate of public accountant may, subject to Section 5051, be styled and known as a "public accountant" and may also use the abbreviation "P.A." No other person, except a firm registered under this chapter, shall assume or use that title, designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a public accountant.

5058. No person or partnership shall assume or use the title or designation "chartered accountant," "certified accountant," "enrolled accountant," "registered accountant" or "licensed accountant," or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations "C.A.," "E.A.," "R.A.," or "L.A.," or similar abbreviations likely to be confused with "C.P.A." or "P.A."; provided, that any person qualified as a certified public accountant under this chapter who also holds a comparable title granted under the laws of another country may use such title in conjunction with the title of "certified public accountant" or "C.P.A." and provided, that any person enrolled to practice before the Internal Revenue Service and recognized as an enrolled agent may use the abbreviation "E.A."

5058.1. A person or firm may not use any title or designation in connection with the designation "certified public accountant" or "public accountant" that is false or misleading.

The board may adopt regulations covering the use of titles or designations.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5060-5063.3**

5060. (a) No person or firm may practice public accountancy under any name which is false or misleading.

(b) No person or firm may practice public accountancy under any name other than the name under which the person or firm holds a valid permit to practice issued by the board.

(c) Notwithstanding subdivision (b), a sole proprietor may practice under a name other than the name set forth on his or her permit to practice, provided the name is registered by the board, is in good standing, and complies with the requirements of subdivision (a).

(d) The board may adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations designating particular forms of names as being false or misleading.

5061. (a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not: (1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client to the products or services of a third party.

(b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.

(c) A person engaged in the practice of public accountancy is prohibited from performing services for a client, or an officer or director of a client, or a client-sponsored retirement plan, for a commission or from receiving a commission from a third party for providing the products or services of that third party to a client, or an officer or director of a client, or a client-sponsored retirement plan, during the period in which the person also performs for that client, or officer or director of that client, or client-sponsored retirement plan, any of the services listed below and during the period covered by any historical financial statements involved in those listed services:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence.

(3) An examination of prospective financial information.

For purposes of this subdivision, "director" means any person as defined under Section 164 of the Corporations Code and "officer" means any individual reported to a regulatory agency as an officer of a corporation. However, "director" and "officer" does not include a director or officer of a nonprofit corporation, or a corporation that meets the board's definition of small business, as specified by regulation.

(d) A person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, shall disclose that fact to any client or entity to whom the person engaged in the practice of public accountancy recommends or refers a product or service to which the commission relates.



(e) The board shall adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations specifying the terms of any disclosure required by subdivision (d), the manner in which the disclosure shall be made, and other matters regarding the disclosure that the board deems appropriate. These regulations shall require, at a minimum, that a disclosure shall comply with all of the following:

- (1) Be in writing and be clear and conspicuous.
- (2) Be signed by the recipient of the product or service.
- (3) State the amount of the commission or the basis on which it will be computed.
- (4) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment.
- (5) Be presented to the client at or prior to the time the recommendation of the product or service is made.

(f) For purposes of this section, "fee" includes, but is not limited to, a commission, rebate, preference, discount, or other consideration, whether in the form of money or otherwise.

(g) This section shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates.

5062. A licensee shall issue a report which conforms to professional standards upon completion of a compilation, review or audit of financial statements.

5062.2. A licensee shall not accept employment with a publicly traded corporation or its affiliate within 12 months of the date of issuance of a financial statement report if both of the following criteria are met:

(a) The licensee has participated in an audit engagement for the corporation and held responsibility, with respect to the audit engagement, requiring the licensee to exercise significant judgment in the audit process. Responsibilities meeting the requirements of this subdivision include, but are not limited to, positions, however titled, where the licensee was the person in charge of the fieldwork, up through positions where the licensee was a partner on the engagement.

(b) The employment would permit the licensee to exercise significant authority over accounting or financial reporting, including authority over the controls related to those functions.

**CASE OF VIOLATION(S):**

**Violation(s) Charged**

Business and Professions Code, Division 3, Chapter 1, §§ 5100 (c) and (g), 5062, and 5050. California Code of Regulations, Title 16, Division 1, § 58.

**Cause For Discipline**

Mr. E admits he performed an audit of a foster care provider, regulated by the California Department of Social Services, that was grossly negligent. The audit report did not conform to professional standards, the financial statements did not include all required disclosures, and the working papers did not have all required documentation. Mr. E engaged in the practice of public accountancy while his license was in inactive status.

<b>Board Actions</b>
----------------------

Surrendered certificate, via stipulated settlement.
---

5063. (a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

- (1) The conviction of the licensee of any of the following:
  - A. A felony.
  - B. Any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant, or to acts or activities in the course and scope of the practice of public accountancy.
  - C. Any crime involving theft, embezzlement, misappropriation of funds or property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

(2) The cancellation, revocation, or suspension of a certificate, other authority to practice or refusal to renew a certificate or other authority to practice as a certified public accountant or a public accountant, by any other state or foreign country.

(3) The cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

(b) A licensee shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2003, within 30 days of the date the licensee has knowledge of the events:

(1) Any restatement of a financial statement and related disclosures by a client audited by the licensee.

(2) Any civil action settlement or arbitration award against the licensee relating to the practice of public accountancy where the amount or value of the settlement or arbitration award is thirty thousand dollars (\$30,000) or greater and where the licensee is not insured for the full amount of the award.

(3) Any notice of the opening or initiation of a formal investigation of the licensee by the Securities and Exchange Commission or its designee.

(4) Any notice from the Securities and Exchange Commission to a licensee requesting a Wells Submission.

(5) Any notice of the opening or initiation of an investigation by the Public Company Accounting Oversight Board or its designee, as defined pursuant to subdivision (g).

(c) A licensee shall report to the board in writing, within 30 days of the entry of the judgment, any judgment entered on or after January 1, 2003, against the licensee in any civil action alleging any of the following:

- (1) Dishonesty, fraud, gross negligence, or negligence.
- (2) Breach of fiduciary responsibility.

(3) Preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(4) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses, or other errors or omissions.

(5) Any actionable conduct by the licensee in the practice of public accountancy, the performance of bookkeeping operations, or other professional practice.

(d) The report required by subdivisions (a), (b), and (c) shall be signed by the licensee and set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(e) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.

(f) Nothing in this section shall impose a duty upon any licensee to report to the board the occurrence of any of the events set forth in subdivision (a), (b), or (c) either by or against any other licensee.

(g) The board may adopt regulations to further define the reporting requirements of this section.

5063.1. Within 10 days of entry of a conviction described in paragraph (1) of subdivision (a) of Section 5063 or a judgment described in subdivision (c) of Section 5063 by a court of this state, the court that rendered the conviction or judgment shall report that fact to the board and provide the board with a copy of the conviction or judgment and any orders or opinions of the court accompanying or ordering the conviction or judgment.

5063.2. Within 30 days of payment of all or any portion of any civil action settlement or arbitration award against a licensee of the board in which the amount or value of the settlement or arbitration award is thirty thousand dollars (\$30,000) or greater, any insurer or licensed surplus broker providing professional liability insurance to that licensee shall report to the board the name of the licensee, the amount or value of the settlement or arbitration award, the amount paid by the insurer or licensed surplus broker, and the identity of the payee.

5063.3. (a) No confidential information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the licensee without the written permission of the client or prospective client, except the following:

(1) Disclosures made by a licensee in compliance with a subpoena or a summons enforceable by order of a court.

(2) Disclosures made by a licensee regarding a client or prospective client to the extent the licensee reasonably believes it is necessary to maintain or defend himself or herself in a legal proceeding initiated by the client or prospective client.

(3) Disclosures made by a licensee in response to an official inquiry from a federal or state government regulatory agency.

- (4) Disclosures made by a licensee or a licensee's duly authorized representative to another licensee in connection with a proposed sale or merger of the licensee's professional practice.
- (5) Disclosures made by a licensee to either of the following:
  - (A) Another licensee to the extent necessary for purposes of professional consultation.
  - (B) Organizations that provide professional standards review and ethics or quality control peer review.
- (6) Disclosures made when specifically required by law.
- (7) Disclosures specified by the board in regulation.
- (b) In the event that confidential client information may be disclosed to persons or entities outside the United States of America in connection with the services provided, the licensee shall inform the client in writing and obtain the client's written permission for the disclosure.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5070-5079**

5070. Permits to engage in the practice of public accountancy in this state shall be issued by the board only to holders of the certificate of certified public accountant issued under this chapter and to those partnerships, corporations, and other persons who, upon application approved by the board, are registered with the board under this chapter. All applicants for registration shall furnish satisfactory evidence that the applicant is entitled to registration and shall pay the fee as provided in Article 8 (commencing with Section 5130). Every partnership, corporation, and other person to whom a permit is issued after December 31, 1962, shall, in addition to any other fee which may be payable, pay the initial permit fee provided in Article 8 (commencing with Section 5130).

Each partnership, corporation, and other person issued a permit by the board to practice as a certified public accountant or as a public accountant shall be furnished with a suitable certificate evidencing such registration.

5070.5. (a) A permit issued under this chapter to a certified public accountant or a public accountant expires at 12 midnight on the last day of the month of the legal birthday of the licensee during the second year of a two-year term if not renewed.

To renew an unexpired permit, a permitholder shall, before the time at which the permit would otherwise expire, apply for renewal on a form prescribed by the board, pay the renewal fee prescribed by this chapter and give evidence satisfactory to the board that he or she has complied with the continuing education provisions of this chapter.

(b) A permit to practice as an accountancy partnership or an accountancy corporation expires at 12 midnight on the last day of the month in which the permit was initially issued during the second year of a two-year term if not renewed. To renew an unexpired permit, the permitholder shall, before the time at which the permit would otherwise expire, apply for renewal on a form prescribed by the board, pay the renewal fee prescribed by this chapter, and provide evidence satisfactory to the board that the accountancy partnership or accountancy corporation is in compliance with this chapter.

5070.6. Except as otherwise provided in this chapter, an expired permit may be renewed at any time within five years after its expiration upon the filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees and providing evidence satisfactory to the board of compliance as required by Section 5070.5. If the permit is renewed after its expiration, its holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the permit shall continue in effect through the date provided in Section 5070.5 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

5070.7. (a) A permit that is not renewed within five years following its expiration may not be renewed, restored, or reinstated thereafter, and the certificate of the holder of the permit shall be canceled immediately upon expiration of the five-year period, except as provided in subdivision (e).

(b) A partnership or corporation whose certificate has been canceled by operation of this section may obtain a new certificate and permit only if it again meets the requirements set forth in this chapter relating to registration and pays the registration fee and initial permit fee.

(c) A certified public accountant whose certificate is canceled by operation of this section may apply for and obtain a new certificate and permit if the applicant:

(1) Is not subject to denial of a certificate and permit under Section 480.

(2) Pays all of the fees that would be required of him or her if he or she were then applying for the certificate and permit for the first time.

(3) Takes and passes the examination which would be required of him or her if he or she were then applying for the certificate for the first time. The examination may be waived in any case in which the applicant establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to engage in practice as a certified public accountant.

(d) The board may, by appropriate regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a certificate is issued without an examination under this section.

(e) Revoked permits may not be renewed, but may be reinstated by the board, without regard to the length of time that has elapsed since the permit was revoked, and with conditions and restrictions as the board shall determine.

5070.8. A permit which has been suspended is subject to expiration, and shall be renewed as provided in this article, but such renewal does not entitle the holder of the permit, while it remains suspended, and until it is reinstated, to engage in the practice of accountancy, or in any other activity or conduct in violation of the order or judgment by which the permit was suspended.

A permit which has been revoked is subject to expiration, but it may not be renewed. If it is reinstated after its expiration, the holder of the permit, as a condition precedent to its reinstatement, shall pay a reinstatement fee which shall be in an amount equal to the renewal fee

in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

5072. (a) No persons shall engage in the practice of accountancy as a partnership unless the partnership is registered by the board.

(b) A partnership, other than a limited partnership, may be registered by the board to engage in the practice of public accountancy provided it meets the following requirements:

(1) At least one general partner shall hold a valid permit to practice as a certified public accountant, public accountant, or accountancy corporation, or shall be an applicant for a certificate as a certified public accountant under Sections 5087 and 5088.

(2) Each partner personally engaged within this state in the practice of public accountancy as defined by Section 5051 shall hold a valid permit to practice in this state or shall have applied for a certificate as a certified public accountant under Sections 5087 and 5088.

(3) Each partner not personally engaged in the practice of public accountancy within this state shall be a certified public accountant in good standing of some state, except as permitted by Section 5079.

(4) Each resident manager in charge of an office of the firm in this state shall be a licensee in good standing of this state, or shall have applied for a certificate as a certified public accountant under Sections 5087 and 5088.

5073. (a) Application for registration of a partnership shall be made upon a form prescribed by the board. The board shall in each case determine whether the applicant is eligible for registration.

(b) A partnership that is so registered and that holds a valid permit issued under this article and that has at least one general partner who is licensed to practice using the designation "certified public accountant" or the abbreviation "C.P.A." and one additional licensed person may use the words "certified public accountants" or the abbreviation "C.P.A.s" in connection with its partnership name.

(c) A partnership that is so registered and that holds a valid permit issued under this article and that has at least one general partner who is licensed to practice using the designation "public accountant" or the abbreviation "P.A." and one additional licensed person may use the words "public accountants" or the abbreviation "P.A.s" in connection with its partnership name.

(d) Notification shall be given to the board within one month after the admission to, or withdrawal of, a partner from any partnership so registered.

(e) Any registration of a partnership under this section granted in reliance upon Sections 5087 and 5088 shall terminate forthwith if the board rejects the application under Sections 5087 and 5088 of the general partner who signed the application for registration as a partnership, or any partner personally engaged in the practice of public accountancy in this state, or any resident manager of a partnership in charge of an office in this state.

5076. (a) In order to renew its registration, a firm providing attest services, other than a sole proprietor or a small firm as defined in Section 5000, shall complete a peer review within three

years of the commencement of the peer review program and no less frequently than every three years thereafter.

(b) For purposes of this article, the following definitions apply:

(1) "Peer review" means a study, appraisal, or review conducted in accordance with professional standards of the professional work of a licensee or registered firm by another licensee unaffiliated with the licensee or registered firm being reviewed. The peer review shall include, but not be limited to, a review of at least one attest engagement representing the highest level of service performed by the firm and may include an evaluation of other factors in accordance with requirements specified by the board in regulations.

(2) "Attest services" include an audit, a review of financial statements, or an examination of prospective financial information, provided, however, "attest services" shall not include the issuance of compiled financial statements.

(c) The board shall adopt regulations as necessary to implement, interpret, and make specific the peer review requirements in this section, including, but not limited to, regulations specifying the requirements for the approval of peer review providers, and regulations establishing a peer review oversight committee.

(d) The board shall review and evaluate whether to implement the program specified in this section, and shall report its findings and recommendations to the Legislature and the department no later than September 1, 2011. If the board determines that the program specified in this section should be implemented, the board shall identify the resources necessary for implementation and recommend a date when the program shall commence.

COMMENTARY: All firms providing attest services as of January 1, 2006 with the exception of sole proprietors and small businesses (4 or less licensees) must submit to peer review in order to renew their licenses to practice public accounting.

5078. In each office of a certified public accountant or public accountant in this state which is not under the personal management of such an accountant, respectively, work shall be supervised by a certified public accountant or public accountant.

5079. (a) Notwithstanding any other provision of this chapter, any firm lawfully engaged in the practice of public accountancy in this state may have owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(1) Nonlicensee owners shall be natural persons or entities, such as partnerships, professional corporations, or others, provided that each ultimate beneficial owner of an equity interest in that entity shall be a natural person materially participating in the business conducted by the firm or an entity controlled by the firm.

(2) Nonlicensee owners shall materially participate in the business of the firm, or an entity controlled by the firm, and their ownership interest shall revert to the firm upon the cessation of any material participation.

(3) Licensees shall in the aggregate, directly or beneficially, comprise a majority of owners, except that firms with two owners may have one owner who is a nonlicensee.

(4) Licensees shall in the aggregate, directly or beneficially, hold more than half of the equity capital and possess majority voting rights.

(5) Nonlicensee owners shall not hold themselves out as certified public accountants or public accountants and each licensed firm shall disclose actual or potential involvement of nonlicensee owners in the services provided.

(6) There shall be a certified public accountant or public accountant who has ultimate responsibility for each financial statement attest and compilation service engagement.

(7) Except as permitted by the board in the exercise of its discretion, a person may not become a nonlicensee owner or remain a nonlicensee owner if the person has done either of the following:

(A) Been convicted of any crime, an element of which is dishonesty or fraud, under the laws of any state, of the United States, or of any other jurisdiction.

(B) Had a professional license or the right to practice revoked or suspended for reasons other than nonpayment of dues or fees, or has voluntarily surrendered a license or right to practice with disciplinary charges or a disciplinary investigation pending, and not reinstated by a licensing or regulatory agency of any state, or of the United States, including, but not limited to, the Securities and Exchange Commission or Public Company Accounting Oversight Board, or of any other jurisdiction.

(b) (1) A nonlicensee owner of a licensed firm shall report to the board in writing of the occurrence of any of the events set forth in paragraph (7) of subdivision (a) within 30 days of the date the nonlicensee owner has knowledge of the event. A conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

(2) A California nonlicensee owner of a licensed firm shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2006, within 30 days of the date the California nonlicensee owner has knowledge of the events:

(A) Any notice of the opening or initiation of a formal investigation of the nonlicensee owner by the Securities and Exchange Commission or its designee, or any notice from the Securities and Exchange Commission to a nonlicensee owner requesting a Wells submission.

(B) Any notice of the opening or initiation of an investigation of the nonlicensee owner by the Public Company Accounting Oversight Board or its designee.

(C) Any notice of the opening or initiation of an investigation of the nonlicensee owner by another professional licensing agency.

(3) The report required by paragraphs (1) and (2) shall be signed by the nonlicensee owner and set forth the facts that constitute the reportable event. If the reportable event involves the action of an administrative agency or court, the report shall identify the name of the agency or court, the title of the matter, and the date of occurrence of the event.

(4) Notwithstanding any other provision of law, reports received by the board pursuant to paragraph (2) shall not be disclosed to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) other than (A) in the course of any disciplinary proceeding by the board after the filing of a formal accusation, (B) in the course of any legal action to which the board is a party, (C) in



response to an official inquiry from a state or federal agency, (D) in response to a subpoena or summons enforceable by order of a court, or (E) when otherwise specifically required by law.

(5) Nothing in this subdivision shall impose a duty upon any licensee or nonlicensee owner to report to the board the occurrence of any events set forth in paragraph (7) of subdivision (a) or paragraph (2) of this subdivision either by or against any other nonlicensee owner.

(c) For purposes of this section, the following definitions apply:

(1) "Licensee" means a certified public accountant or public accountant in this state or a certified public accountant in good standing in another state.

(2) "Material participation" means an activity that is regular, continuous, and substantial.

(d) All firms with nonlicensee owners shall certify at the time of registration and renewal that the firm is in compliance with this section.

(e) The board shall adopt regulations to implement, interpret, or make specific this section.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5080-5095**

5080. The "certified public accountant" license shall be granted by the board to any person who meets the requirements of this article, has not committed acts or crimes constituting grounds for denial of a license under Section 480, and files an application for licensure on a form provided by the board.

5080.1. The board may require an applicant for a certified public accountant license to appear in person to determine if the applicant's qualifications are as prescribed in this chapter and in rules adopted by the board.

5081. An applicant for an authorization to be admitted to the examination for a certified public accountant license shall:

(a) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) File the application prescribed by the board. This application shall not be considered filed unless all required supporting documents, fees, and the fully completed board-approved application form are received in the board office or filed by mail in accordance with Section 11003 of the Government Code on or before the specified final filing date.

(c) Meet one of the educational requirements specified in this article.

5081.1. Pursuant to subdivision (b) of Section 5090, an applicant for admission to the examination for a certified public accountant certificate may qualify for admission with one of the following:

(a) The applicant shall present satisfactory evidence that the applicant has either of the following:

(1) A baccalaureate degree from a university, college or other four-year institution of learning accredited by a regional institutional accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher

Education Act of 1965 as amended (20 U.S.C. Sec. 1001 et seq.) with a major in accounting or related subjects requiring a minimum of 45 semester units of instruction in these subjects. If the applicant has received a baccalaureate degree in a nonaccounting major, the applicant shall present satisfactory evidence of study substantially the equivalent of an accounting major, including courses in related business administration subjects.

(2) A degree or degrees from a college, university, or other institution of learning located outside the United States that is approved by the board as the equivalent of the baccalaureate degree described in paragraph (1). The board may require an applicant under this paragraph to submit documentation of his or her education to a credential evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board. The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (A) furnish evaluations directly to the board, (B) furnish evaluations written in English, (C) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services, (D) be used by accredited colleges and universities, (E) be reevaluated by the board every five years, (F) maintain a complete set of reference materials as specified by the board, (G) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts, (H) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses, (I) have an appeal procedure for applicants, and (J) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of reference from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this paragraph and in any regulations adopted by the board.

(b) The applicant shall present satisfactory evidence that the applicant has successfully completed a two-year course of college level study or received an associate of arts degree from a community college, either institution accredited by a regional institutional accrediting agency that is included in a list published by the United States Secretary of Education under the provisions of federal law specified in paragraph (1) of subdivision (a), and that the applicant has completed a minimum of 120 semester units which includes the study of accounting and related business administration subjects.

(c) The applicant shall show to the satisfaction of the board that he or she has had the equivalent of the educational qualifications required by subdivision (b), or shall pass a preliminary written examination approved and administered by an agency approved by the California State Department of Education and shall have completed a minimum of 10 semester units or the equivalent in accounting subjects. The 10 semester units in accounting subjects shall be completed at a college, university, or other institution of higher learning accredited at the college level by an agency or association that is included in a list published by the United States Secretary of Education under the federal law specified in paragraph (1) of subdivision (a).

(d) The applicant shall be a public accountant registered under this chapter.

(e) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

5082. An applicant for a certified public accountant license shall have successfully passed an examination in subjects the board deems appropriate, and in the form and manner that the board deems appropriate. The board may, by regulation, prescribe the methods for applying for and conducting the examination, including methods for grading and determining a passing grade.

5082.1. (a) The examination required by the board for the granting of a license as a certified public accountant may be conducted by the board or by a public or private organization specified by the board.

The examination may be conducted under a uniform examination system.

(b) The board may make arrangements with a public or private organization for the conduct of the examination, as deemed necessary by the board. The board may contract with a public or private organization for materials or services related to the examination.

5082.2. A candidate who fails an examination provided for in this article shall have the right to reexamination pursuant to the provisions of this article and regulations adopted by the board.

5082.3. An applicant for a license as a certified public accountant may be deemed by the board to have met the examination requirements of Section 5082, 5092, or 5093 if the applicant satisfies all of the following requirements:

(a) The applicant is licensed or has comparable authority under the laws of any country to engage in the practice of public accountancy.

(b) The International Qualifications Appraisal Board jointly established by the National Association of State Boards of Accountancy and the American Institute of Certified Public Accountants has determined that the standards under which the applicant was licensed or under which the applicant secured comparable authority meet its standards for admission to the International Uniform Certified Public Accountant Qualification Examination.

(c) The applicant has successfully passed the International Uniform Certified Public Accountant Qualification Examination referenced in subdivision (b).

5082.4. A Canadian Chartered Accountant in good standing may be deemed by the board to have met the examination requirements of Section 5082, 5092, or 5093 if he or she has successfully passed the Canadian Chartered Accountant Uniform Certified Public Accountant Qualification Examination of the American Institute of Certified Public Accountants or the International Uniform Certified Public Accountant Qualification Examination referenced in subdivision (b) Section 5082.3.

5082.5. The board may give credit to a candidate who has passed all or part of the examination in another state or territory, if the members of the board determine that the standards under

which the examination was held are as high as the standards established for examination in this chapter.

5083. (a) Pursuant to subdivision (b) of Section 5090, an individual applying for licensure shall meet, to the satisfaction of the board, one of the following requirements:

(1) Four year of experience if the applicant qualified to sit for the exam by meeting the requirements of subdivision (b) or (c) of Section 5081.1.

(2) Three years of experience if the applicant qualified to sit for the exam by meeting the requirements of subdivision (a) or (d) of Section 5081.1 or meets the requirements of Section 5082.3.

(b) In order to be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting may be qualifying if completed by, or in the employ of, a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing employment may be qualifying provided that this work was performed under the direct supervision of an individual licensed by a state to engage in the practice of public accountancy.

(c) Qualifying experience for licensure includes providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills.

(d) The board shall prescribe rules related to the experience requirements set forth in this section, including a requirement that each applicant demonstrate to the board satisfactory experience in the attest function as it relates to financial statements. For purposes of this subdivision, the attest function includes audit and review of financial statements.

(e) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

5084. For applicants seeking licensure pursuant to subdivision (b) of Section 5090, the board shall grant one year's credit toward fulfillment of its public accounting experience requirement to a graduate of a college who has completed a four-year course with 45 or more semester units or the equivalent thereof in the study of accounting and related business administration subjects, of which at least 20 semester units or the equivalent thereof shall be in the study of accounting.

The members of the board shall prescribe rules establishing the character and variety of experience necessary to fulfill the experience requirements set forth in this section.

This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

5086. Individuals who, at the time of the enactment of this act, hold certified public accountant licenses heretofore issued under the laws of this state shall not be required to secure additional licenses under this chapter, but shall otherwise be subject to all the provisions of this act; and such licenses heretofore issued shall, for all purposes, be considered licenses under this chapter and subject to the provisions hereof.

5087. (a) The board may issue a certified public accountant license to any applicant who is a holder of a valid and unrevoked certified public accountant license issued under the laws of any state, if the board determines that the standards under which the applicant received the license are substantially equivalent to the standards of education, examination, and experience established under this chapter and the applicant has not committed acts or crimes constituting grounds for denial under Section 480. To be authorized to sign reports on attest engagements, the applicant shall meet the requirements of Section 5095.

(b) The board may in particular cases waive any of the requirements regarding the circumstances in which the various parts of the examination were to be passed for an applicant from another state.

5088. (a) Any individual who is the holder of a current and valid license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, until the time the application for a license is granted or denied, practice public accountancy in this state only under a practice privilege pursuant to the provisions of Article 5.1 (commencing with Section 5096), except that, for purposes of this section, the individual is not disqualified from a practice privilege during the period the application is pending by virtue of maintaining an office or principal place of business, or both, in this state. The board may by regulation provide for exemption, credit, or proration of fees to avoid duplication of fees.

(b) This section shall become operative on January 1, 2006.

5090. (a) An applicant for the certified public accountant license shall comply with the education, examination, and experience requirements in either Section 5092 or 5093.

(b) Notwithstanding subdivision (a), an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may complete the examination and qualify for licensure based on the requirements in Sections 5081.1, 5082, 5082.2, 5083, 5084, and applicable regulations adopted by the board that were in effect on December 31, 2001, or comparable examination requirements adopted by the board in the event the form or format of the examination changes, provided the applicant qualifies and applies for licensure before January 1, 2010.

5092. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

5093. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) (1) An applicant for admission to the certified public accountant examination under the provisions of this section shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be provided at the time of application for admission to the examination, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 5, 2002, may provide this evidence at the time of application for licensure.

(2) An applicant for issuance of the certified public accountant license under the provisions of this section shall present satisfactory evidence that the applicant has completed at least 150 semester unit of college education including a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business related subjects. This evidence shall be presented at the time of application for the certified public accountant license.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had one year of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing

shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

5094. (a) In order for education to be qualifying, education shall meet the standards described in subdivision (b) or (c) of this section.

(b) At a minimum, education must be from a degree-granting university, college, or other institution of learning accredited by a regional or national accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001, et seq.).

(c) Education from a college, university, or other institution of learning located outside the United States may be qualifying provided it is deemed by the board to be equivalent to education obtained under subdivision (b). The board may require an applicant to submit documentation of his or her education to a credential evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board in order to assess educational equivalency. procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (1) furnish evaluations directly to the board, (2) furnish evaluations written in English, (3) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services, (4) be used by accredited colleges and universities, (5) be reevaluated by the board every five years, (6) maintain a complete set of reference materials as specified by the board, (7) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts, (8) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses, (9) have an appeal procedure for applicants, and (10) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of references from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this subdivision and in any regulations adopted by the board.

5094. (a) In order for education to be qualifying, it shall meet the standards described in subdivision (b) or (c) of this section.

(b) At a minimum, education must be from a degree-granting university, college, or other institution of learning accredited by a regional or national accrediting agency included in a list of these agencies published by the United States Secretary of Education under the requirements of the Higher Education Act of 1965 as amended (20 U.S.C. Sec. 1001, et seq.).

(c) Education from a college, university, or other institution of learning located outside the United States may be qualifying provided it is deemed by the board to be equivalent to education obtained under subdivision (b). The board may require an applicant to submit documentation of

his or her education to a credential evaluation service approved by the board for evaluation and to cause the results of this evaluation to be reported to the board in order to assess educational equivalency.

(d) The board shall adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These regulations shall, at a minimum, require that the credential evaluation service (1) furnish evaluations directly to the board, (2) furnish evaluations written in English, (3) be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association of Foreign Student Affairs, or the National Association of Credential Evaluation Services, (4) be used by accredited colleges and universities, (5) be reevaluated by the board every five years, (6) maintain a complete set of reference materials as specified by the board, (7) base evaluations only upon authentic, original transcripts and degrees and have a written procedure for identifying fraudulent transcripts, (8) include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each of the courses, (9) have an appeal procedure for applicants, and (10) furnish the board with information concerning the credential evaluation service that includes biographical information on evaluators and translators, three letters of references from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any additional information the board may require in order to ascertain that the credential evaluation service meets the standards set forth in this subdivision and in any regulations adopted by the board.

5095. (a) To be authorized to sign reports on attest engagements, a licensee shall complete a minimum of 500 hours of experience, satisfactory to the board, in attest services.

(b) To be qualifying under this section, attest experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy and provide attest services, and this experience shall be verified. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy and perform attest services, and this experience shall be verified. An applicant may be required to present work papers or other evidence substantiating that the applicant has met the requirements of this section and applicable regulations.

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

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

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5096-5096.15**



5096. (a) An individual whose principal place of business is not in this state and who has a valid and current license, certificate or permit to practice public accountancy from another state may, subject to the conditions and limitations in this article, engage in the practice of public accountancy in this state under a practice privilege without obtaining a certificate or license under this chapter if the individual satisfies one of the following:

(1) The individual has continually practiced public accountancy as a certified public accountant under a valid license issued by any state for at least four of the last ten years.

(2) The individual has a license, certificate, or permit from a state which has been determined by the board to have education, examination, and experience qualifications for licensure substantially equivalent to this state's qualifications under Section 5093.

(3) The individual possesses education, examination, and experience qualifications for licensure which have been determined by the board to be substantially equivalent to this state's qualifications under Section 5093.

(b) The board may designate states as substantially equivalent under paragraph (2) of subdivision (a) and may accept individual qualification evaluations or appraisals conducted by designated entities, as satisfying the requirements of paragraph (3) of subdivision (a).

(c) To obtain a practice privilege under this section, an individual who meets the requirements of subdivision (a), shall do the following:

(1) In the manner prescribed by board regulation, notify the board of the individual's intent to practice.

(2) Pay a fee as provided in Article 8 (commencing with Section 5130).

(d) Except as otherwise provided by this article or by board regulation, the practice privilege commences when the individual notifies the board, provided the fee is received by the board within 30 days of that date. The board shall permit the notification to be provided electronically.

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

(1) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state.

(2) Shall comply with the provisions of this chapter, board regulations, and other laws, regulations, and professional standards applicable to the practice of public accountancy by the licensees of this state and to any other laws and regulations applicable to individuals practicing under practice privileges in this state except the individual is deemed, solely for the purpose of this article, to have met the continuing education requirements and ethics examination requirements of this state when such individual has met the examination and continuing education requirements of the state in which the individual holds the valid license, certificate, or permit on which the substantial equivalency is based.

(3) Shall not provide public accountancy services in this state from any office located in this state, except as an employee of a firm registered in this state. This paragraph does not apply to public accountancy services provided to a client at the client's place of business or residence.

(4) Is deemed to have appointed the regulatory agency of the state that issued the individual's certificate, license, or permit upon which substantial equivalency is based as the individual's agent on whom notices, subpoenas or other process may be served in any action or proceeding by the board against the individual.

(5) Shall cooperate with any board investigation or inquiry and shall timely respond to a board investigation, inquiry, request, notice, demand or subpoena for information or documents and timely provide to the board the identified information and documents.

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

(g) (1) No individual may practice under a practice privilege without prior approval of the board if the individual has, or acquires at any time during the term of the practice privilege, any disqualifying condition under paragraph (2) of this subdivision.

(2) Disqualifying conditions include:

(A) Conviction of any crime other than a minor traffic violation.

(B) Revocation, suspension, denial, surrender or other discipline or sanctions involving any license, permit, registration, certificate or other authority to practice any profession in this or any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board.

(C) Pendency of any investigation, inquiry or proceeding by or before any state, federal or local court or agency, including, but not limited to, the Public Company Accounting Oversight Board, involving the professional conduct of the individual.

(D) Any judgment or arbitration award against the individual involving the professional conduct of the individual in the amount of thirty thousand dollars (\$30,000) or greater.

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

(3) The board may adopt regulations exempting specified minor occurrences of the conditions listed in subparagraph (B) of paragraph (2) from being disqualifying conditions under this subdivision.

5096.1. (a) Any individual, not a licensee of this state, who is engaged in any act which is the practice of public accountancy in this state, and who has not given notice of intent to practice under practice privileges and paid the fee required pursuant to the provisions of this article, and who has a license, certificate or other authority to engage in the practice of public accountancy in any other state, regardless of whether active, inactive, suspended, or subject to renewal on payment of a fee or completion of an educational or ethics requirement, is:

(1) Deemed to be practicing public accountancy unlawfully in this state.

(2) Subject to the personal and subject matter jurisdiction and disciplinary authority of the board and the courts of this state to the same extent as a holder of a valid practice privilege.

(3) Deemed to have appointed the regulatory agency of the state that issued the individual's certificate or license as the individual's agent on whom notice, subpoenas, or other process may be served in any action or proceeding by the board against the individual.

(b) The board may prospectively deny a practice privilege to any individual who has violated this section or implementing regulations or committed any act which would be grounds for discipline against the holder of a practice privilege.

5096.2. (a) Practice privileges may be denied for failure to qualify under or comply with the provisions of this article or implementing regulations, or for any act that if committed by an applicant for licensure would be grounds for denial of a license under Section 480 or if

committed by a licensee would be grounds for discipline under Section 5100, or for any act committed outside of this state that would be a violation if committed within this state.

(b) The board may deny practice privileges using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) That the practice privilege is denied.

(B) The reasons for denial.

(C) The earliest date on which the individual is eligible for a practice privilege.

(D) That the individual has a right to appeal the notice and request a hearing under the provisions of the Administrative Procedure Act if a written notice of appeal and request for hearing is made within 60 days.

(E) That, if the individual does not submit a notice of appeal and request for hearing within 60 days, the board's action set forth in the notice shall become final.

(2) Filing a statement of issues under the Administrative Procedure Act.

(c) An individual who had been denied a practice privilege may apply for a new practice privilege not less than one year after the effective date of the notice or decision denying the practice privilege unless a longer time period, not to exceed three years, is specified in the notice or decision denying the practice privilege.

5096.3. (a) Practice privileges are subject to revocation, suspension, fines or other disciplinary sanctions for any conduct that would be grounds for discipline against a licensee of the board or for any conduct in violation of this article or regulations implementing this article.

(b) Practice privileges are subject to discipline during any time period in which they are valid, under administrative suspension, or expired.

(c) The board may recover its costs pursuant to Section 5107 as part of any disciplinary proceeding against the holder of a practice privilege.

(d) An individual whose practice privilege has been revoked may apply for a new practice privilege not less than one year after the effective date of the board's decision revoking the individual's practice privilege unless a longer time period, not to exceed three years, is specified in the board's decision revoking the practice privilege.

(e) The provisions of the Administrative Procedure Act, including, but not limited to, the commencement of a disciplinary proceeding by the filing of an accusation by the board shall apply under this article.

5096.4. (a) The right of an individual to practice in this state under a practice privilege may be administratively suspended at any time by an order issued by the board or its executive officer, without prior notice or hearing, for the purpose of conducting a disciplinary investigation, proceeding, or inquiry concerning the representations made in the notice, the individual's competence or qualifications to practice under practice privileges, failure to timely respond to a board inquiry or request for information or documents, or under other conditions and circumstances provided for by board regulation.

(b) The administrative suspension order is immediately effective when mailed to the individual's address of record or agent for notice and service as provided for in this article.

(c) The administrative suspension order shall contain the following:

- (1) The reason for the suspension.
- (2) A statement that the individual has the right, within 30 days, to appeal the administrative suspension order and request a hearing.
- (3) A statement that any appeal hearing will be conducted under the provisions of the Administrative Procedure Act applicable to individuals who are denied licensure, including the filing of a statement of issues by the board setting forth the reasons for the administrative suspension of practice privileges and specifying the statutes and rules with which the individual must show compliance by producing proof at the hearing and in addition any particular matters that have come to the attention of the board and that would authorize the administrative suspension, or the denial of practice privileges.
- (d) The burden is on the holder of the suspended practice privilege to establish both qualification and fitness to practice under practice privileges.
- (e) The administrative suspension shall continue in effect until terminated by an order of the board or the executive officer or expiration of the practice privilege under administrative suspension.
- (f) Administrative suspension is not discipline and shall not preclude any individual from applying for a license to practice public accountancy in this state or from applying for a new practice privilege upon expiration of the one under administrative suspension, except that the new practice privilege shall not be effective until approved by the board.
- (g) Notwithstanding any administrative suspension, a practice privilege expires one year from the date of notice unless a shorter period is set by board regulation.
- (h) Proceedings to appeal an administrative suspension order may be combined or coordinated with proceedings for denial or discipline of a practice privilege.

5096.5. Notwithstanding any other provision of this article, an individual may not sign any attest report pursuant to a practice privilege unless the individual meets the experience requirements of Section 5095 and completes any continuing education or other conditions required by the board regulations implementing this article.

COMMENTARY: Only CPAs who are verified as qualified for attest service status are permitted to sign reports on attest engagements. ("look-up" feature provides verification of a CPA's status).

5096.6. In addition to the authority otherwise provided for by this code, the board may delegate to the executive officer the authority to issue any notice or order provided for in this article and to act on behalf of the board, including, but not limited to, issuing a notice of denial of a practice privilege and an interim suspension order, subject to the right of the individual to timely appeal and request a hearing as provided for in this article.

5096.7. Except as otherwise provided in this article, the following definitions apply:

- (a) Anywhere the term "license," "licensee," "permit," or "certificate" is used in this chapter or Division 1.5 (commencing with Section 475), it shall include persons holding practice privileges under this article, unless otherwise inconsistent with the provisions of the article.

(b) Any notice of practice privileges under this article and supporting documents is deemed an application for licensure for purposes of the provisions of this code, including, but not limited to, the provisions of this chapter and the provisions of Division 1.5 (commencing with Section 475) related to the denial, suspension and revocation of licenses.

(c) Anywhere the term "employee" is used in this article it shall include, but is not limited to, partners, shareholders, and other owners.

5096.8. In addition to the authority otherwise provided by this code, all investigative powers of the board, including those delegated to the executive officer, shall apply to investigations concerning compliance with, or actual or potential violations of, the provisions of this article or implementing regulations, including, but not limited to, the power to conduct investigations and hearings by the executive officer under Section 5103 and to issuance of subpoenas under Section 5108.

5096.9. The board is authorized to adopt regulations to implement, interpret, or make specific the provisions of this article.

5096.10. The provisions of this article shall only be operative if commencing July 1, 2005, and continuing during the period provided in Section 5096.11, there is an appropriation from the Accountancy Fund in the annual Budget Act to fund the activities in the article and sufficient hiring authority is granted pursuant to a budget change proposal to the board to provide staffing to implement this article.

5096.11. This article shall become operative on January 1, 2006. It shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends that date.

5096.12. (a) A certified public accounting firm that is authorized to practice in another state and that does not have an office in this state may engage in the practice of public accountancy in this state through the holder of a practice privilege provided that:

(1) The practice of public accountancy by the firm is limited to authorized practice by the holder of the practice privilege.

(2) A firm that engages in practice under this section is deemed to consent to the personal, subject matter, and disciplinary jurisdiction of the board with respect to any practice under this section.

(b) The board may revoke, suspend, issue a fine pursuant to Article 6.5 (commencing with Section 5116), or otherwise restrict or discipline the firm for any act that would be grounds for discipline against a holder of a practice privilege through which the firm practices.

(c) This section shall become inoperative on January 1, 2011, and as of that date is repealed.

5096.13. The notification of intent to practice under a practice privilege pursuant to Section 5096 shall include the name of the firm, its address and telephone number, and its federal taxpayer identification number.

5096.14. The board shall amend Section 30 of Article 4 of Division 1 of Title 16 of the California Code of Regulations to extend the current "safe harbor" period from December 31, 2007, to December 31, 2010.

5096.15. It is the intent of the Legislature that the board adopt regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege. These regulations shall ensure that the practice privilege program is adequately funded. These regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and, for purposes of that chapter, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5097-5098**

5097. (a) Audit documentation shall be a licensee's records of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in an audit engagement. Audit documentation shall include, but is not limited to, programs, analyses, memoranda, letters of confirmation and representation, copies or abstracts of company documents, and schedules or commentaries prepared or obtained by the licensee.

(b) Audit documentation shall contain sufficient documentation to enable a reviewer with relevant knowledge and experience, having no previous connection with the audit engagement, to understand the nature, timing, extent, and results of the auditing or other procedures performed, evidence obtained, and conclusions reached, and to determine the identity of the persons who performed and reviewed the work.

(c) Failure of the audit documentation to document the procedures applied, tests performed, evidence obtained, and relevant conclusions reached in an engagement shall raise a presumption that the procedures were not applied, tests were not performed, information was not obtained, and relevant conclusions were not reached. This presumption shall be a rebuttable presumption affecting the burden of proof relative to those portions of the audit that are not documented as required in subdivision (b). The burden may be met by a preponderance of the evidence.

(d) Audit documentation shall be maintained by a licensee for the longer of the following:

(1) The minimum period of retention provided in subdivision (e).

(2) A period sufficient to satisfy professional standards and to comply with applicable laws and regulations.

(e) Audit documentation shall be maintained for a minimum of seven years which shall be extended during the pendency of any board investigation, disciplinary action, or legal action involving the licensee or the licensee's firm. The board may adopt regulations to establish a

different retention period for specific categories of audit documentation where the board finds that the nature of the documentation warrants it.

(f) Licensees shall maintain a written documentation retention and destruction policy that shall set forth the licensee's practices and procedures complying with this article.

5098. The board may adopt regulations to implement, interpret, and make specific provisions relating to the following:

(a) Requirements for licensees maintaining an audit documentation retention policy and procedures for review and approval of audit documentation destruction.

(b) Procedures for the identification, dating, and retention of audit documentation.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5100-5115**

5100. After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

(b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

(d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.

(e) Violation of Section 5097.

(f) Violation of Section 5120.

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

(h) Suspension or revocation of the right to practice before any governmental body or agency.

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

(m) Unlawfully engaging in the practice of public accountancy in another state.

**CASE OF VIOLATION(S):**

**Violation(s) Charged**

Business and Professions Code, Division 3, Chapter 1, § 5100 (h).

**Cause For Discipline**

The Department of Treasury found that Mr. A provided erroneous advice to taxpayers, including improperly advising them that tax returns were not required because IRS Code sections 861 through 856 define "source of income" in a manner that excluded the income of United States citizens residing in the United States from United States tax.

**Board Actions**

Revocation of CPA Certificate, via proposed decision. Mr. A is required to reimburse the Board \$6,628 for its investigation and prosecution costs.

5101. After notice and hearing the board shall revoke the registration and permit to practice of a partnership if at any time it does not have all the qualifications prescribed by the section of this chapter under which it qualified for registration. After notice and hearing the board may revoke, suspend or refuse to renew the permit to practice of a partnership or may censure the holder of such permit for any of the causes enumerated in Section 5100 and for the following additional causes:

(a) The revocation or suspension of the certificate or registration or the revocation or suspension of or refusal to renew the permit to practice of any partner.

(b) The cancellation, revocation or suspension of certificate or other authority to practice or refusal to renew the certificate or other authority of the partnership of any partner thereof to practice public accountancy in any other state.

5102. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

5103. (a) Notwithstanding any other provision of law, the board may inquire into any alleged violation of this chapter or any other state or federal law, regulation, or rule relevant to the practice of accountancy.

(b) The board, or its executive officer pursuant to a delegation of authority from the board, is authorized to perform the following functions:

(1) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any



matter involving the conduct of licensees, as directed by the board, or as directed by the executive officer pursuant to a delegation of authority from the board.

(2) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving any violation or alleged violation of this chapter by licensees, as directed by the board, or as directed by the executive officer pursuant to a delegation of authority from the board.

5104. Any certified public accountant or public accountant whose certificate, registration, or permit has been revoked or suspended shall upon request of the board relinquish his or her certificate or permit. However, upon the expiration of the period of suspension, the board shall immediately return any suspended certificate or permit which has been relinquished.

5105. Any certified public accountant or public accountant who is delinquent in the payment of his renewal fee shall upon request of the board relinquish his certificate and permit; provided, however, the board shall reissue any certificate and permit which has been relinquished for nonpayment of renewal fees if the permit is renewed as provided in Section 5070.6.

5106. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The record of the conviction shall be conclusive evidence thereof. The board may order the certificate or permit suspended or revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made, suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information or indictment.

5107. (a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

(c) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested to do so by the executive officer pursuant to subdivision (a). Costs are payable 120 days after the board's decision is final, unless otherwise provided for by the administrative law judge or if the time for payment is extended by the board.

(d) The finding of the administrative law judge with regard to cost shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or

remand to the administrative law judge where the proposed decision fails to make a finding on costs requested by the executive officer pursuant to subdivision (a).

(e) The administrative law judge may make a further finding that the amount of reasonable costs awarded shall be reduced or eliminated upon a finding that respondent has demonstrated that he or she cannot pay all or a portion of the costs or that payment of the costs would cause an unreasonable financial hardship which cannot be remedied through a payment plan.

(f) When an administrative law judge makes a finding that costs be waived or reduced, he or she shall set forth the factual basis for his or her finding in the proposed decision.

(g) Where an order for recovery of costs is made and timely payment is not made as directed by the board's decision, the board may enforce the order for payment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any holder of a permit or certificate directed to pay costs.

(h) In a judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms of payment.

(i) All costs recovered under this section shall be deposited in the Accountancy Fund.

(j) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit or certificate of a holder who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the permit or certificate of a holder who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

(k) Nothing in this section shall preclude the board from seeking recovery of costs in an order or decision made pursuant to an agreement entered into between the board and the holder of a permit or certificate.

(l) (1) Costs may not be recovered under this section as a result of a citation issued pursuant to Section 125.9 and its implementing language if the licensee complies with the citation.

(2) The Legislature hereby finds and declares that this subdivision is declaratory of existing law.

5108. In connection with any investigation or action authorized by this chapter, the board may issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to its inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

5109. The expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

5109.5. The board shall report to the Legislature by September 1, 2003, on problems associated with policing and disciplining those accountants who violate Section 5100 or other provisions of this chapter and who are employed by a large public accounting firm. The board shall look

critically at their enforcement budget and identify costs of investigation and prosecution of these disciplinary actions and propose ways to cover costs of handling these types of cases.

5110. (a) After notice and an opportunity for a hearing, the board may deny an application to take the licensing examination, deny admission to current and future licensing examinations, void examination grades, and deny an application for a license or registration to any individual who has committed any of the following acts:

(1) Made any false, fraudulent, or materially misleading statement or a material omission in any application for a license, examination, or registration.

(2) Cheated or subverted or attempted to subvert any licensing examination.

(3) Aided, abetted, or conspired with any other person to violate paragraph (1) or (2).

(4) Any act that if committed by an applicant for licensure would be grounds for denial of a license or registration under Section 480 or if committed by a licensee or a registrant would be grounds for discipline under Section 5100.

(5) Any act committed outside of this state that would be a violation of this article if committed within this state.

(b) Neither the withdrawal of an application for examination, licensure, or registration, nor the expulsion or voluntary departure from an examination shall deprive the board of its authority to deny an application for, or admittance to, current or future licensing examinations, or to commence or continue a proceeding based on a violation of this article.

(c) Nothing in this article shall be construed to limit the authority of the board to refuse admittance to or to remove from the licensing examination, any person suspected of cheating or failing to comply with examination procedures or requirements.

(d) The term "licensing examination" includes the Uniform Certified Public Accountant examination, ethics examination, and any other professional or vocational licensing examination offered or administered by, or through, the board or other agencies within or outside of this state, for professional or vocational licensing purposes.

(e) The board may take any of the actions described in subdivision (a) based upon any determination, decision, ruling, or finding made by any state or other governmental entity, foreign or domestic, that any individual has committed any of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The provisions of this section are in addition to any other remedies that may be available under other provisions of law including, but not limited to, those set forth in Sections 123, 480, and 496.

5111. Cheating on, or subverting or attempting to subvert any licensing examination includes, but is not limited to, engaging in, soliciting, or procuring any of the following:

(a) Any communication between one or more examinees and any person, other than a proctor or examination official, while the examination is in progress.

(b) Any communication between one or more examinees and any other person at any time concerning the content of the examination including, but not limited to, any examination question or answer, unless the examination has been publicly released by the examining authority or jurisdiction.

- (c) The taking of all or a part of the examination by a person other than the applicant.
- (d) Possession or use at any time during the examination or while the examinee is on the examination premises of any device, material, or document that is not expressly authorized for use by examinees during the examination including, but not limited to, notes, crib sheets, textbooks, and electronic devices.
- (e) Failure to follow any examination instruction or rule related to examination security.
- (f) Providing false, fraudulent, or materially misleading information concerning education, experience, or other qualifications as part of, or in support of, any application for admission to any professional or vocational examination.

5112. (a) The board may deny an application to take the licensing examination, deny admittance to current and future licensing examinations, and void examination grades on the grounds set forth in Section 5110 using either of the following procedures:

- (1) Notifying the individual in writing of all of the following:
  - (A) The action the board has taken.
  - (B) The reasons the action was taken.
  - (C) The earliest date on which the individual may reapply for admittance to the licensing examination.
  - (D) The individual's right to a hearing under the provisions of Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code if a written request for a hearing is made within 60 days from the date of the board's notice. If the individual does not request a hearing, the board's action shall become final at the expiration of this 60-day period.
- (2) Filing and serving a statement of issues in accordance with Section 11504 of the Government Code.
- (b) The board shall issue the notice of action under paragraph (1) of subdivision (a) or file and serve the statement of issues under paragraph (2) of subdivision (a) within five years of the last day of the examination with respect to which the alleged prohibited act was committed or within three years of the discovery of the commission of the alleged prohibited act, whichever occurs later.

5113. An individual who has been denied admission to the licensing examination under Section 5110 may petition the board for admission to the Certified Public Accountant examination not less than one year after the effective date of the decision issued by the board following a hearing held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code or, if there was no hearing, may petition the board not less than one year after the decision or action pursuant to the notice of action issued by the board becomes final as provided in subparagraph (D) of paragraph (1) of subdivision (a) of Section 5112, unless the decision or notice of action issued by the board specifies a different timeframe within which this petition may be filed. However, in no event shall the timeframe specified by the board be more than three years from the effective date of the board's decision or from the date that the board's action pursuant to the notice of action becomes final.

5115. (a) A person whose license has been revoked or surrendered may petition the board for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition, unless a longer period, not to exceed three years, is specified by the board in any decision revoking the license, accepting the surrender of the license, or denying reinstatement of the license.

(b) A person whose license has not been revoked or surrendered but who has been disciplined by imposition of a suspension or otherwise disciplined may petition the board for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision.

(c) The board shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the board itself. The board itself shall rule on the petition, and the decision shall include the reasons therefore and any terms and conditions that the board reasonably deems appropriate to impose as a condition of reinstatement or reduction of penalty, including, but not limited to, restrictions on the petitioner's scope of professional practice.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5116-5116.6**

5116. (a) The board, after appropriate notice and an opportunity for hearing, may order any licensee or applicant for licensure or examination to pay an administrative penalty as provided in this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

(b) The board may assess administrative penalties under one or more provisions of this article. However, the total administrative penalty to be paid by the licensee shall not exceed the amount of the highest administrative penalty authorized by this article.

(c) The board shall adopt regulations to establish criteria for assessing administrative penalties based upon factors, including, but not limited to, actual and potential consumer harm, nature and severity of the violation, the role of the person in the violation, the person's ability to pay the administrative penalty, and the level of administrative penalty necessary to deter future violations of this chapter.

(d) Administrative penalties assessed under this article shall be in addition to any other penalties or sanctions imposed on the licensee or other person, including, but not limited to, license revocation, license suspension, denial of the application for licensure, denial of the petition for reinstatement, or denial of admission to the licensing examination. Payment of these administrative penalties may be included as a condition of probation when probation is ordered.

(e) All administrative penalties collected under this article shall be deposited in the Accountancy Fund.

5116.1. In accordance with Section 5116 and applicable regulations, except as provided in Section 5116.2, any licensee who violates any provision of this chapter may be assessed an administrative penalty of not more than five thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for each subsequent violation.

5116.2. In accordance with Section 5116 and applicable regulations, any licensee who violates subdivision (a), (c), (i), (j) or (k) of Section 5100 may be assessed an administrative penalty of not more than one million dollars (\$1,000,000) for the first violation and not more than five million dollars (\$5,000,000) for any subsequent violation, except that a licensee who is a natural person may be assessed an administrative penalty of not more than fifty thousand dollars (\$50,000) for the first violation and not more than one hundred thousand dollars (\$100,000) for any subsequent violation.

5116.3. In accordance with Section 5116 and applicable regulations, any person who is found to have cheated or subverted or attempted to subvert or cheat on any licensing examination or who conspired with or aided or abetted any other person to cheat, subvert or attempt to subvert any examination may be assessed an administrative penalty of not more than five thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for each subsequent violation.

5116.4. (a) The board's executive officer may request assessment of an administrative penalty in any disciplinary or other proceeding provided in this chapter or in any notice to an applicant pursuant to Section 5112.

(b) The administrative penalty pursuant to subdivision (a) shall become final unless contested within the time period provided for the filing of a notice of appeal, for the filing of a notice of defense, or for requesting a hearing in the proceeding.

(c) Nothing in this article shall prevent an administrative penalty from being included in a final contested or default decision of the board or in a notice issued pursuant to Section 5112 once the time period for requesting a hearing has expired.

5116.5. The board may obtain a judgment in any court of competent jurisdiction ordering the payment of any final administrative penalty assessed by the board pursuant to this article upon the filing of a certified copy of the board's final decision or notice issued pursuant to Section 5112.

5116.6. Anywhere the term "licensee" is used in the article it shall include certified public accountants, public accountants, partnerships, corporations, holders of practice privileges, other persons licensed, registered, or otherwise authorized to practice public accountancy under this chapter, and persons who are in violation of any provision of Article 5.1 (commencing with Section 5096).

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5120-5122**

5120. Any person who violates Article 3 (commencing with Section 5050) is guilty of a misdemeanor, punishable by imprisonment for not more than six months, or by a fine of not more than one thousand dollars (\$1,000), or both.

Whenever the board has reason to believe that any person is liable to punishment under this article, the board or with its approval the administrative committee, may certify the facts to the appropriate enforcement officer of the city or county where the alleged violation had taken place and the officer may cause appropriate proceedings to be brought.

5121. The display or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof or the words "public accountant" or any abbreviation thereof shall be prima facie evidence in any prosecution, proceeding or hearing brought under this article that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement or other printed, engraved or written instrument or device. Any such display or uttering shall be prima facie evidence that the person whose name is so displayed holds himself or herself out as a certified public accountant, or a public accountant holding a permit to practice public accountancy in this State under the provisions of this chapter. In any prosecution or hearing under this chapter, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify a conviction without evidence of a general course of conduct.

5122. Whenever in the judgment of the board, or with its approval the administrative committee, any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the board may make application to the appropriate court for an order enjoining the acts or practices, and upon showing by the board that the person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or other order that may be appropriate shall be granted by the court.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5130-5134**

5130. The board shall charge and collect a fee from each applicant for the certificate of certified public accountant. The fee shall accompany the application which must be made on a blank provided by the board.

5131. (a) The board may charge and collect an application fee and an examination fee from each applicant. The applicable fees shall accompany the application which shall be made on a form provided by the board.

(b) Notwithstanding any other provision of this chapter, the board may authorize an organization specified by the board pursuant to Section 5082.1 to receive directly from applicant's payment of the examination fees charged by that organization as payment for examination materials and services.

5132. All moneys received by the board under this chapter from any source and for any purpose shall be accounted for and reported monthly by the board to the Controller and at the same time the moneys shall be remitted to the State Treasury to the credit of the Accountancy Fund.

The secretary-treasurer of the board shall, from time to time, but not less than once each fiscal year, prepare or have prepared on his or her behalf, a financial report of the Accountancy Fund that contains information that the board determines is necessary for the purposes for which the board was established.

The report of the Accountancy Fund, which shall be published pursuant to Section 5008, shall include the revenues and the related costs from examination, initial licensing, license renewal, citation and fine authority, and cost recovery from enforcement actions and case settlements.

5133. All money in the Accountancy Fund is hereby appropriated to the California Board of Accountancy to carry out the provisions of this chapter. Each member of the board and each member of a committee shall receive a per diem and expenses as provided in Section 103.

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars (\$600). The board may charge a reexamination fee not to exceed seventy-five dollars (\$75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount not to exceed six hundred dollars (\$600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount not to exceed two hundred fifty dollars (\$250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately nine months of annual authorized expenditures. Any increase in the renewal fee shall be made by regulation upon a determination by the board that additional moneys are required to fund authorized expenditures and maintain the board's contingent fund reserve balance equal to nine months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars (\$250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is



issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) (1) On and after the enactment of Assembly Bill 1868 of the 2005-06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed one hundred twenty-five dollars (\$125). (2) On and after enactment of Assembly Bill 1868 of the 2005-06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars (\$25).

(k) The board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in a fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(l) It is the intent of the Legislature that, to ease entry into the public accounting profession in California, any administrative cost to the board related to the certified public accountant examination or issuance of the certified public accountant certificate that exceeds the maximum fees authorized by this section shall be covered by the fees charged for the biennial renewal of the permit to practice.

## **BUSINESS AND PROFESSIONS CODE**

### **SECTION 5150-5158**

5150. An accountancy corporation is a corporation which is registered with the California Board of Accountancy and has a currently effective certificate of registration from the board pursuant to the Moscone-Knox Professional Corporation Act, as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code, and this article. Subject to all applicable statutes, rules and regulations, an accountancy corporation is entitled to practice accountancy. With respect to an accountancy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the California Board of Accountancy.

5151. An applicant for registration as an accountancy corporation shall supply to the board all necessary and pertinent documents and information requested by the board concerning the applicant's plan of operation. The board may provide forms of application. If the board finds that the corporation is duly organized and existing under the General Corporation Law or the foreign corporation is duly qualified for the transaction of intrastate business pursuant to the General Corporation Law, that, except as otherwise permitted under Section 5053 or 5079, each officer, director, shareholder, or employee who will render professional services is a licensed person as defined in the Moscone-Knox Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and that from the application it appears that the affairs of the corporation will be

conducted in compliance with law and the rules and regulations of the board, the board shall upon payment of the registration fee in the amount as it may determine, issue a certificate of registration. The applicant shall include with the application for each shareholder of the corporation licensed in a foreign country but not in this state or in any other state, territory, or possession of the United States, a certificate from the authority in the foreign country currently having final jurisdiction over the practice of accounting, which shall verify the shareholder's admission to practice in the foreign country, the date thereof, and the fact that the shareholder is currently in good standing as the equivalent of a certified public accountant or public accountant. If the certificate is not in English, there shall be included with the certificate a duly authenticated English translation thereof. The application shall be signed and verified by an officer of the corporation.

5152. Each accountancy corporation shall file with the board at the times the board may require a report containing information pertaining to qualification and compliance with the statutes, rules and regulations of the board as the board may determine. All reports shall be signed and verified by an officer of the corporation.

5152.1. Each accountancy corporation shall renew its permit to practice biennially and shall pay the renewal fee fixed by the board in accordance with Section 5134.

5154. Except as provided in Section 5079 of this code and in Section 13403 of the Corporations Code, each director, shareholder, and officer of an accountancy corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act, or a person licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices.

5155. The income of an accountancy corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Moscone-Knox Professional Corporation Act) shall not in any manner accrue to the benefit of such shareholder or his shares in the accountancy corporation.

5156. An accountancy corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a permit under Section 5070

of this code. The board shall have the same powers of suspension, revocation and discipline against an accountancy corporation as are now or hereafter authorized by Section 5100 of this code, or by any other similar statute against individual licensees, provided, however, that proceedings against an accountancy corporation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

5157. The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of an accountancy corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in the Moscone-Knox Professional Corporation Act), or a deceased person, shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such rules and regulations may provide, and (b) that an accountancy corporation as a condition of obtaining a certificate pursuant to the Moscone-Knox Professional Corporation Act and this article shall provide adequate security by insurance or otherwise for claims against it by its clients arising out of the rendering of professional services.

5158. Each office of an accountancy corporation engaged in the practice of public accountancy in this state shall be managed by a certified public accountant or public accountant.

**CALIFORNIA CODE OF REGULATIONS**  
**TITLE 16. Professional and Vocational Regulations**  
**DIVISION 1. Board of Accountancy Regulations**

The California Accountancy Regulations define the Boards authority regarding complaints, specific California statutes and regulations related to the practice of public accounting including:

- The Accounting Act (Business & Professional Code Section 5000-5172)
- California Code of regulations (Title 16, Division)
- Business and Professional codes related sections.
- Corporation Code
- Government Code
- California Family Code

The Board's authority when a violation of accounting statutes or Board regulations has occurred is limited to disciplinary and recommending discipline. California law prohibits the Board from representing private citizens in a civil court of law or collecting money on their behalf. The filing of a complaint with the Board does not prohibit a person from filing a concurrent civil action. The Board cannot act as your attorney, provide legal advice or legal services, or advise you of your rights in a given situation.

The California Board of Accountancy does not discriminate on the basis of disability in employment or in the admission and access to its programs and activities. A coordinator has been designated to coordinate and carry out this agency's compliance with the nondiscrimination regulations of Title 11 of the American with Disabilities Act (ADA).

The California Code of Regulations is available on the Board's website at [www.dca.ca.gov/cba/regs.htm](http://www.dca.ca.gov/cba/regs.htm). ([http://dca.ca.gov/cba/laws\\_and\\_guidelines/regs4.pdf](http://dca.ca.gov/cba/laws_and_guidelines/regs4.pdf)) You may log onto the Board's website and research any of the Act or Regulations that you feel would benefit your practice. You are encouraged to explore the Board's website, in particular, the link on the site to "Accountancy Act and Regulations" which will help you remain updated at all times.

**COMMENTARY: MOST COMMON COMPLAINTS AGAINST CPAs**

- Unprofessional conduct
- Practicing without a license

Confirmed violations may be subject to fines, mandated continuing professional education or more formal charges. Conduct and compliance violations are referred to formal investigations.

**Sections**

**Article 1.**

**General**

1. Definition of "Accountancy Act."
2. Confusing Titles.
- 2.5. Definition of "Audits."
3. Notification of Change of Address.
4. Safe Harbor Language.
5. Observance of Rules.
- 5.1. Permit Processing Times.

**Article 2.**

**Examinations**

6. Examination Required, Passing Grades, Provisions for Disabled Applicants.
- 6.1 Additional Requirements for Computer-Based Testing.
7. Conditional Examination Credit Requirements for Applicants Who Will be Applying for Licensure Pursuant to Business and Professions Code Section 5090(b).
- 7.1 Credit Status for the Computerized Uniform CPA Examination.
- 7.2 Transition to Computer-Based Testing.
8. Examination Final Filing Dates.
- 8.1 The Authorization to Test and Notice to Schedule for the Computer-Based Uniform CPA Examination.
- 8.2 Requirements for Issuance of the Authorization of Test.
9. Educational Requirements for Applicants Who Will be Applying for Licensure Pursuant to Business and Professions Code Section 5090(b).
- 9.1. Approved Credential Evaluation Service Status.

- 9.2 Education Required Under Business and Professions Code Sections 5092 and 5093.
- 10. Examination on Rules of Professional Conduct.
- 11.5. Experience Requirements for Applicants Who Will be Applying for Licensure Pursuant to Business and Professions Code Sections 5092 and 5093.
- 12.5. Attest Experience Under Business and Professions Code Section 5095.
- 13. Applicants Who Applied for the Examination Prior to May 15, 2002.

**Article 3. Waiver of Examination**

- 21. Out-of-State Licensee.

**Article 4. Practice Privileges**

- 26. Purpose of this Article.
- 27. Qualifications for the Practice Privilege.
- 28. Notification. (Updated Notification Form)
- 29. Term of the Practice Privilege.
- 30. Safe Harbor - Period of the Notice.
- 31. Payment of the Fee.
- 32. Board Approval Required.
- 33. Changes to Information on the Notification.
- 34. Responses to Board Inquiry.
- 35. Continuing Education Requirement.
- 35.1. Notice of Intent to Administratively Suspend.

**Article 5. Registration**

- 36. Forfeiture of Eligibility.
- 37. Reissuance.

**Article 8. Appeals**

- 49. Appeals.

**Article 9. Rules of Professional Conduct**

- 50. Client Notification.
- 51. Firms with Non-licensee Owners.
- 51.1. Notification of Non-licensee Ownership.
- 52. Response to Board Inquiry.
- 53. Discrimination Prohibited.
- 54. Confidential Information Defined, Exception.
- 54.1. Disclosure of Confidential Information Prohibited.
- 54.2. Recipients of Confidential Information.
- 56. Commissions -- Basic Disclosure Requirement.
- 56.1. Commissions -- Professional Services Provided to the Client.

- 56.2. Commissions -- Disclosure Requirement and Other Rules of Professional Conduct.
- 56.3. Commissions -- Definitions.
- 56.4. "Officer" and "Director."
- 57. Incompatible Occupations / Conflict of Interest.
- 58. Compliance with Standards.
- 59. Reporting of Restatements.
- 60. Reporting of Investigations by the Securities and Exchange Commission pursuant to Section 5063(b)(3);: Reporting of Notices of Requests for Wells Submissions pursuant to Section 5063(b)(4); and Reporting of Investigations by the Public Company Accounting Oversight Board pursuant to Section 5063(b)(5).
- 61. The Reporting of Settlements, Arbitration Awards, and Judgments.
- 62. Contingent Fees.
- 63. Advertising.
- 65. Independence.
- 67. Approval of Use of Fictitious Name.
- 68. Retention of Client's Records.
- 68.1. Working Papers Defined; Retention.
- 68.2. Identification of Audit Documentation.
- 68.3. Retention Period for Audit Documentation.
- 68.4. Changes in Audit Documentation After Issuance of the Report.
- 68.5. Audit Documentation Retention and Destruction Policy.
- 69. Certification of Applicant's Experience.

**Article 10. Fees**

- 70. Fees.
- 71. Abandonment of Application.

**Article 11. Accountancy Corporations**

- 75.4. Office for Filing.
- 75.5. Application; Review of Refusal to Approve.
- 75.8. Security for Claims Against an Accountancy Corporation.
- 75.9. Shares: Ownership and Transfer.
- 75.11. Certificate of Registration; Continuing Validity; Notification of Name and Address Changes.

**Article 12. Continuing Education Rules**

- 80. Inactive License Status.
- 87. Basic Requirements.
- 87.1. Conversion to Active Status Prior to Renewal.
- 87.5. Additional Continuing Education Requirements.
- 87.6. Records Review Continuing Education Requirements.

- 87.7. Continuing Education in the Accountancy Act, Board Regulations, and Other Rules of Professional Conduct.
- 88. Programs Which Qualify.
- 88.1. Provider Requirements.
- 88.2. Program Measurements.
- 89. Control and Reporting.
- 89.1. Reports.
- 90. Exceptions and Extensions.
- 93. Unexpired Licenses.
- 94. Failure to Comply.

**Article 12.5. Citations and Fines**

- 95. Citations.
- 95.1. Citation Format.
- 95.2. Fines.
- 95.3. Citation Factors.
- 95.4. Failure to Comply with Order.
- 95.5. Appeals.
- 95.6. Unlicensed, Unregulated Practice.

**Article 13. Denial, Suspension, and Revocation of Certificates, Permits, or Licenses**

- 98. Disciplinary Guidelines.
- 98.1. Mediation Guidelines.
- 99. Substantial Relationship Criteria.
- 99.1. Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty, Etc.

**ARTICLE 1. GENERAL**

(Sections 1 - 5.1)

**Section 1. Definition of "Accountancy Act."**

"Accountancy Act" as used in these regulations means Division 3, Chapter 1, of the Business and Professions Code.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Section 5010, Business and Professions Code.

**HISTORY:**

1. Amendment filed 6-24-66 as organizational; effective upon filing (Register 66, No. 19). For prior history see Registers 61, No. 22 and 12, No. 6.

2. Amendment filed 7-10-70; effective thirtieth day thereafter (Register 70, No. 28). 3. Repealer of former Section 1 and renumbering and amendment of Section 5.2 to Section 1 filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16). For prior history, see Registers 77, No. 16 and 60, No. 3.

## **Section 2. Confusing Titles.**

The following are titles or designations likely to be confused with the titles Certified Public Accountant and Public Accountant within the meaning of Section 5058 of the Business and Professions Code:

(a) "Accountant," "auditor," "accounting," or "auditing," when used either singly or collectively or in conjunction with other titles.

(b) Any other titles or designations which imply that the individual is engaged in the practice of public accountancy.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5055, 5056, 5057 and 5058, Business and Professions Code.

### **HISTORY:**

1. New Sections 2, 3, 4 and 5 filed 5-8-48 (Register 12, No. 6).
2. Amendment filed 2-4-60; effective thirtieth day thereafter (Register 60, No. 3). 3. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

## **Section 2.5. Definition of "Audits."**

"Making audits—as a part of bookkeeping operations," as used in Section 5052 of the Business and Professions Code, refers to the evaluation of financial and operational data solely for review by management and not intended for distribution to outside parties, and does not include those activities set forth in Sections 5051(c) and (d) of the Business and Professions Code.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5051 and 5052, Business and Professions Code.

### **HISTORY:**

1. New section filed 12-14-61; effective thirtieth day thereafter (Register 61, No. 25).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

## **Section 3. Notification of Change of Address.**



(a) Address Notification—Individual Licensees

(1) Each licensee shall notify the Board of any change in his or her address of record within 30 days after the change. The address of record is public information. If the address of record is a post office box or mail drop, the change of address notification shall include the street address of either the licensee's primary place of employment or his or her residence.

(2) For purposes of this section, "licensee" includes any holder of an active, inactive, suspended, or expired certified public accountant license or public accountant license issued by the Board which is not canceled or revoked.

(3) All notification required under this subsection shall be in writing and shall be signed by the licensee.

(b) Notification of Change of Address—Licensed Firm

(1) Each licensed firm shall notify the Board of any change in its address of record within 30 days after the change. The address of record is public information. If the address of record is a post office box or mail drop, the change of address notification shall include the street address of the firm's principal office.

(2) For purposes of this section "licensed firm" includes any partnership or professional corporation licensed by the Board to practice public accountancy even if the license is suspended or expired, provided the license is not canceled or revoked.

(3) All notifications required under this subsection shall be in writing and shall be signed by a licensed partner or licensed shareholder of the firm.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Section 5009, Business and Professions Code.

HISTORY:

1. Amendment filed 9-2-64; effective thirtieth day thereafter (Register 64, No. 19).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16). For prior history, see Register 12, No. 6.
3. Repealer and new section and amendment of Note filed 6-16-97; operative 6-30-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
4. Repealer and new section filed 11-20-98; operative 12-20-98 (Register 98, No. 47).

COMMENTARY: Failure to notify the Board within 30 days after the change could result in a \$100 - \$1,000 fine. The notification must be in writing and signed by the licensee.

CASE OF VIOLATION(S):

**Violation(s) Charged**

Business and Professions Code, Division 3, Chapter 1, §§ 5050 and 5100 (f). California Code of Regulations, Title 16, Division 1, §§ 3 and 80 (a).

**Cause For Discipline**

Mr. U provided and was paid for accounting services while his CPA license was in "inactive" status. Mr. U's license then expired. Thereafter, Mr. U prepared personal income tax returns for a client and included the designation "CPA" after his name in the paid preparer's box of the client's federal return. Mr. U failed to notify the Board in writing of a change of address.

**Board Actions**

Revocation of CPA Certificate, via default decision.

**Section 4. Safe Harbor Language.**

A person who is not licensed by the California Board of Accountancy, and who prepares a financial report in a form substantially the same as that set forth in subsection (a) or (b) below, shall not be deemed to be engaged in the practice of public accountancy as defined in Section 5051 of the Business and Professions Code.

(a) "I [we] have prepared the accompanying financial statements of [name of entity] as of [time period] for the [period] then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management [owners].

I [we] have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

(b) "We [I] have prepared the accompanying statement of assets, liabilities and equity for [name of company] as of [month-day-year], together with the related statements of revenue, expense, [and cash flow] for the year [or month] then ended on the income tax basis of accounting.

The preparation of financial statements on the income tax basis of accounting is limited to presenting information that is the representation of management [the owners]. We [I] have not audited nor reviewed the accompanying statements. Accordingly, we [I] do not express an opinion or any other form of assurance on them.

Management has [The owners have] elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the income tax basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's assets, liabilities, equity, revenues, expenses [and cash flow]. Accordingly, these financial statements are not designed for those who are not informed about such matters."

NOTE: Authority cited: Sections 5010, Business and Professions Code. Reference: Sections

5051 and 5052, Business and Professions Code.

**HISTORY:**

1. New section filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24). For prior history, see Register 83, No. 16.

**Section 5. Observance of Rules.**

A licensee of the State Board of Accountancy engaged in the practice of public accountancy as defined in Section 5051 of the Business and Professions Code or engaged in an occupation in which the licensee renders services of the type performed by certified public accountants or public accountants or renders other professional services shall observe and is subject to rules and regulations of the State Board of Accountancy in the conduct of such activity. For purposes of Section 5, the term "activity" includes but is not limited to bookkeeping, financial planning, investment planning, tax services and management services.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5051, Business and Professions Code.

**HISTORY:**

1. Repealer of former Section 5 and renumbering and amendment of Section 5.3 to Section 5 filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16). For prior history, see Register 12, No. 6.

**Section 5.1. Permit Processing Times.**

(a) Applications must be filed at the designated office of the Board in Sacramento on a form provided by the Board and must be accompanied by any required application fee as provided for in Section 70.

(b) The maximum period of time in which the Board will notify an applicant in writing that an application is complete and accepted for filing or deficient and if deficient what specific information or documentation is required to complete the application, is as follows:

- 1) Examination/Authorization to test - 115 days
- 2) Licensure - Individual - 100 days
- 3) Licensure - Partnership, Corporation - 90 days
- 4) Fictitious Names Approval - 90 days
- 5) Continuing Education Course/Provider Approval - 120 days
- 6) Renewal - 45 days

7) Credential Evaluation Service Application – 45 days

(c) The maximum period of time, after filing of a complete application, in which the Board will notify an applicant of the results of the certified public accountant examination is 225 days.

(d) During the last two years, the minimum, median and maximum permit processing times, of applications for examination, from the date of receipt of a completed application until the results of the examination are released were as follows:

Minimum – 100 days

Median – 150 days

Maximum – 225 days

(e) The maximum period of time after the filing of a complete application in which the Board will notify an applicant of a permit decision is as follows:

1) Licensure - Individual -	105 days
2) Licensure - Partnership and Corporation -	100 days
3) Fictitious Names -	100 days
4) Continuing Education Course/Provider -	120 days
5) Renewal -	45 days
6) Credential Evaluation Service	150 days
7) Examination/Authorization to test	100 days

(f) During the last two years the minimum, median and maximum processing times of applications for a permit from the date of receipt of the completed application until the first official action by the Board were as follows:

1) Licensure – Individual – Minimum – 3 days Median  
– 97 days Maximum  
–105 days

2) Licensure – Partnership and Corporation  
Minimum – 1 day  
Median – 25 days  
Maximum –100 days

3) Fictitious Names – Minimum – 1 day  
Median – 25 days  
Maximum –100 days

4) Continuing Education Course / Provider Approval --  
Minimum – 1 day

Median – 67 days  
Maximum – 120 days

5) Renewal –                      Minimum – 1 day  
    Median – 14 days  
    Maximum – 45 days

(g) An application is considered complete when all requested information designated on the application form is received by the Board.

(h) The Board is not responsible for delays attributable to applicants in the form of application deficiencies or other factors beyond the Board's control which may impede the processing of applications.

NOTE: Authority cited: Business and Professions Code Section 5010, Government Code Section 15376. Reference: Government Code Section 15376.

#### HISTORY:

1. Renumbering and amendment of former Section 7 to Section 5.1 filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16). For prior history, see Registers 75, No. 33 and 64, No. 15.
2. Amendment of section filed 9-23-91; operative 10-23-91 (Register 91, No. 52).
3. Change without regulatory effect amending subsections (b)(5), (e)(4) and (f)(4) filed 3-18-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 12).
4. Amendment of subsection (b) and new subsections (b)(7) and (e)(6) filed 5-3-2001; operative 7-1-2001 (Register 2001, No. 18).
5. Amendment filed 1-23-2004; operative 1-23-2004.

## **ARTICLE 2. EXAMINATIONS**

(Sections 6 - 14)

### **Section 6. Examination Required, Passing Grades, Provisions for Disabled Applicants.**

(a) Every candidate for the CPA license is required to pass or to have passed the Uniform Certified Public Accountant Examination prepared by the American Institute of Certified Public Accountants or to otherwise have met the examination requirements of Business and Professions Code Sections 5082, 5092, or 5093 and the requirements of this article.

(b) The passing score for any section of the Uniform Certified Public Accountant Examination is 75.

(c) A disabled candidate, upon request and presentation of satisfactory evidence of need, in accordance with the Americans with Disabilities Act will be afforded such accommodation in the examination procedures or the examination conditions as may be reasonable.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 313.2, 5082, 5082.1, 5082.3, 5092, and 5093, Business and Professions Code.

**HISTORY:**

1. Amendment filed 6-18-68; effective thirtieth day thereafter (Register 68, No. 23). For prior history, see Register 64, No. 15.
2. Amendment filed 12-24-69; effective thirtieth day thereafter (Register 69, No. 52).
3. Amendment filed 1-26-79; effective thirtieth day thereafter (Register 79, No. 4).
4. Amendment filed 4-12-83, effective thirtieth day thereafter (Register 83, No. 16).
5. Amendment of section heading, text and Note filed 3-14-94; operative 4-14-94 (Register 94, No. 11).
6. Redesignation and amendment of first paragraph as subsection (a), amendment of subsection (b) and Note filed 2-26-96; operative 3-27-96 (Register 96, No. 9).
7. Change without regulatory effect amending subsection (a) filed 1-12-2000 pursuant to section 100, 5title 1, California Code of Regulations, (Register 2000, No. 2).
8. Amendment of section and Note filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

**Section 6.1. Additional Requirements for Computer-Based Testing.**

Upon the commencement of computer-based testing in California, applicants are responsible for contacting the National Association of State Boards of Accountancy to obtain a Notice to Schedule pursuant to Section 8.1 and the examination test centers to obtain a date to examine. Applicants shall pay all required fees and comply with test center procedures and rules.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5082, 5082.1, 5082.2, 5092, 5093, and 5131, Business and Professions Code.

**HISTORY:**

1. Amendment filed 1-23-2004; operative 1-23-2004.

**Section 7. Conditional Examination Credit Requirements for Applicants Who Will be Applying for Licensure Pursuant to Business and Professions Code Section 5090(b).**

(a) A candidate who passes two or more subjects at any examination shall receive a conditional credit for such subject or subjects and shall have the right to be re-examined in the remaining subject or subjects for the six (6) examinations immediately following receipt of such

conditional credit and, if such remaining subject or subjects are passed during the six subsequent examinations, the candidate shall be considered to have passed the examination.

(b) The conditional period in subsection (a) may be extended by the Board upon a showing of extraordinary extenuating circumstances which prevented the applicant from retaking the examination in such period.

(c) Time during which a candidate is serving in the armed forces shall be excluded in determining the conditional period in subsection (a) unless the candidate takes an examination while so serving, in which case such time shall be included in computing the conditional period.

(d) This section shall become inoperative on January 1, 2010.

(e) Upon commencement of the computer-based Uniform Certified Public Accountant Examination, candidates holding conditional credit under this section may complete the examination pursuant to Section 7.2.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.

Reference: Sections 114, 5082, 5082.2, and 5090, Business and Professions Code.

#### HISTORY:

1. Renumbering and amendment of former section 7 to section 5.1 and renumbering and amendment of section 17 to section 7 filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16). For prior history, see Registers 79, No. 49 and 75, No. 33.

2. Amendment of subsection (a) filed 3-14-94; operative 4-13-94 (Register 94, No. 11).

3. Amendment of subsections (a) and (b), repealer of subsection (d) and amendment of Note filed 2-26-96; operative 3-27-96 (Register 96, No. 9).

4. Amendment of section heading, new subsection (d) and amendment of Note filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

5. New section filed 1-23-2004; operative 1-23-2004.

6. Change without regulatory effect amending subsection (d) filed 10-11-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 41).

### **Section 7.1 Credit Status for the Computerized Uniform CPA Examination.**

(a) Upon the commencement of computer-based testing in California, an applicant may sit for the four sections of the computer-based Uniform Certified Public Accountant Examination individually and in any order. An applicant who fails to pass any section of the examination may retake that section. When the applicant has credit for all four sections of the examination within an 18-month period as defined in subsection (b), the applicant shall be considered to have passed the examination.

(b) Except as provided in subsections (c) and (d), an applicant shall retain credit for any section the applicant has passed for an 18-month period beginning with the date that the section of the exam was passed. At the end of the 18-month period, credit for that section expires, and that section must be re-taken and passed to re-establish credit.

(c) A first-time applicant who passes any section of the computer-based Uniform Certified Public Accountant Examination during the six months immediately following commencement of computer-based testing in California shall retain credit for that section for a 24-month period beginning with the date the section of the exam was passed. At the end of the 24-month period, credit for that section expires. The section may be re-taken pursuant to subsection (b) of this section.

(d) A candidate may sit for any unpassed section of the examination only one time during each testing window. A testing window is a three-month period as determined by the American Institute of Certified Public Accountants during which applicants may take the exam. There are four three-month testing windows in a year. To allow for routine maintenance, the exam may be unavailable for up to one month during each testing window.

(e) Credit for passed examination sections may be extended by the Board because the applicant was prevented from sitting for an unpassed section or sections before credit for passed sections expired pursuant to subsections (b) or (c) because of one of the following events:

(1) Death of an immediate family member. Documentation, such as a copy of the death certificate, must be submitted.

(2) Catastrophic illness, contagious disease, or major traumatic injury to the candidate or immediate family member (spouse, child or parent). Submit an original letter on letterhead from the physician, which includes the date(s), nature of the illness, and the physician's signature.

(3) Natural disaster (earthquake, flood, fire, etc.).

(4) Non-issuance of visa for travel to the U.S. Documentation, such as an official letter from the U.S. Embassy or a copy of the passport indicating a visa was requested, must be submitted.

(5) Other good cause.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5081, 5082, 5082.1 and 5082.2, 5092 and 5093, Business and Professions Code.

#### HISTORY:

1. New section filed 1-23-2004; operative 1-23-2004.
2. Change without regulatory effect repealing subsection (d), relettering subsections and amending Note filed 10-11-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 41).



## **Section 7.2. Transition to Computer-Based Testing.**

(a) Upon commencement of computer-based testing in California, a candidate who has already passed two or more sections of the examination in accordance with the requirements of Section 5092 or 5093 of the Business and Professions Code or Section 7 of these regulations will receive credit for the computer-based equivalent of those sections as specified in subsection (b). This credit will expire 18 months after commencement of computer-based testing in California. During this 18 month period, a candidate will have the same number of opportunities to sit for the exam as the candidate would have had to take the paper-and-pencil exam.

(b) This table indicates the computer-based equivalent of the sections of the paper-and-pencil Uniform Certified Public Accountant Examination:

Paper-and-Pencil Examination	Computer-Based Examination
Auditing	Auditing & Attestation
Financial Accounting & Reporting (FARE)	Financial Accounting & Reporting
Accounting & Reporting (ARE)	Regulation
Business Law & Professional Responsibilities (LPR)	Business Environment & Concepts

(c) A candidate who does not pass the examination in accordance with subsection (a) will retain credit for sections of the computerized exam passed by the candidate in accordance with subsection (b) of Section 7.1.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5081, 5082, 5082.1 and 5082.2, 5090, 5092 and 5093, Business and Professions Code.

### **HISTORY:**

1. New section filed 1-23-2004; operative 1-23-2004.

## **Section 8. Examination Final Filing Dates.**

(a) During the time the Uniform CPA Examination is a paper and pencil examination, applications for the Uniform CPA Examination must be received by the Board at its office or postmarked on or before the below final filing dates in order to be accepted for that exam. Applications postmarked after the final filing dates listed in this section shall be rejected and returned to the applicant. Meter marks are not acceptable proof of mailing.

(b) First-time Applicant Final Filing Date.

(1) The final filing date for applicants who have never sat for the Uniform CPA Exam in California shall be February 1 for the May examination, or August 1 for the November examination. If the examination final filing date falls on a Sunday or a National holiday on which the United States Postal Service is not open, the final filing date will be the next business day.

(2) The application must be complete, including official transcripts and/or foreign evaluations pursuant to Section 9 or Section 9.2, and the appropriate fees, or it shall be rejected by the Board and the applicant will not be scheduled to sit for the examination.

(c) Repeat Applicant Final Filing Date.

(1) The final filing date for applicants who have previously taken the Uniform CPA Exam in California shall be March 1 for the May examination, or September 1 for the November examination. If the examination final filing date falls on a Sunday or a National holiday on which the United States Postal Service is not open, the final filing date will be the next business day.

(2) The application must be complete including the appropriate fees or it shall be rejected by the Board and the applicant will not be scheduled to sit for the examination.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5081, 5082, 5082.1 and 5082.2, 5092 and 5093, Business and Professions Code.

HISTORY:

1. New section filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19). For prior history, see Register 74, No. 15.

2. New subsection designators, amendment of newly designated subsection (b)(2) and amendment of Note filed 6-12-2000s; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

3. Amendment filed 1-23-2004; operative 1-23-2004.

**Section 8.1. The Authorization to Test and Notice to Schedule for the Computer-Based Uniform CPA Examination.**

(a) An Authorization to Test (ATT) is issued by the Board to permit the applicant to test for specified sections of the computer-based Uniform Certified Public Accountant Examination. An ATT for a specified section or sections of the exam shall go into effect (be open) on the date of issuance. Within 90 calendar days of the date the ATT is issued, the applicant must remit the required fees to the National Association of State Boards of Accountancy to obtain a Notice to Schedule (NTS) pursuant to Section 6.1. If the applicant fails to remit fees and obtain the NTS, the ATT shall be deemed expired and the applicant must reapply and be issued another ATT to be able to test for that section.

(b) The NTS will enable the applicant to schedule testing at an examination test center. Except as provided in subsection (e), the NTS shall remain open until either the applicant schedules testing for the specified section(s) or nine months have transpired since the date the NTS was issued, whichever occurs first. The ATT will remain open until the applicant completes testing for the specified section(s) or nine months have transpired since the date the NTS was issued, whichever occurs first.

(c) If for any reason an applicant does not pass a section of the exam during the time the applicant holds an open ATT for that section, the applicant cannot test for that section until the applicant reapplies and is issued another ATT for that section pursuant to Section 8.2.

(d) An ATT may be suspended by the Board based on a report from the National Association of State Boards of Accountancy that its National Candidate Database has identified that the applicant holds another open ATT for the same section of the exam, has unpaid fees, or may have engaged in subversion of the exam. An ATT may also be suspended by the Board for other good cause.

(e) The nine-month time periods specified in subsection (b) may be extended by the Board because the applicant was prevented from testing due to one of the following events:

- (1) Death of an immediate family member, when accompanied by documentation, such as a copy of the death certificate.
- (2) Catastrophic illness, contagious disease, or major traumatic injury to the candidate or immediate family member (spouse, child or parent), when accompanied by an original letter on letterhead from the physician, which includes the date(s), nature of the illness, and the physician's signature.
- (3) Natural disaster (earthquake, flood, fire, etc.).
- (4) Non-issuance of visa for travel to the U.S., when accompanied by documentation, such as an official letter from the U.S. Embassy or a copy of the passport indicating a visa was requested.
- (5) Other good cause.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5081, 5082, 5082.1, 5082.2, 5092, 5093, and 5131, Business and Professions Code.

#### HISTORY:

1. New section filed 1-23-2004; operative 1-23-2004.
2. Amendment of subsection (b) and new subsections (e)-(e)(5) filed 5-2-2006; operative 5-31-2006 (Register 2006, No. 18).

### **Section 8.2. Requirements for Issuance of the Authorization to Test.**

(a) An application for an Authorization to Test (ATT) for the computer-based Uniform CPA Examination pursuant to Section 8.1 must be complete including the candidate's name, application date, date of birth, address, telephone number, summary of education, the appropriate fees pursuant to Section 70, and a signature (or the electronic equivalent) authorizing the release of application information to the National Association of State Boards of Accountancy and the designated exam administrator. The application must also specify the section(s) of the exam the applicant is applying to take. First-time applicants must also provide official transcripts and/or foreign evaluations pursuant to Section 9.2.

(b) An applicant shall not have more than one open ATT for any section of the examination at the same time. At the time of application and during the time any ATT issued by the California Board of Accountancy is open, the applicant shall not have an open ATT for the same section in any other state or jurisdiction.

(c) The applicant shall not apply to take, or take, any section or sections of the examination for which the applicant holds unexpired credit pursuant to Sections 7.1 or 7.2, with the following exceptions:

(1) An applicant may reapply and retake the examination pursuant to Section 13(b) or Section 14(b) of these regulations.

(2) An applicant for reissuance who does not currently hold a Certified Public Accountant license in another jurisdiction may retake the examination pursuant to Section 37 of these regulations.

(d) The applicant shall certify at the time of application that he or she is in compliance with subsections (b) and (c). Falsifying this certification; or including any false, fraudulent, or materially misleading statements on the application for the examination; or including any material omission on the application for the examination shall be cause for action by the Board pursuant to Business and Professions Code 5110.

(e) Except for a CPA who is required to take specified sections of the examination pursuant to a disciplinary action of the Board, no CPA shall apply to take, or take, any section of the Uniform Certified Public Accountant Examination. A CPA who fails to comply with this requirement shall be subject to disciplinary action by the Board.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5081, 5082, 5082.1, 5082.2, 5092, 5093, and 5131, Business and Professions Code.

#### HISTORY:

1. New section filed 1-23-2004; operative 1-23-2004.

### **Section 9. Educational Requirements for Applicants Who Will be Applying for Licensure Pursuant to Business and Professions Code Section 5090(b).**

Each applicant must present satisfactory evidence that he or she meets the requirements set forth in Section 5081.1 of the Business and Professions Code. Satisfactory evidence as to educational qualifications shall take the form of certified transcripts of the applicant's college record mailed directly to the Board from the educational institution; however, in unusual circumstances the board may accept such other evidence as it deems appropriate and reasonably conclusive. For foreign education, in addition to certified transcripts of the applicant's college record, satisfactory evidence usually takes the form of an evaluation of educational credentials by a credentials evaluation service approved by the Board pursuant to Section 9.1.

For purposes of Business and Professions Code Sections 5081.1 and 5084, one quarter unit is equivalent to 2/3 of one semester unit.

(a) To qualify under the provisions of Section 5081.1(a), an applicant shall have a baccalaureate degree with 45 semester units or the equivalent in quarter units including at least 10 semester units or the equivalent in quarter units of audit and accounting subjects. The remaining units may include additional accounting, auditing, or other business related subjects such as: economics, management, finance, business administration, marketing, computer science, law, business communications, mathematics, tax and statistics.

(b) To qualify under the provisions of Section 5081.1(b), an applicant shall complete 120 semester units or the equivalent in quarter units, including 45 semester units or the equivalent in quarter units of accounting and related subjects, as described in subsection (a).

(c) To qualify under the provisions of Section 5081.1(c):

(1) an applicant shall complete foreign education that is equivalent to the education required by subsection (b) or foreign and US education that, in combination, is equivalent to subsection (b); or

(2) an applicant shall pass a board approved preliminary written examination as specified by Section 5081.1(c) of the Business and Professions Code and complete 10 semester units or the equivalent in quarter units of audit and accounting subjects.

(d) This section shall become inoperative on January 1, 2010.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5081, 5081.1, 5084, and 5090, Business and Professions Code.

#### HISTORY:

1. Amendment filed 2-4-60; effective thirtieth day thereafter (Register 60, No. 3).
2. Amendment filed 1-26-79; effective thirtieth day thereafter (Register 79, No. 4).
3. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
4. Amendment of section heading and section filed 5-10-2000; operative 6-9-2000 (Register 2000, No. 19).

5. Amendment of section heading, new subsection (d) and amendment of Note filed 6-12-2002; operative 6-12-2002 pursuant to Government Code Section 11343.4 (Register 2002, No. 24).

6. Change without regulatory effect amending subsection (d) filed 10-11-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 41).

### **Section 9.1. Approved Credential Evaluation Service Status.**

(a) To receive and to maintain Board approval, a credentials evaluation service shall:

(1) Be a member of the American Association of Collegiate Registrars and Admission Officers, the National Association for Foreign Student Affairs: Association of International Educators, or the National Association of Credential Evaluation Services;

(2) Furnish the Board with a copy of its current written procedure for identifying fraudulent transcripts, and comply with that procedure;

(3) Furnish the Board with a list of its reference materials including the title of each reference, its publisher, and the date of publication, and certify that the references are adequate to prepare complete, accurate evaluations and are the most current editions available;

(4) Furnish the Board with biographical information on evaluators and translators, including a list of languages spoken and years in service. The service shall have at least one senior staff member with not less than five years of foreign student college admission experience or closely related credential evaluation experience at all academic levels;

(5) Furnish the Board with its organization chart showing the ratio of senior staff members to junior staff members is, at most, one to five, and shall not exceed that ratio;

(6) Furnish the Board with written evidence that a minimum of 50% of the evaluations performed by junior staff members are reviewed by senior staff members, and shall maintain at least that minimum;

(7) Furnish the Board with statistical information on the number of applications processed annually for the past five years;

(8) Furnish the Board with a list of at least three accredited colleges and universities or other licensing agencies using its services;

(9) Furnish the Board with three letters of reference, written within the last year, from public or private agencies;

(10) Furnish the Board with a copy of its appeal procedure for applicants, and comply with that procedure;

(11) Furnish evaluations to the Board that comply with the requirements of this section; (12) For the initial application, furnish the Board with sample evaluations prepared for other agencies.

(b) Each evaluation provided by the Board approved service shall:

- (1) Affirm in a written statement that the evaluation is based only upon authenticated, original transcripts and degrees;
- (2) Include certified copies of all original transcripts;
- (3) Be furnished directly to the Board, in English; on tamper-proof paper,
- (4) Include a report of each degree held by the applicant along with the equivalent degree offered in the United States, the date the degree was granted and the institution granting the degree;
- (5) Include a listing of the course titles with the semester unit equivalent for each course.

(c) The credentials evaluation service shall report to the Board annually whether it has undergone any organizational changes. Approval issued under this section shall expire five years after the date of issuance unless renewed by the Board prior to its expiration by meeting the requirements in subsection (a). Approval may be withdrawn at any time if the credentials evaluation service fails to comply with any of the requirements of this section or of the provisions of paragraph (2) of subdivision (a) of Section 5081.1 of the Accountancy Act.

NOTE: Authority cited: Sections 5010 and 5081.1, and 5094, Business and Professions Code. Reference: Section 5081.1 and 5094, Business and Profession Code.

**HISTORY:**

1. New section filed 5-10-2000; operative 6-9-2000 (Register 2000, No. 19).
2. Amendment of Note filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

**Section 9.2. Education Required Under Business and Professions Code Sections 5092 and 5093.**

(a) Each applicant shall present satisfactory evidence that he or she has received a baccalaureate or higher degree, has completed the accounting subjects specified in subsection (b) of this section, and has completed the business-related subjects specified in subsection (c) of this section.

(b) The applicant shall have completed a minimum of 24 semester units, or the equivalent in quarter units, selected from the following accounting subjects: accounting, auditing, financial reporting, external or internal reporting, financial statement analysis or taxation.

(c) In addition to the accounting courses described in subsection (b), an applicant shall have completed a minimum of 24 semester units, or the equivalent in quarter units, selected from the following business-related subjects: accounting subjects in excess of the 24 semester units as described in subsection (b), business administration, economics, finance, business management, marketing, computer science/information systems, statistics, business communications, mathematics, business law, or business related law courses offered by an accredited law school.

(d) Qualifying education shall be completed within the following time frames specified in this subsection:

(1) Except as provided for in subsection (d)(2), applicants shall complete the education required by this section before applying for examination for the first time.

(2) An applicant who applied, qualified, and sat for at least two subjects of the examination for the Certified Public Accountant License before May 15, 2002, may provide evidence of qualifying education at the time of application for licensure.

(e) Satisfactory evidence as to educational qualifications shall take the form of certified transcripts of the applicant's college record, mailed directly to the Board from the educational institution; however, in unusual circumstances the Board may accept such other evidence as it deems appropriate and reasonably conclusive. For foreign education, in addition to certified transcripts of the applicant's college record, satisfactory evidence usually takes the form of an evaluation of educational credentials by a credentials evaluation service approved by the Board pursuant to Section 9.1.

(f) For purposes of this section, one quarter unit is equivalent to two-thirds of one semester unit.

NOTE: Authority cited: Sections 5010, 5092, and 5093, Business and Professions Code.

Reference: Sections 5092 and 5093, Business and Professions Code.

**HISTORY:**

1. New section filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

2. Change without regulatory effect amending subsection (d)(2) filed 10-11-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 41).

**Section 10. Examination on Rules of Professional Conduct.**

All applicants for a certified public accountant license shall pass an examination in professional ethics, acceptable to the Board, before such license is to be issued. This professional ethics examination shall be passed no sooner than two years prior to the Board's consideration of the application for licensure.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.

Reference: Sections 5018, 5082, 5092, and 5093, Business and Professions Code.

**HISTORY:**

1. Renumbering and amendment of former Section 18 to Section 10 filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16). For prior history, see Registers 79, No. 4 and 69, No. 47.



2. Amendment files 2-26-96; operative 3-27-96 (Register 96, No 9).
3. Amendment of Note filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

**Section 11.5. Experience Requirements for Applicants Who Will be Applying for Licensure Pursuant to Business and Professions Code Section 5090(b).**

Applicants may be required to appear before the Qualifications Committee and present work papers, or other evidence, substantiating that their experience meets the requirements of Section 5083 of the Business and Professions Code.

(a) In order to meet the attest experience requirements as set forth in Section 5083, the applicant shall show to the satisfaction of the Board that his/her experience has included all the following:

- (1) Experience in the planning of the audit including the selection of the procedures to be performed.
- (2) Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions included in financial statements.
- (3) Experience in the preparation of working papers in connection with the various elements of (1) and (2) above.
- (4) Experience in the preparation of written explanations and comments on the work performed and its findings.
- (5) Experience in the preparation of and reporting on full disclosure financial statements.

(b) The applicant, pursuant to Section 5087 of the Accountancy Act, may be considered to have met the experience requirement for licensure when the applicant can show to the satisfaction of the Board that (s)he has been engaged in the practice of public accounting as a licensed certified public accountant in another state for five of the ten years preceding the date of application for a California license.

(c) The applicant who is applying with public accounting experience obtained outside the United States and its territories must present work papers substantiating that such experience meets the requirements of Rule 11.5(a) and generally accepted auditing standards. Alternatively, the applicant may acquire one year of United States experience which meets the requirements of Business and Professions Code Section 5083 and Rule 11.5(a).

(d) The applicant who is applying with experience obtained five (5) or more years prior to application will be required to obtain 48 hours of continuing education courses in specific areas prescribed by the Board.

(e) The experience required by Section 5083 may be obtained in full-time or part-time employment. In evaluating an applicant's experience, 170 hours of part-time employment shall be considered equivalent to one month of full-time employment.

(f) This section shall become inoperative on January 1, 2010.

NOTE: Authority cited: Sections 5010, 5018, and 5083, Business and Professions Code.

Reference: Sections 5023 and 5083, and 5090, Business and Professions Code.

#### HISTORY:

1. New section filed 6-29-48, effective thirtieth day thereafter (Register 13, No. 1).
2. Amendment filed 2-4-60; effective thirtieth day thereafter (Register 60, No. 3).
3. New subsection (c) filed 1-26-79; effective thirtieth day thereafter (Register 79, No. 4).
4. Amendment filed 10-15-80; effective thirtieth day thereafter (Register 80, No. 42).
5. Amendment of section filed 9-23-91; operative 10-23-91 (Register 91, No. 52).
6. New subsection (c), subsection redesignation and amendment of new subsection (d) filed 11-30-93, operative 12-30-93 (Register 93, 49).
7. Amendment of section and Note filed 2-26-96, operative 3-27-96 (Register 96, No. 9).
8. Repealer and new subsection (b) and amendment of subsection (e) filed 11-20-98; operative 12-20-98 (Register 98, No. 47).
9. Amendment of section heading, new subsection (f) and amendment of Note filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).
10. Change without regulatory effect amending subsection (f) filed 10-11-2005 pursuant section 100, title 1, California Code of Regulations (Register 2005, No. 41).

#### **Section 12. General Experience Required Under Business and Professions Code Sections 5092 and 5093.**

(a) In order to meet the experience requirement of Section 5092 or Section 5093 of the Business and Professions Code, experience must be supervised by a person holding a valid license or comparable authority to practice public accounting as specified in subdivision (d) of Section 5092 or subdivision (d) of Section 5093.

(1) Experience shall be verified by the person supervising the experience and by a second person with a higher level of responsibility in the firm or agency. If the experience is obtained in public accounting, the second person signing the verification shall be an owner of the firm holding a valid license or comparable authority to practice public accounting. If the person supervising the experience is also an owner of the public accounting firm, no second signature is required. If the experience is obtained at a private business, no second signature is required if the person supervising the experience is also an owner of the private business.

(2) Experience may not be supervised by a licensee who provides public accounting services to the applicant's employer.

(3) All verifications shall be signed under penalty of perjury.

(b) The experience required by Section 5092 or Section 5093 involves providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. Qualifying experience may be gained through employment in public practice, industry, or government. Experience acquired in academia is not qualifying.

(c) The experience required by Section 5092 or Section 5093 of the Business and Professions Code may be obtained in full-time or part-time employment provided the total experience completed by the applicant is the equivalent of at least two years of full time employment for an applicant qualifying under Section 5092 or at least one year of full time employment for an applicant qualifying under Section 5093. In evaluating an applicant's experience, 170 hours of part-time employment shall be considered equivalent to one month of full-time employment.

(d) An applicant who is applying under Section 5092 or Section 5093 of the Business and Professions Code with experience obtained five (5) or more years prior to application will be required to obtain 48 hours of continuing education in specific areas prescribed by the Board.

NOTE: Authority cited: Sections 5010, 5092, and 5093, Business and Professions Code.  
Reference: Sections 5092 and 5093.

#### HISTORY:

1. New section filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24). For prior history, see Register 83, No. 16.

2. Redesignation of portions of subsection (a) as new subsections (a)(1) and (a)(3) and new subsection (a)(2) filed 7-19-2004; operative 8-18-2004 (Register 2004, No. 30). 3. Amendment of subsection (c), repealer of subsection (e) and amendment of Note filed 5-1-2006; operative 5-31-2006 (Register 2006, No. 18).

#### **Section 12.5. Attest Experience Under Business and Professions Code Section 5095.**

(a) To be authorized to sign reports on attest engagements pursuant to Business and Professions Code Section 5095, an applicant for a California Certified Public Accountant license pursuant to Business and Professions Code Section 5087, 5092, or 5093 or holder of an unexpired California Certified Public Accountant license issued pursuant to Business and Professions Code Section 5087, 5092, or 5093 shall show to the satisfaction of the Board that he or she meets the requirements of this section and Business and Professions Code Section 5095.

(1) Some or all of the experience required by Section 5095 and this section may be completed prior to issuance of the California Certified Public Accountant license. Any experience that would be qualifying for purposes of Section 5095 and this section may also

serve as qualifying experience for purposes of Section 5083, 5092, or 5093. To be qualifying for purposes of Section 5095 and this section, any experience obtained after issuance of the California Certified Public Accountant license must be obtained while the license is held in active status.

(2) A holder of an active California Certified Public Accountant license may commence signing reports on attest engagements upon receipt of notification from the Board that he or she has met the requirements of this section and Business and Professions Code Section 5095. A holder of an inactive California Certified Public Accountant license may apply under this section, but must convert the license to active status before commencing to sign reports on attest engagements.

(3) An applicant for the California Certified Public Accountant license who has met the requirements of this section and Business and Professions Code Section 5095 may commence signing reports on attest engagements upon license issuance.

(b) In order to meet the attest experience requirements of Section 5095 an applicant for or holder of a California Certified Public Accountant license shall show to the satisfaction of the Board that the applicant has completed a minimum of 500 hours of attest experience. This experience shall include all of the following:

(1) Experience in the planning of the audit including the selection of the procedures to be performed.

(2) Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions included in financial statements.

(3) Experience in the preparation of working papers in connection with the various elements of (1) and (2) above.

(4) Experience in the preparation of written explanations and comments on the work performed and its findings.

(5) Experience in the preparation of and reporting on full disclosure financial statements.

(c) In order to be qualifying, experience obtained pursuant to Section 5095 of the Business and Professions Code must be supervised by a person holding a valid license or comparable authority to provide attest services as specified in subdivision (b) of Business and Professions Code Section 5095.

(1) Experience shall be verified by the supervisor and by a second person with a higher level of responsibility in the firm or agency. The verification shall be signed by both persons under penalty of perjury. If the experience is obtained in public accounting, the second person signing the verification shall be an owner of the firm holding a valid license or comparable authority to practice public accounting. If the owner of the public accounting firm signing the verification is also the person supervising the experience, no second signature is required.

(2) Experience may not be supervised by a licensee who provides public accounting services to the applicant's employer.

(d) In order to demonstrate the completion of qualifying experience, an applicant for or holder of a California Certified Public Accountant license may be required to appear before the Qualifications Committee to present work papers, or other evidence, substantiating that his or her experience meets the requirements of Section 5095 of the Business and Professions Code and of subsection (b) of this section.

(e) The applicant who is applying with attest experience obtained outside the United States and its territories must present work papers substantiating that such experience meets the requirements of subsection (b) and generally accepted auditing standards. Alternatively, the applicant may acquire a minimum of 500 hours of United States experience which meets the requirements of Business and Professions Code Section 5095 and subsection (b).

(f) The applicant who is applying with experience obtained five (5) or more years prior to application may be required to obtain 48 hours of continuing education courses in specific areas prescribed by the Board.

(g) The experience required by Section 5095 may be obtained in full-time or part-time employment.

NOTE: Authority cited: Sections 5010 and 5095, Business and Professions Code.  
Reference: Section 5023, 5092, 5093, and 5095, Business and Professions Code.

#### HISTORY:

1. New section filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).
2. Redesignation of portion of subsection (c) as new subsection (c)(1) and new subsection (c)(2) filed 7-19-2004; operative 8-18-2004 (Register 2004, No. 30).
3. Repealer of subsection (g), subsection relettering and amendment of Note filed 5-1 - 2006; operative 5-31-2006 (Register 2006, No. 18).

#### **Section 13. Applicants Who Applied for the Examination Prior to May 15, 2002.**

(a) Only an applicant who applied, qualified, and sat for at least two subjects of the examination as a California applicant prior to May 15, 2002, may satisfy the examination requirement and qualify for licensure under the requirements that were in effect on December 31, 2001. Such California applicant must, however, qualify and apply for licensure prior to January 1, 2010. Sections 7, 9, and 11.5 of these regulations apply only to these applicants.

(b) As an alternative to qualifying for licensure in accordance with the requirements described in subsection (a), an applicant for the Certified Public Accountant license who applied, qualified, and sat for at least two subjects of the examination as a California applicant prior to May 15, 2002, may qualify for licensure by meeting the requirements of Business and Professions

Code Section 5092 or 5093 and the requirements of this article. The applicant may retain the examination scores he or she has received and may apply these scores toward meeting the requirements of Section 5092 or 5093.

NOTE: Authority cited: Sections 5010, 5092, and 5093, Business and Professions Code.  
Reference: Section 5090, 5092, and 5093, Business and Professions Code.

**HISTORY:**

1. New section filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24). For prior history, see Register 83, No. 16.
2. Change without regulatory effect amending sections (a) and (b) filed 10-11-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 41).

**ARTICLE 3. WAIVER OF EXAMINATION**

(Section 21)

**Section 21. Out-of-State Licensee.**

(a) The Board will consider applications filed under Section 5087 from holders of valid unrevoked Certified Public Accountant licenses issued under the laws of any state. The Board may deny an application when the facts indicate that the applicant has been a California resident before, during or after having obtained a CPA license in another state and when the facts indicate that the applicant's CPA license was obtained in another state to evade otherwise applicable California statutes and rules.

(b) An applicant pursuant to Business and Professions Code Section 5087 may be considered to have met the education, examination, and experience requirements for issuance of the California license if the applicant shows, to the satisfaction of the Board, that he or she has engaged in the practice of public accounting as a licensed Certified Public Accountant in another state for four of the ten years preceding the date of application for a California license.

(c) An applicant pursuant to Business and Professions Code Section 5087 may be considered to have met the attest experience requirement of Section 5095 if the applicant shows to the satisfaction of the Board that he or she has been authorized to provide attest services and engaged in the practice of public accounting as a Certified Public Accountant in another state for four of the ten years preceding the date of application for a California license.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.  
Reference: Sections 5082, 5087, and 5095. Business and Professions Code.

**HISTORY:**

1. Amendment filed 12-24-57; effective thirtieth day thereafter (Register 58, No. 1).

2. Amendment filed 2-4-60; effective thirtieth day thereafter (Register 60, No. 3).
3. Amendment filed 4-9-74; effective thirtieth day thereafter (Register 74, No. 15).
4. Amendment filed 12-24-75; effective thirtieth day thereafter (Register 75, No. 52).
5. Amendment filed 4-12-83, effective thirtieth day thereafter (Register 83, No. 16).
6. Amendment of section header, section, and Note filed 2-26-96; operative 3-27-96 (Register 96, No 9).
7. Designation and amendment of first paragraph as subsection (a), new subsections (b)- (c) and amendment of Note filed 5-1-2006; operative 5-31-2006 (Register 2006, No. 18).

## **ARTICLE 4. PRACTICE PRIVILEGES**

(Sections 26 - 35.1)

### **Section 26. Purpose of this Article.**

This Article implements Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) related to Practice Privileges.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 5096 – 5096.11, Business and Professions Code.

#### **HISTORY:**

1. New article 4 (sections 26-35.1) and section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50). For prior history of article 4 (sections 25-29), see Register 2000, No. 5.

### **Section 27. Qualifications for the Practice Privilege.**

To be eligible for a practice privilege, an individual whose principal place of business is not in California and who holds a valid, current license, certificate, or permit to practice public accountancy issued by another state shall meet the requirements of Business and Professions Code Section 5096 including, but not limited to, satisfying one of the following:

(a) Hold a current, valid license, certificate, or permit issued by another state, if the requirements under which that license, certificate, or permit was issued are deemed by the Board to be substantially equivalent to the requirements in Business and Professions Code Section 5093;

(b) Possess education, examination, and experience qualifications that have been determined by the Board to be substantially equivalent to the qualifications under Business and Professions Code Section 5093. Pursuant to subdivision (b) of Business and Professions Code Section 5096, the Board accepts individual qualification evaluations of substantial equivalency by the National Association of State Boards of Accountancy's (NASBA's) CredentialNet. Prior to

seeking a practice privilege under this paragraph, an individual shall apply to NASBA's CredentialNet, pay the required fee, and obtain the required substantial equivalency determination. The individual shall report the NASBA file number on the Notification Form submitted pursuant to Section 28 and shall authorize the Board to review the NASBA file upon request; or

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

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Section 5096, Business and Professions Code.

#### **HISTORY:**

1. New section filed 12-12-2005; operative 1-1 -2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50). For prior history, see Register 2000, No. 5.

#### **FAQs**

**Q:** Where can I find the statutes and regulations regarding California Practice Privilege?

**A:** Sections 5096 through 5096.15 of the California Business and Professions Code (California Accountancy Act) and Sections 26 through 35.1 of the California Code of Regulations, Title 16, Division 1, Article 4 are available here on the Board's Web site or from the Practice Privilege Unit at [pracprivinfo@cba.ca.gov](mailto:pracprivinfo@cba.ca.gov) or (916) 561-1704.

#### **Section 28. Notification.**

(a) To obtain a practice privilege, an individual meeting the requirements of Section 27 shall notify the Board by submitting the fully completed Notification Form provided at the end of this Section or the electronic equivalent provided by the Board on its Web site, and shall pay the fee as required by Sections 31 and 70. Except for the electronic signature which is provided for in subsection (c), the electronic version of the form shall be identical in content to the paper version of the Notification Form provided at the end of this section.

(b) The license which shall be reported on Item 3 of "Qualification Requirements" on the Notification Form and "the license upon which the substantial equivalency is based" referenced in subdivision (e) of Business and Professions Code Section 5096 is the license under which an individual qualifies for a practice privilege pursuant to subsection (a) of Section 27, or the license in the state of the principal place of business for an individual who qualifies for a practice privilege under subsection (b) or (c) of Section 27.

(c) The electronic version of the Notification Form shall provide for a certification and electronic signature as follows:

I understand that any misrepresentation or omission in connection with this notification disqualifies me from the California practice privilege and is cause for termination. Further I authorize the California Board of Accountancy to act accordingly, including



notifying other state or federal authorities. By typing my name in the box below and clicking the “I Agree” button I certify under penalty of perjury under the laws of the State of California that the forgoing information is true and correct. If I am not prepared to so certify, I understand that I should click the “Cancel” button to discontinue the notification process.

Full name \_\_\_\_\_

I Agree \_\_\_\_\_

Cancel \_\_\_\_\_

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 5088, 5096, 5096.3, 5096.4, 5096.5, 5096.13, and 5096.15, Business and Professions Code; and Section 1633.2, Civil Code.

#### HISTORY:

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50). For prior history, see Register 2000, No. 5
2. Change without regulatory effect amending the Notice form and amending Note filed 11-16-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 46).

#### **FAQs**

**Q:** How do I submit the Notification Form?

**A:** You have the option of submitting the Notification Form on-line or by downloading the form from the Web site and submitting it by mail. A California Practice Privilege expires one year from the submission date of the Notification Form. The submission date for a form sent through the mail will be the postmark date. The submission date will be the actual date of transmission for forms that are signed electronically and submitted online. The fee required is \$50 for submission of the California Practice Privilege Notification Form without authorization to sign attest reports and \$100 for submission of the California Practice Privilege Notification Form with authorization to sign attest reports. The \$50/\$100 fee must be received by the Board within 30 days of the Notification Form submission date.



## CALIFORNIA BOARD OF ACCOUNTANCY

2000 EVERGREEN STREET, SUITE 250

SACRAMENTO, CA 95815-3832

TELEPHONE: (916) 263-3680

FACSIMILE: (916) 263-3675

WEB ADDRESS: <http://www.dca.ca.gov/cba>

NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO  
PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND  
PROFESSIONS CODE SECTION 5096 AND TITLE 16, DIVISION 1, ARTICLE 4 OF THE  
CALIFORNIA CODE OF REGULATIONS

## CONTACT INFORMATION

Individual Information

Name: \_\_\_\_\_ Prior Name(s): \_\_\_\_\_

Date of Birth: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Social Security Number: \_\_\_\_\_

Daytime Direct Telephone Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_  
(optional)Certified Public Accounting Firm Information

Complete the Certified Public Accounting Firm Information **ONLY** if the certified public accounting firm name you  
are associated with is different from the individual name above.

Certified Public Accounting Firm Name: \_\_\_\_\_

Firm Address: \_\_\_\_\_

Firm Main Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Firm Taxpayer ID Number: \_\_\_\_\_

Include additional certified public accounting firms you are associated with on Attachment 2, if necessary.

Other Contact Information

Address of Record (mailing address:  
fill out only if different from firm address  
or if no firm address is listed above): \_\_\_\_\_

## QUALIFICATION REQUIREMENTS

I state as follows:

1. ☐ I am an individual.
2. ☐ a. My principal place of business is not in California; **OR**  
☐ b. I have a pending application for licensure in California under Sections 5087 and 5088.
3. ☐ I qualify for a practice privilege based on my current, valid license to practice public  
accountancy in the following state:

State: \_\_\_\_\_ License Number: \_\_\_\_\_ Date Originally Issued: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

4. ☐ a. The license identified in Item 3 is deemed substantially equivalent by the California Board of Accountancy; **OR**
- ☐ b. My individual qualifications have been determined by the National Association of State Boards of Accountancy (NASBA) to be substantially equivalent (NASBA file no. \_\_\_\_\_); **OR**
- ☐ c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for four of the last 10 years.
5. ☐ a. I am submitting this notice to the CBA at or before the time I begin the practice of public accountancy in California; **OR**
- ☐ b. I am submitting this notice after I began the practice of public accountancy in California on \_\_\_\_/\_\_\_\_/\_\_\_\_. My reason(s) for not providing notice on or before that date is(are) provided below. (The safe harbor provision is referenced in the California Code of Regulations, Title 16, Division 1, Article 4, Section 30.)
- 
6. ☐ I have met the continuing education requirements and any exam requirements for the state of licensure identified in Item 3.

**I consent and agree to the following:**

7. ☐ To comply with the laws of the state of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at [http://www.dca.ca.gov/cba/acnt\\_act.htm](http://www.dca.ca.gov/cba/acnt_act.htm)) and the regulations thereunder (accessible at <http://www.dca.ca.gov/cba/regs.htm>).
8. ☐ To the personal and subject matter jurisdiction of the CBA including, but not limited to, the following:
- a. To suspend, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
  - b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
  - c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the Securities and Exchange Commission (SEC), the Public Company Accounting Oversight Board (PCAOB) or other relevant regulatory authorities.
9. ☐ To respond fully and completely to all inquiries by the CBA relating to my California practice privilege, including after the expiration of this privilege.
10. ☐ To the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
- a. Contacting other state agencies;
  - b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
  - c. Contacting NASBA.
11. ☐ In the event that any of the information in this notice changes, to provide the CBA written notice of any such change within 30 days of its occurrence.
12. ☐ To submit any applicable fees timely.

## AUTHORITY TO SIGN ATTEST REPORTS

Choose **ONE** of the following options:

- ☐ **I WISH** to be able to sign an attest report under this practice privilege, and I have at least 500 hours of experience in attest services. By checking this box, I agree to pay within 30 days of submission of this Notification Form, the \$100 Notification Fee which includes authorization to sign attest reports.

OR

- ☐ **I DO NOT WISH** to be able to sign an attest report under this practice privilege. Under this choice, I may participate in attest engagements but may not sign an attest report. By checking this box, I agree to pay the \$50 Notification Fee, due within 30 days of submission of this Notification Form.

## DISQUALIFYING CONDITIONS

Please respond to the following items. For any items checked "Yes" in (A) – (G), you must provide additional information as requested in Attachment 1, and you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.

Please check "Yes" for any items even if they were previously reviewed and cleared by the Board in a past California Practice Privilege. To expedite the review process, please include the details of all disqualifying conditions, including those previously reported in the additional information you provide.

- |                          |                          |     |   |
|--------------------------|--------------------------|-----|---|
| Y                        | N                        | A.  | I have been convicted of a crime other than a minor traffic violation.  |
| <input type="checkbox"/> | <input type="checkbox"/> |     |   |
| Y                        | N                        | B.  | I have had a license, registration, permit or authority to practice a profession surrendered, denied, suspended, revoked, or otherwise disciplined or sanctioned except for the following occurrences:                            |
| <input type="checkbox"/> | <input type="checkbox"/> |     |   |
|                          |                          | (1) | an action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education courses.   |
|                          |                          | (2) | the revocation of a license or other authority to practice public accountancy, other than the license upon which the practice privilege is based, solely because of failure to complete continuing education or failure to renew. |
| Y                        | N                        | C.  | I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct.  |
| <input type="checkbox"/> | <input type="checkbox"/> |     |   |
| Y                        | N                        | D.  | I have an unresolved administrative suspension or an unpaid fine related to a prior California Practice Privilege.  |
| <input type="checkbox"/> | <input type="checkbox"/> |     |   |
| Y                        | N                        | E.  | I did not respond to a request for information from the CBA related to a prior California Practice Privilege.   |
| <input type="checkbox"/> | <input type="checkbox"/> |     |   |
| Y                        | N                        | F.  | I have been notified by the CBA that prior Board approval is required before practice under a new California Practice Privilege may commence.   |
| <input type="checkbox"/> | <input type="checkbox"/> |     |   |
| Y                        | N                        | G.  | I have had a judgment or arbitration award against me involving my professional conduct in the amount of \$30,000 or greater.   |
| <input type="checkbox"/> | <input type="checkbox"/> |     |   |



## REQUIRED ADDITIONAL INFORMATION

I currently hold a California Practice Privilege. ☐ Yes ☐ No

Expiration date: \_\_\_\_\_ Unique Identifier: \_\_\_\_\_

I have held a California CPA/PA license. ☐ Yes ☐ No License number: \_\_\_\_\_

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

State: \_\_\_\_\_ License Number: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_

*Include additional licenses on Attachment 2, if necessary.*

*An answer of "No" to any of the following statements does not disqualify you from a California Practice Privilege.*

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

My firm has undergone peer review within the last three years. ☐ Yes ☐ No

The state of licensure identified in Item 3 requires CE in fraud detection. ☐ Yes ☐ No  
If yes, I have fulfilled this requirement. ☐ Yes ☐ No

**I, \_\_\_\_\_, understand that any misrepresentation or omission in connection with this notification disqualifies me from the California Practice Privilege and is cause for termination. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Unless you have checked "Y" to any items under Disqualifying Conditions, your privilege to practice commences with the submission of your properly completed notification. Your fee must be received within 30 days. Your privilege expires one year from the date of submission of this notification.



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

**ATTACHMENT 1**

Name: \_\_\_\_\_  
Last First MI

1. If you checked "Yes" to any of items A – G under Disqualifying Conditions, please provide explanatory details:

---

---

---

2. If you checked "Yes" to Item G under Disqualifying Conditions, please also provide:

Date of Judgment/  
Arbitration Award: \_\_\_\_\_ Jurisdiction/Court: \_\_\_\_\_ Docket No: \_\_\_\_\_

**PERSONAL INFORMATION COLLECTION AND ACCESS:** The information provided in this form will be used by the California Board of Accountancy to determine whether you qualify for practice privilege in California. Sections 5096 through 5096.15 of the California Business and Professions Code authorize the collection of this information. Failure to provide any of the required information is ground for rejection of the form as being incomplete. Information provided may be transferred to the Department of Justice, a District Attorney, a City Attorney, or to another government agency as may be necessary to permit the CBA, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in California Civil Code Section 1798.24. Each individual has the right to review his or her file, except as otherwise provided by the California Information Practices Act. Certain information provided may be disclosed to a member of the public, upon request, under the California Public Records Act. The Executive Officer of the California Board of Accountancy is responsible for maintaining the information in this form, and may be contacted at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, telephone number (916) 263-3680, regarding questions about this notice or access to records.



**CALIFORNIA BOARD OF ACCOUNTANCY**

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



## ATTACHMENT 2

Name: \_\_\_\_\_

### Certified Public Accounting Firm Information

Certified Public Accounting Firm Name: \_\_\_\_\_

Firm Address: \_\_\_\_\_

Firm Main Telephone Number:	Fax Number:	Firm Taxpayer ID Number:
-----------------------------------	----------------	-----------------------------

Certified Public Accounting Firm Name: \_\_\_\_\_

Firm Address: \_\_\_\_\_

Firm Main Telephone Number:	Fax Number:	Firm Taxpayer ID Number:
-----------------------------------	----------------	-----------------------------

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

State: License Number:

State: \_\_\_\_\_ License Number: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_

State: \_\_\_\_\_ License Number: \_\_\_\_\_

**PERSONAL INFORMATION COLLECTION AND ACCESS:** The information provided in this form will be used by the California Board of Accountancy to determine whether you qualify for practice privilege in California. Sections 5096-5098 and 5099-5105 of the California Business and Professions Code authorize the collection of this information. Failure to provide any of the information requested on this form as being incomplete. Information provided may be transferred to the Department of Justice, the District Attorney, the County Attorney, or to another government agency as may be necessary to permit the CBA, or the transferee agency, to perform its statutory or constitutional duties, or otherwise transferred or disclosed as provided in California Civil Code Section 1798.24. Each individual has the right to review his or her file, except as otherwise provided by the California Information Practices Act. Certain information provided may be disclosed to a member of the public, upon request, under the California Public Records Act. The Executive Officer of the California Board of Accountancy is responsible for maintaining the information in this form, and may be contacted at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, telephone number (916) 263-3680, regarding questions about this notice or access to records.

---

**Section 29. Term of the Practice Privilege.**

(a) Except when prior approval by the Board is required pursuant to Section 32, the practice privilege commences on the date the Notification Form is electronically submitted to the Board, on the postmark date of a Notification Form submitted to the Board by mail, or on the date a Notification Form is submitted to the Board via facsimile. When prior approval by the Board is required pursuant to Section 32, the practice privilege commences on the date the practice privilege is approved by the Board.

(b) Except as provided in subsection (c), a practice privilege, including a practice privilege that is or has been on administrative suspension pursuant to Business and Professions Code Section 5096.4, expires one year from the date the Notification Form is submitted to the Board or on the date a subsequent Notification Form is submitted to the Board, whichever occurs first.

(c) A practice privilege held by an applicant for a California license expires one year from the date the Notification Form is submitted to the Board or on the date the California license is issued by the Board, whichever occurs first.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 5088, 5096 and 5096.4, Business and Professions Code.

**HISTORY:**

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50). For prior history, see Register 200, No. 5.

**Section 30. Safe Harbor – Period of the Notice.**

(a) Notwithstanding Section 29, during the period January 1, 2006, through December 31, 2007, an individual shall not be deemed to be in violation of this Article or Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) solely because he or she begins the practice of public accounting in California prior to submitting the Notification Form, provided the Notification Form is submitted within five business days of the date practice begins. An individual who properly submits the Notification Form to the Board within the five-day period provided for in this Section shall be deemed to have a practice privilege from the first day of practice in California unless the individual fails to timely submit the required fee pursuant to Section 31.

(b) Subsection (a) of this section does not apply in those instances in which prior approval by the Board is required pursuant to Section 32.

(c) In addition to any other applicable sanction, the Board may issue a fine of \$250 to \$5,000 for notifying the Board more than five business days after beginning practice in



California. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 125.9, 5096, and 5096.3, Business and Professions Code.

**HISTORY:**

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

**Section 31. Payment of the Fee.**

The fee required by Section 70(h) must be received by the Board within 30 days of the date the Notification Form is submitted to the Board.

(a) In addition to any other applicable sanction, an individual is subject to a fine of \$100 to \$500 for the first failure to pay the practice privilege fee within 30 days of the commencement of the practice privilege, including attempting to pay with a check that is subsequently dishonored. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

(b) In addition to any other applicable sanction, an individual is subject to a fine of \$250 to \$1,000 for any subsequent occurrence of failure to pay the practice privilege fee within 30 days, including attempting to pay with a check that is subsequently dishonored. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

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

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 125.9, 5096, 5096.3, and 5096.4, Business and Professions Code.

**HISTORY:**

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

**Section 32. Board Approval Required.**

(a) An individual submitting a Notification Form pursuant to Section 28 who has any of the

conditions listed in subsection (c) of this Section may not commence practice under a practice privilege without prior approval of the Board.

(b) A holder of a practice privilege who acquires any of the conditions listed in subsection (c) of this Section during the term of the practice privilege shall cease practicing immediately and shall not begin practicing again without prior approval of the Board.

(c) Conditions requiring Board approval to practice under a practice privilege:

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

(2) The individual has had a revocation, suspension, denial, surrender, or other discipline or sanction involving any license or other authority to practice any profession in California or in any other state or foreign country or to practice before any state, federal, or local court or agency, or the Public Company Accounting Oversight Board (PCAOB), except for the following occurrences:

(A) An action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education courses.

(B) The revocation of a license or other authority to practice public accountancy, other than the license identified in Item 3 of the Qualification Requirements on the Notification Form, solely because of failure to complete continuing education or failure to renew.

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

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

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

(6) The individual has been notified by the Board that prior Board approval is required before practice under a new practice privilege may commence.

(7) The individual has had a judgment or arbitration award in an amount of \$30,000 or greater entered against him or her in a civil matter involving the professional conduct of the individual.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Section 5096, Business and Professions Code.

**HISTORY:**

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

**Section 33. Changes to Information on the Notification.**

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

(b) In addition to any other applicable sanctions, an individual is subject to a fine of \$250 to \$5,000 for failure to comply with the requirements of this Section. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 125.9, 5096, and 5096.3, Business and Professions Code.

**HISTORY:**

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50). For prior history, see Register 62, No. 11.

**Section 34. Response to Board Inquiry.**

(a) In addition to any other applicable sanction, failure to comply with the obligation to respond to Board inquiry pursuant to Section 5096(e)(5) could result in one or more of the following:

(1) Issuance of a fine of \$250 to \$5,000;

(2) An administrative suspension of a current practice privilege pursuant to Business and Professions Code Section 5096.4; or

(3) The requirement to obtain the approval of the Board before commencing to practice under a future practice privilege.

(b) In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 125.9, 5096, 5096.3, and 5096.4, Business and Professions Code.

**HISTORY:**

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50). For prior history, see Register 49, No. 4.

### **Section 35. Continuing Education Requirement.**

An individual practicing under a practice privilege shall meet the continuing education requirements of the state of licensure identified in Item 3 of the Qualification Requirements on the Notification Form.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 5096, Business and Professions Code.

#### **HISTORY:**

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50). For prior history, see Register 83, No. 16.

### **Section 35.1. Notice of Intent to Administratively Suspend.**

(a) Prior to the issuance of an Administrative Suspension Order pursuant to Business and Professions Code Section 5096.4, the Executive Officer may issue to the holder of a practice privilege a Notice of Intent to Administratively Suspend. The Notice of Intent to Administratively Suspend shall be in writing and shall be mailed to the practice privilege holder's address of record.

(b) The Notice of Intent to Administratively Suspend shall include a description of the contents of the Administrative Suspension Order pursuant to subdivision (c) of Section 5096.4.

(c) The Notice of Intent to Administratively Suspend shall provide the holder with a specified period of time in which to respond in writing by showing cause to the Executive Officer why the Administrative Suspension Order should not be issued.

(d) The Executive Officer shall determine whether or not the Administrative Suspension Order shall be issued and shall so inform the practice privilege holder in writing.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Section 5096.4, Business and Professions Code.

#### **HISTORY:**

1. New section filed 12-12-2005; operative 1-1-2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

## **ARTICLE 5. REGISTRATION**

(Sections 36 - 37)

### **Section 36. Forfeiture of Eligibility.**

An applicant who fails to pay the required initial permit fee within two years after being notified by the board of his or her eligibility for a permit shall be deemed to have abandoned the application and must file a new application in compliance with all of the requirements for a permit which are in effect at the time of reapplication.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 5070, 5070.7, 5130 and 5134, Business and Professions Code.

#### **HISTORY:**

1. New section filed 7-10-64; effective thirtieth day thereafter (Register 64, No. 15).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

### **Section 37. Reissuance.**

A certified public accountant (CPA) whose certificate has been canceled by the operation of Business and Professions Code Section 5070.7 may apply for and obtain a new certificate if the applicant is otherwise qualified under the provisions of Section 5070.7 and the applicant meets the requirements of subsection (a) or (b) of this section. The reissued certificate will permit the CPA to perform the same services as did the cancelled certificate.

(a) Within 3 years preceding the date of application, the applicant has completed at least 120 hours of continuing education of which up to 48 hours must be in subject areas specifically identified by the board.

(b) In lieu of meeting the requirements of subsection (a) of this section, the applicant may choose to retake and successfully complete the entire Uniform CPA examination.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.  
Reference: Section 5070.7, Business and Professions Code.

#### **HISTORY:**

1. New section filed 6-19-90; operative 7-19-90 (Register 90, No. 33).
2. Amendment filed 6-12-2002; operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

## **ARTICLE 8. APPEALS**

(Section 49)

### **Section 49. Appeals.**

(a) Any applicant who is aggrieved by any action of any of the board's committees or its staff may appeal from such action to the board. The appeal shall be filed within 24 months of the action being appealed or the mailing of written notification from the board, whichever is later. Two signed copies of the appeal shall be mailed or delivered to the office of the State Board of Accountancy. The appeal shall contain the following information:

- (1) The name, business address and residence address of the applicant making the appeal.
- (2) The action being appealed from and the date of any written notification from the board. (3) A summary of the basis for the appeal, including any information which the applicant believes was not given adequate consideration by the committee or staff.
- (b) The board will consider only appeals based on information previously considered by its committees or staff. If the applicant wishes to submit for consideration additional evidence or information not previously submitted to the board's committee or staff, such additional information should be submitted directly to the committee or staff within the request that its previous action be reconsidered. An appeal based on evidence or information not previously submitted to the committee or staff will be referred by the board to the appropriate committee or staff for further consideration.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Section 5022, Business and Professions Code.

#### HISTORY:

1. New section filed 10-16-47 (Register 10, No. 1).
2. Amendment filed 2-4-60; effective thirtieth day thereafter (Register 60, No. 3).
3. Amendment filed 6-7-62; effective thirtieth day thereafter (Register 62, No. 11).
4. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

## **ARTICLE 9. RULES OF PROFESSIONAL CONDUCT**

(Sections 50 - 69)

### **Section 50. Client Notification.**

Every licensee engaged in the practice of public accountancy shall provide notice reasonably calculated to be received by the licensee's clients of the fact that the licensee is licensed by the California Board of Accountancy. For purposes of this section, "licensee" means a Certified Public Accountant, Public Accountant, accountancy partnership, or accountancy corporation licensed by the California Board of Accountancy. Notice shall be provided by any of the following methods:

- (a) Displaying the certificate of licensure issued by the Board in the office or the public area of the premises where the licensee provides the licensed service.

(b) Providing a statement to each client to be signed and dated by the client and retained in that person's records that states the client understands the person is licensed by the California Board of Accountancy.

(c) Including a statement that the licensee is licensed by the California Board of Accountancy either on letterhead or on a contract for services where the notice is placed immediately above the signature line for the client in at least 12 point type.

(d) Posting a notice in a public area of the premises where the licensee provides the licensed services, in at least 48-point type, that states the named licensee is licensed by the California Board of Accountancy.

(e) Any other method of written notice, including a written notice that is electronically transmitted or a written notice posted at an Internet Web site.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 138, Business and Professions Code.

**HISTORY:**

1. New section filed 5-10-2000; operative 6-9-2000 (Register 2000, No. 19).
2. Amendment filed 6-12-2002: operative 6-12-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

**Section 51. Firms with Nonlicensee Owners.**

At initial registration and at renewal, all firms shall certify that any nonlicensee owner with his or her principal place of business in this state has been informed regarding the rules of professional conduct applicable to accountancy firms. This certification shall be signed by a licensed partner or licensed shareholder of the firm.

NOTE: Authority cited: Sections 5010, 5018 and 5079, Business and Professions Code.  
Reference: Section 5079, Business and Professions Code.

**HISTORY:**

1. New section filed 7-22-99; operative 8-21-99 (Register 99, No. 30).

**Section 51.1. Notification of Non-licensee Ownership.**

(a) Any firm with a nonlicensee owner or owners that has one or more offices located in California shall notify each client served by an office located in California of the actual or

potential involvement of a nonlicensee owner or owners in any service to be provided to the client by the firm. Notice shall be provided by any of the following methods:

(1) Providing a statement to each client served by a California office to be signed and dated by the client and retained in the firm's records that states that the client understands that services will or may be provided by a nonlicensee owner of the firm.

(2) Including a statement that the firm has a nonlicensee owner or owners who may provide client services in any contract for services, proposal letter, or engagement letter with the client served by a California office.

(b) A copy of the statement, contract, engagement letter, or proposal letter containing this notice shall be maintained by the public accounting firm in the client's files for a minimum of five years from the date of the notice.

Note: Authority cited: Section 5010, 5018, and 5079, Business and Professions Code.

Reference: Section 5079, Business and Professions Code.

#### HISTORY:

1. New Section filed 1-23-2004; operative 1-23-2004.

### **Section 52. Response to Board Inquiry.**

(a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested.

(b) A licensee shall respond to any subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer within 30 days and in accordance with the provisions of the Accountancy Act and other applicable laws or regulations.

(c) A licensee shall appear in person upon written notice or subpoena issued by the Board or its executive officer or the assistant executive officer in the absence of the executive officer.

(d) A licensee shall provide true and accurate information and responses to questions, subpoenas, interrogatories or other requests for information or documents and not take any action to obstruct any Board inquiry, investigation, hearing or proceeding.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.

Reference: Sections 5018, 5100, 5103, and 5108, Business and Professions Code.

#### HISTORY:



1. Renumbering of form section 54.1 to new section 52 and amendment of section heading filed 8-4-95, operative 9-3-95 (Register 95, No. 31).
2. Amendment filed 1-23-2004; operative 1-23-2004.

### **Section 52.1. Failure to Appear.**

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.  
Reference: Sections 5018 and 5020, Business and Professions Code.

#### **HISTORY:**

1. Renumbering and amendment of former section 69.1 To new section 52.1 And amendment of note filed 8-4-95; operative 9-3-95 (register 95, no. 31).
2. Repealer filed 1-23-2004; operative 1-23-2004.

### **Section 53. Discrimination Prohibited.**

No licensee or registrant shall engage in any conduct or practice which shall deny any person an opportunity or benefit of employment within the accounting profession based on race, color, religious creed, national origin, ancestry, physical handicap, sex, marital status, sexual orientation or age.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5018, Business and Professions Code.

#### **HISTORY:**

1. New section filed 6-8-81; effective thirtieth day thereafter (Register 81, No. 24).

### **Section 54. Confidential Information Defined, Exception.**

"Confidential information" includes all information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client, except that it does not include information obtained from a prospective client who does not subsequently become a client, where all of the following conditions are met:

(a) The licensee provides reasonable notice to the prospective client or the prospective client's representative that the information will not be treated as confidential information in the event the provider does not become a client and that providing such information will not preclude the licensee from being employed by a party adverse to the potential client in any current or future legal action or proceeding. For purposes of this section "reasonable notice" shall mean the following:

(1) With respect to oral communications, including telephonic communications, reasonable notice consists of oral notice to the speaker given immediately by the licensee upon hearing that client information is being presented or will be presented.

(2) With respect to written communications, including electronic and facsimile communications, reasonable notice consists of an oral or written notice to the sender within one business day.

(b) The licensee, on request, returns the original and all copies of documents provided by the prospective client or his or her representative within 30 days.

(c) The licensee does not utilize in any manner the information obtained, except that nothing shall prohibit the licensee from utilizing the same information obtained from an independent source such as through litigation discovery.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5018, Business and Professions Code.

#### HISTORY:

1. Sections 54-66, inclusive, filed 12-6-47 (Register 10, No. 5).
2. Amendment filed 10-17-62; effective thirtieth day thereafter (Register 62, No. 22).
3. Amendment filed 11-17-69; effective thirtieth day thereafter (Register 69, No. 47).
4. Amendment filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
5. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
6. Amendment filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
7. Renumbering of former section 54 to new section 54.1 and new section filed 8-4-95; operative 9-3-95 (Register 95, No. 31).

#### **Section 54.1. Disclosure of Confidential Information Prohibited.**

(a) No confidential information obtained by a licensee, in his or her professional capacity, concerning a client or a prospective client shall be disclosed by the licensee without the written permission of the client or prospective client, except for the following:

(1) disclosures made by a licensee in compliance with a subpoena or a summons enforceable by order of a court;

(2) disclosures made by a licensee regarding a client or prospective client to the extent that the licensee reasonably believes that it is necessary to maintain or defend himself/herself in a legal proceeding initiated by that client or prospective client;

(3) disclosures made by a licensee in response to an official inquiry from a federal or state government regulatory agency;

(4)disclosures made by a licensee or a licensee's duly authorized representative to another licensee in connection with a proposed sale or merger of the licensee's professional practice;

(5)disclosures made by a licensee to (A) another licensee to the extent necessary for purposes of professional consultation and to (B) professional standards review, ethics or quality control peer review organizations;

(6)disclosures made when specifically required by law;

(7) disclosures made at the direct request of the client to a person or entity that is designated by the client at the time of the request.

(b) In the event that confidential client information may be disclosed to persons or entities outside the United States in connection with the services provided, the licensee shall so inform the client in writing and obtain the client's written permission for the disclosure.

NOTE: Authority cited: Sections 5010, 5018, and 5063.3, Business and Professions Code.  
Reference: Sections 5018 and 5063.3, Business and Professions Code.

#### HISTORY:

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Editorial correction of printer error in HISTORY (Register 91, No. 30).
3. Editorial correction of reference cite (Register 95, No. 30).
4. Renumbering of former section 54.1 to new section 52, renumbering of former section 54 to 54.1 and amendment of section heading and first paragraph filed 8-4-95; operative 9-3- 95 (Register 95, No. 31).
5. New subsection (b) and subsection relettering filed 11-20-98; operative 12-20-98 (Register 98, No. 47).
6. Amendment filed 4-14-05, operative 5-14-05.

#### **Section 54.2. Recipients of Confidential Information.**

Members of the Board, its appointed representatives professional practice reviewers and other persons designated in section 54.1(a)(4)-(a)(6) shall not disclose information concerning licensees or their clients which comes to their attention in carrying out their professional responsibilities; provided, however, such information may be disclosed:

- (a) as part of disciplinary proceedings with the Board,
  - (b) as part of legal actions in which the Board is a party,
  - (c) in response to an official inquiry from a federal or state governmental regulatory agency,
  - (d) in compliance with a subpoena or summons enforceable by order of a court, or (e)
- when otherwise specifically required by law.

NOTE: Authority cited: Sections 5010, 5018, and 5063.3, Business and Professions Code.  
Reference: Sections 5018 and 5063.3, Business and Professions Code.

**HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Editorial correction of printing error in History (Register 91, No 30).
3. Editorial correction of reference cite (Register 95, No. 30).
4. Amendment of first paragraph filed 8-4-95; operative 9-3-95 (Register 95, No. 31).
5. Amendment of first paragraph filed 11-20-98; operative 12-20-98 (Register 98, No. 47).
6. Amendment filed 4-14-05, operative 5-14-05.

**Section 56. Commissions—Basic Disclosure Requirement.**

(a) A licensee shall not accept any fee or commission permitted by Business and Professions Code Section 5061 unless he or she complies with the provisions of this section and Section 56.1.

(b) A licensee who may receive a fee or commission pursuant to Business and Professions Code Section 5061 shall furnish to the client, at or prior to the time the recommendation of the product or service is made, a written disclosure statement in 12 point type or larger that contains the following information:

(1) The fact that the fee or commission is to be paid for professional services and that a fee or commission cannot be accepted solely for the referral of the client to the products or services of a third party.

(2) A description of the product(s) or service(s) which the licensee is recommending to the client, the identity of the third party that is expected to provide the product or service, the business relationship of the licensee to the third party, a description of any fee or commission which may be received by the licensee, including, but not limited to, any supplemental fee or commission or other compensation allocable to the client being provided with the product or service of the third party. Where the product(s) or service(s) cannot be specifically identified at the time of the initial disclosure, this information shall be included in a supplemental disclosure within 30 days of receipt of the fee or commission.

(3) The dollar amount or value of the fee or commission payment(s) or the basis on which the payment(s) shall be computed.

(c) The written disclosure shall be on letterhead of the licensed firm or shall be signed by the licensee. The disclosure statement shall be signed and dated by the client and contain an acknowledgment by the client that the client has read and understands the information contained in the disclosure. Supplemental disclosures as described in subsection (b)(2) of Section 56 need not be signed by the client or by the licensee. The licensee shall retain the disclosure statements for a period of five years and shall provide copies to the client.

NOTE: Authority cited: Section 5010, 5018 and 5061, Business and Professions Code.  
Reference: Section 5061, Business and Professions Code.

**HISTORY:**

1. New section filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2). For prior history, see Register 95, No. 31.

**Section 56.1. Commissions—Professional Services Provided to the Client.**

The professional services which must be provided to the client in conjunction with the products or services of a third party under Business and Professions Code Section 5061(b) shall include consultation with the client regarding the third party's product or service in relation to the client's circumstances.

NOTE: Authority cited: Section 5010, 5018 and 5061, Business and Professions Code.  
Reference: Section 5061, Business and Professions Code.

**HISTORY:**

1. New section filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).

**Section 56.2. Commissions—Disclosure Requirement and Other Rules of Professional Conduct.**

Nothing in Section 56 permits a licensee either (1) to accept any fee or commission which would violate the requirement that a licensee be independent in the performance of services in accordance with professional standards (Section 65) or (2) to concurrently engage in the practice of public accountancy and in any other business or occupation which impairs the licensee's independence, objectivity, or creates a conflict of interest in rendering professional services (Section 57). However, the act of a licensee taking a fee or commission as permitted by Business and Professions Code Section 5061 and in conformity with Section 56 does not, by itself, constitute an impairment of a licensee's objectivity or create a conflict of interest in rendering professional services.

NOTE: Authority cited: Section 5010, 5018 and 5061, Business and Professions Code.  
Reference: Sections 5018 and 5061, Business and Professions Code.

**HISTORY:**

1. New section filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).

**Section 56.3. Commissions—Definitions.**

For purposes of Sections 56, 56.1, and 56.2 of the Board's regulations the following definitions apply:

(a) "Licensee" means a Certified Public Accountant, Public Accountant, or firm licensed by the Board of Accountancy, including a firm with nonlicensee owners, that is engaged in the practice of public accountancy as defined by Business and Professions Code Section 5051.

(b) The term "a third party" means all persons other than the licensee, the licensee's client, and any licensee firm of which the licensee is an employee, partner, or owner.

(c) "The basis on which the payment(s) shall be computed" shall be a formula which can be used to calculate the dollar amount or value of the fee or commission once the dollar amount or value of the transaction is known.

NOTE: Authority cited: Section 5010, 5018 and 5061, Business and Professions Code.

Reference: Section 5061, Business and Professions Code.

**HISTORY:**

1. New section filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).

**Section 56.4. "Officer" and "Director."**

The terms 'director' and 'officer' as defined under Section 5061 (c) does not include a director or officer of a nonprofit corporation, or a corporation that together with any affiliates, has 100 or less employees or average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three tax years. The term "average annual gross receipts" means all pecuniary gross receipts (less returns, allowances and interaffiliate transactions), the assignment of such receipts notwithstanding, of a business concern from whatever source derived, as entered or to have been entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion or other commonly recognized and accepted accounting method).

NOTE: Authority cited: Sections 5010, 5018, and 5061, Business and Professions Code.

Reference: Section 5061, Business and Professions Code.

**HISTORY:**

1. New section filed 1-23-2004; operative 1-23-2004.

**Section 57. Incompatible Occupations/Conflict of Interest.**

A licensee shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs the licensee's independence, objectivity, or creates a conflict of interest in rendering professional services.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5018, Business and Professions Code.

**HISTORY:**

1. Amendment filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

**Section 58. Compliance With Standards.**

Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010 and 5018, Business and Professions Code.

**HISTORY:**

1. New section filed 10-9-79; effective thirtieth day thereafter (Register 79, No. 41). For prior history, see Registers 68, No. 38; 66, No. 1; 61, No. 22; 20, No. 6; and 10, No. 5.
2. Amendment of section heading and section filed 8-4-95; operative 9-3-95 (Register 95, No. 31).

**Section 59. Reporting of Restatements.**

(a) To comply with the requirements of paragraph (1) of subdivision (b) of Business and Professions Code Section 5063, a licensee who issues a report on a client's restated financial statement shall report to the Board:

(1) Any restatement of a financial statement reporting the correction of any error in a previously issued financial statement of a client that is:

(A) a publicly traded company that is required to file a tax return with the California Franchise Tax Board; or

(B) a government agency located in California, when the financial restatement(s) exceeds the planning materiality used by the licensee in conjunction with the current year audit. For purposes of this paragraph, planning materiality means the planned level of misstatements, individually or in aggregate, that would cause the financial statements to not be presented fairly, in all material respects, in conformity with generally accepted accounting principles.

(2) Any restatement of a financial statement of a charitable organization registered by the Office of the Attorney General's Registry of Charitable Trusts which is issued for purposes of correcting any error in a previously issued financial statement and which has resulted in the

filing of an amended or superceding Internal Revenue Service Form 990 or 990PF.

(b) The report required by subsection (a) shall be made by the licensee issuing the report on the restatement even if the licensee did not perform the original audit. The report required by subsection (a) shall be provided to the Board within 30 days of issuance of the restatement, shall be signed by the licensee, and shall set forth the facts which constitute the reportable event including an explanation of the reason for the restatement. The report made under paragraph (a)(1) of this section shall include copies of the original and the restated financial statements. The report made under paragraph (a)(2) of this section shall include only those portions of the original and the amended Forms 990 or 990PF related to the reissued financial statement.

Note: Authority Cited Sections 5010, 5018, and 5063, Business and Professions Code.  
Reference: Section 5063, Business and Professions Code.

**HISTORY:**

1. New section filed 1-23-2004; operative 1-23-2004.

**Section 60. Reporting of Investigations by the Securities and Exchange Commission pursuant to Section 5063(b)(3); Reporting of Notices of Requests for Wells Submissions pursuant to Section 5063 (b)(4); and Reporting of Investigations by the Public Company Accounting Oversight Board pursuant to Section 5063(b)(5).**

(a) For purposes of reporting pursuant to Section 5063 (b)(5), notice of the opening or initiation of an investigation by the Public Company Accounting Oversight Board shall include any notice by the Public Company Accounting Oversight Board that it is initiating an investigation of the licensee.

(b) Reports received by the Board pursuant to the requirements of subsection (a) of this section or of paragraphs (3), (4) or (5) of subdivision (b) of Business and Professions Code 5063 shall not be publicly disclosed other than (1) in the course of any disciplinary proceeding by the Board after the filing of a formal accusation; (2) in the course of any legal action to which the Board is a party; (3) in response to an official inquiry from a state or federal agency; (4) in response to a subpoena or summons enforceable by order of a court; or (5) when otherwise specifically required by law.

Note: Authority Cited Sections 5010, 5018, and 5063, Business and Professions Code.  
Reference: Section 5063, Business and Professions Code.

**HISTORY:**

1. New section filed 1-23-2004; operative 1-23-2004.

**Section 61. The Reporting of Settlements, Arbitration Awards, and Judgments.**



(a) To meet the reporting requirements of paragraph (b)(2) of Section 5063, licensees shall report settlements and arbitration awards consistent with that provision that are the result of actions brought by persons located, residing, or doing business in California.

(b) Reports of judgments in civil actions alleging negligent conduct (but not dishonesty, fraud, or gross negligence) by a licensee pursuant to paragraph (c)(1) of Section 5063 shall be limited to those judgments in which a person located, residing in or doing business in California is a named party to the action or where the alleged conduct relates to the practice of public accountancy in California. Nothing in this subsection limits a licensee's responsibility to report under any other paragraph of subdivision (c) of Section 5063.

(c) Reports received by the Board pursuant to the requirements of subsection (a) of this section shall not be publicly disclosed other than (1) in the course of any disciplinary proceeding by the Board after the filing of a formal accusation; (2) in the course of any legal action to which the Board is a party; (3) in response to an official inquiry from a state or federal agency; (4) in response to a subpoena or summons enforceable by order of a court; or (5) when otherwise specifically required by law.

Note: Authority Cited Sections 5010, 5018, and 5063, Business and Professions Code.  
Reference: Section 5063, Business and Professions Code.

#### HISTORY:

1. New section filed 1-23-2004; operative 1-23-2004.

#### **Section 62. Contingent Fees.** (a) A licensee shall not:

(1) Perform for a contingent fee any professional services for, or receive such a fee from, a client for whom the licensee or the licensee's firm performs:

(A) an audit or review of a financial statement; or

(B) a compilation of a financial statement when the licensee expects or reasonably should expect that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(C) an examination of prospective financial information; or

(D) any other attest engagement when the licensee expects or reasonably should expect that a third party will use the related attestation report; or

(E) any other services requiring independence.

(2) Prepare an original tax return for a contingent fee for any client.

(3) Prepare an amended tax return, claim for tax refund, or perform other similar tax services for a contingent fee for any client.

(4) Perform an engagement as a testifying expert for a contingent fee.

The prohibition in (a)(1) above applies during the period in which the licensee or the licensee's firm is engaged to perform any of the services listed under (a)(1) above and the

period covered by any historical financial statements involved in any such listed services.

(b) Except as stated in the next paragraph, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specific finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

Solely for purposes of this section, fees are not regarded as being contingent if fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based upon the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity or there is a reasonable expectation of substantive review by a taxing authority.

NOTE: Authority cited: Section 5010 and 5018, Business and Professions Code.

Reference: Section 5010 and 5018, Business and Professions Code.

**HISTORY:**

1. Amendment filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 11-20-96; effective on filing (Register 96, No.47).

COMMENTARY: Contingency fees are considered to be infringements of a CPAs ability to be independent. However, if the contingency fee is determined by a government agency, court or public authority then it is not considered to be detrimental to the CPA's independence.

**Section 63. Advertising.**

A licensee shall not advertise or use other forms of solicitation in any manner which is false, fraudulent, misleading, or in violation of Section 17500 of the Business and Professions Code.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.

Reference: Section 5100, Business and Professions Code.

**HISTORY:**

1. New section filed 12-6-47; effective thirtieth day thereafter (Register 10, No. 5).
2. Amendment filed 8-17-49; effective thirtieth day thereafter (Register 17, No. 4).
3. Amendment filed 8-1 7-77; effective thirtieth day thereafter (Register 77, No. 34).
4. Amendment of section and new Note filed 8-4-95, operative 9-3-95 (Register 95, No 31).

**Section 65. Independence.**

A licensee shall be independent in the performance of services in accordance with professional standards.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010 and 5018, Business and Professions Code.

**HISTORY:**

1. Repealer and new section filed 3-24-65; effective thirtieth day thereafter (Register 65, No. 5).
2. Amendment filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
3. Amendment filed 10-9-79; effective thirtieth day thereafter (Register 79, No. 41).
4. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
5. Repealer and new section filed 8-4-95; operative 9-3-95 (Register 95, No. 31).

COMMENTARY: If compilation engagements lack independence, the report must be modified and disclose the lack of independence.

**Section 67. Approval of Use of Fictitious Name.**

No sole proprietor may practice under a name other than the name set forth on his or her permit to practice unless such name has been registered with the Board. Any registration issued under this section shall expire five years after the date of issuance unless renewed prior to its expiration.

NOTE: Authority cited: Sections 5010, 5018 and 5060, Business and Professions Code. Reference: Section 5060, Business and Professions Code.

**HISTORY:**

1. New section filed 7-10-64; effective thirtieth day thereafter (Register 64, No. 15).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment filed 9-23-91; operative 10-23-91 (Register 91, No. 52).
4. Amendment of section and Note filed 5-10-2000; operative 6-9-2000 (Register 2000, No. 19).

COMMENTARY: A fictitious name would be the name other than the name on the CPA's certificate.

**Section 68. Retention of Client's Records.**

A licensee, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client's records shall not retain such records.

Unpaid fees do not constitute justification for retention of client records.

Although, in general the accountant's working papers are the property of the licensee, if such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client, then the information on those working papers must be treated the same as if it were part of the client's books and records.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Section 5037, Business and Professions Code.

**HISTORY:**

1. New section filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment filed 8-4-95, operative 9-3-95 (Register 95, No. 31).

**Section 68.1. Working Papers Defined; Retention.**

(a) Working papers are the licensee's records of the procedures applied, the tests performed, the information obtained and the pertinent conclusions reached in an audit, review, compilation, tax, special report or other engagement. They include, but are not limited to, audit of other programs, analyses, memoranda, letters of confirmation and representations, abstracts of company documents and schedules or commentaries prepared or obtained by the licensee. The form of working papers may be handwriting, typewriting, printing, photocopying, photographing, computer, data, or any other letters, words, pictures, sounds, or symbols or combinations thereof.

(b) Licensees shall adopt reasonable procedures for the safe custody of working papers and shall retain working papers for a period sufficient to meet the needs of the licensee's practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.

(c) Licensees shall retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending.

NOTE: Authority Cited: Section 5010 and 5018, Business and Professions Code.  
Reference: Section 5018 and 5037, Business and Professions Code.

**HISTORY:**

1. New section filed 2-26-96; operative 3-27-96 (Register 96, No 9).

## **68.2. Identification of Audit Documentation.**

(a) To provide for the identification of audit documentation, audit documentation shall include an index or guide to the audit documentation which identifies the components of the audit documentation.

(b) In addition to the requirements of Business and Professions Code Section 5097(b), audit documentation shall provide the date the document or working paper was completed by the preparer(s) and any reviewer(s), and shall include the identity of the preparer(s) and any reviewer(s).

(c) Audit documentation shall include both the report date and the date of issuance of the report.

Note: Authority cited: Section 5010, 5018, and 5098, Business and Professions Code.

Reference: Sections 5097 and 5098, Business and Professions Code.

### **HISTORY:**

1. New section filed 1-23-2004; operative 1-23-2004.

## **Section 68.3. Retention Period for Audit Documentation.**

(a). The retention period mandated by Business and Professions Code Section 5097 shall be measured from the report date.

(b) If audit documentation is required to be kept for longer than seven years because of a pending Board investigation or disciplinary action, audit documentation shall not be destroyed until the licensee has been notified in writing by the Board of the closure of a Board investigation or disciplinary proceeding.

(c) Any documents required to be maintained by Business and Professions Code Section 5097 or these regulations shall be maintained in accessible form.

(d) Audit documentation shall be retained whether or not the documentation supports the auditor's final conclusions. All audit documentation regarding any significant matter related to the audit shall be retained whether or not the documentation contains information or data inconsistent with the auditor's final conclusions. Significance of a matter shall be determined based on an objective analysis of the facts and circumstances. Audit documentation to be retained shall also include all documentation of consultations on, or resolutions of, any differences of opinion regarding the exercise of professional judgment.

Note: Authority cited: Section 5010, 5018, and 5098, Business and Professions Code.

Reference: Sections 5097 and 5098, Business and Professions Code.

**HISTORY:**

1. New section filed 1-23-2004; operative 1-23-2004.

**Section 68.4. Changes in Audit Documentation After Issuance of the Report.**

(a) Changes in audit documentation include any addition, removal, deletion, substitution, or editing of audit documentation, including, but not limited to, physical or electronic additions to any audit documentation file or preexisting audit documentation, occurring after the date of issuance of the audit report which is supported in whole or in part by the audit documentation.

(b) Except as provided in subsection (c), in addition to any other documentation required by professional standards, any changes in audit documentation shall provide the identity of the person(s) making the change, and identity of any person(s) approving the change, the date of the change, and the reason for the change if the reason is other than the assembling of pre-existing documents. The documentation which is changed shall contain sufficient detail to enable a reviewer with relevant knowledge and experience, having no previous connection with the audit engagement, to understand the nature, timing, reason for, and extent of the change.

(c) During a 60-day period after the date of issuance of the audit report, documents may be added to the file for the assemblage and documentation of work previously performed. Nothing in this subsection authorizes the deferral of audit procedures required to be performed prior to the date of issuance of the report.

Note: Authority cited: Section 5010, 5018, and 5098, Business and Professions Code.

Reference: Sections 5097 and 5098, Business and Professions Code.

**HISTORY:**

1. New section filed 1-23-2004; operative 1-23-2004.

**Section 68.5. Audit Documentation Retention and Destruction Policy.**

(a) Licensees shall maintain, and document compliance with, a written Audit Documentation Retention and Destruction Policy which provides for the preservation of audit documentation for the full time period required by Business and Professions Code Section 5097. The policy and documentation of compliance shall be available to the Board upon request.

(b) This policy shall provide for the authorized custody, security, access, retention, and destruction of the documentation. This policy shall, at a minimum, include the following:

(1) procedures for the maintenance of back-up copies of electronic audit documentation at secure locations,

- (2) procedures for maintaining audit documentation,
- (3) procedures for approving any changes to audit documentation,
- (4) procedures for approving the destruction of documentation when no longer required to be maintained by Business and Professions Code Section 5097.

(c) The procedure required by subsection (b)(4) shall provide for identifying the persons, by name or position, authorized to approve the destruction of audit documentation. In the alternative, the procedure required by subsection (b)(4) may be self-executing once the retention period has expired.

Note: Authority cited: Section 5010, 5018, and 5098, Business and Professions Code.

Reference: Sections 5097 and 5098, Business and Professions Code.

**HISTORY:**

1. New section filed 1-23-2004; operative 1-23-2004.

**Section 69. Certification of Applicant's Experience.**

(a) Any licensee who shall have been requested by an applicant to prepare and submit to the board certification of the applicant's experience and shall have refused to prepare and submit said certification shall, when requested by the board, explain in writing, or, when so requested by the board, explain in person, the basis for refusal to complete and submit said certification.

(b) Any licensee who shall have signed a certification of experience shall, when requested by the board, explain in writing, or, when so requested by the board, explain in person, the information provided on any said certification of experience, in any situation including, but not limited to, the following:

(1) Where there is an alleged disagreement between an applicant and any licensee as to dates and/or type of work performed;

(2) Where there is satisfactorily answered certification of experience submitted to the board, but the period of experience appears to be unduly short;

(3) Where the board seeks to verify on a sample basis information submitted by an applicant or attested thereto on a certification of experience; or

(4) Where the board reasonably believes that the information in the certification of experience may be false or incorrect.

(c) Any false or misleading statement, made by a licensee as to material matters in the certification of an applicant's experience, shall constitute a violation of Section 5100 (g) of the Accountancy Act.

(d) Inspection by the board or its representatives of documentation relating to an applicant's fulfillment of the experience requirements set forth in Sections 5083, 5092, 5093, and 5095 of the Accountancy Act and Sections 11.5, 12, and 12.5 herein above may be made at any of the board's offices or at such other places as the board may designate.

(e) The failure or refusal, by any licensee to complete and submit a certification of experience or to comply with a request for explanation of said certification or inspection of documentation as set forth in this rule constitutes a violation of Section 5100 (g) of the Accountancy Act.

(f) Any unreasonable act or failure to act which jeopardizes an applicant's chances for obtaining a certificate, shall constitute a violation of Section 5100 (g) of the Accountancy Act. NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010, 5018 and 5100, Business and Professions Code.

#### HISTORY:

1. New section filed 10-21-77; effective thirtieth day thereafter (Register 77, No. 43).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Change without regulatory effect amending subsections (c), (e), and (f) filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).
4. Amendment of subsection (d) filed 5-1-2006; operative 5-31-2006 (Register 2006, No. 18).

### **ARTICLE 10. FEES**

(Sections 70 - 71)

#### **Section 70. Fees.**

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

(b) The fee to be charged each applicant for issuance of a certified public accountant certificate shall be \$250.

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

(d) (1) Commencing January 1, 2007, the fee to be charged each applicant for the initial permit to practice as a partnership, a corporation, or a certified public accountant shall be \$120.

(2) Commencing January 1, 2011, the fee to be charged each applicant for the initial permit to practice as a partnership, a corporation, or a certified public accountant shall be \$200 unless subsection (h) applies.



(e) (1) Commencing January 1, 2007, the fee to be charged each applicant for renewal of a permit to practice as a partnership, a corporation, or a certified public accountant shall be \$120.

(2) Commencing January 1, 2011, the fee to be charged each applicant for renewal of a permit to practice as a partnership, a corporation, or a certified public accountant shall be \$200 unless subsection (h) applies.

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

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

(h) By July 1, 2009, the Board shall conduct a review of its actual and estimated revenue and expenditures. Based on this review, the Board shall determine the appropriate level of fees for the initial permit to practice pursuant to subsection (d) and renewal of the permit to practice pursuant to subsection (e) in order to maintain the Board's contingent fund reserve balance at an amount equal to approximately nine months of annual authorized expenditures. If the Board determines that fees of less than \$200 are indicated, the Board shall fix the fees by regulation at the indicated amounts on or before January 1, 2011

NOTE: Authority cited: Section 5010 and 5018, Business and Professions Code. Reference: Sections 122, 163, 5096, 5096.15, and 5134 Business and Professions Code.

#### HISTORY:

1. Amendment filed 11-4-70; effective thirtieth day thereafter (Register 70, No. 45). For prior history, see Register 68, No. 23.

2. Amendment filed 4-9-74; effective thirtieth day thereafter (Register 74, No. 15).

3. Amendment filed 8-15-75; effective thirtieth day thereafter (Register 75, No. 33).

4. Amendment filed 8-17-77; effective thirtieth day thereafter (Register 77, No. 34).

5. Amendment of subsection (b) filed 1-26-79; effective thirtieth day thereafter (Register 79, No. 4).

6. Repealer and new section filed 7-1-96; operative 7-1-96 pursuant to Government Code Section 11343.4(d) (register 96, No.27).

7. Amendment changing designation of subsection (d) to (d)(1), changing designation of subsection (e) to (e)(1), and adding new subsections (d)(2), (e)(2) and (h) filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

8. Amendment of section heading and section filed 8-3-98; operative 8-3-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 32).

9. Redesignation and amendment of subsection (a) as subsection (a)(1), new subsections (a)(2) and (a)(3), amendment of subsection (b) filed 5-3-2001; operative 7-1-2001 (Register 2001, No. 18).

10. Amendment filed 1-23-2004; operative 1-23-2004.

11. Repealer of subsections (a) (1) - (2), redesignation of former subsection (1) (3) as subsection (a), new subsection (h) and amendment of Note filed 12-12-2005; operative 1-1- 2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

12. Amendment of subsection (a), redesignation and amendment of former subsection (h) as new subsection (h)(1), new subsection (h)(2) and amendment of Note filed 10-3-2006 as an emergency; operative 10-3-2006 (Register 2006, No. 40). A Certificate of Compliance must be transmitted to OAL by 1-31-2007 or emergency language will be repealed by operation of law on the following day.

13. Certificate of Compliance as to 10-3-2006 order transmitted to OAL 12-21-2006 and filed 2-1-2007 (Register 2007, No.5).

### **Section 71. Abandonment of Application.**

- a) An applicant for the paper and pencil examination who fails to appear for the examination shall be deemed to have abandoned the application and shall forfeit the examination fee.
- b) A first-time applicant for an Authorization to Test pursuant to Section 8.1 shall be deemed to have abandoned the application and shall forfeit any application fee if the applicant fails to complete the application within one year of notification by the Board of any deficiency in the application.
- c) Any application for a certificate, permit, registration, or license, including any application for renewal, shall be deemed abandoned and any application fee shall be forfeited, if the applicant fails to complete the application within two years of its original submission or within one year of notification by the Board of any deficiency in the application.

NOTE: Authority cited: Section 5010 and 5018, Business and Professions Code. Reference: Section 5134 Business and Professions Code.

#### **HISTORY:**

- 1. Amendment filed 1-23-2004; operative 1-23-2004.

## **ARTICLE 11. ACCOUNTANCY CORPORATIONS**

(Sections 75.4 - 75.11)

### **Section 75.4 Office for Filing.**

All applications for a Certificate of Registration and any other documents or reports required by these rules or by law to be filed with the board shall be filed with the principal office of the board in Sacramento.

#### **HISTORY**

1. Repealer filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

#### **Section 75.5. Application; Review of Refusal to Approve.**

(a) An applicant corporation shall file with the board an application for Certificate of Registration on a form furnished by the board, which shall be signed and verified by an officer of the corporation who is a licensed person and be accompanied by a fee established pursuant to Rule 70.

(b) A Certificate of Registration shall be issued if the board finds that the applicant corporation has complied with Sections 13401 to 13409, inclusive, of the Corporations Code, Sections 5151 to 5155, inclusive, of the Business and Professions Code, and Sections 75.7 to 75.10, inclusive, of these Rules.

(c) The board may delegate to its executive officer, or other official or employee of the board, its authority under Section 5151 of the Business and Professions Code, to review and approve applications for registration and to issue Certificates of Registration.

NOTE: Authority cited: Sections 5010 and 5157, Business and Professions Code. Reference: Sections 5151, 5152, 5154 and 5155, Business and Professions Code.

#### **HISTORY:**

1. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
2. Change without regulatory effect amending Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

#### **Section 75.8. Security for Claims Against an Accountancy Corporation.**

(a) An accountancy corporation shall provide and maintain adequate security for claims against it by its clients arising out of the rendering of or failure to render professional services. Security for such claims shall consist of either of the following:

(1) Insurance for each claim in an amount equal to at least \$100,000 per licensee, provided that the maximum amount for each claim shall not be required to exceed \$1,000,000, and that the minimum amount guaranteed for all claims during any one calendar year shall be at least an amount equal to \$250,000 per licensee, provided that the maximum amount shall not be required to exceed \$3,000,000; or

(2) A written agreement of the shareholders that they shall jointly and severally guarantee payment by the corporation of liabilities to its clients arising out of the rendering of or failure to render professional services.

(b) In the event of failure to comply with the requirements of this section, each and every shareholder of the corporation shall be deemed to have agreed to be jointly and severally liable for claims against the corporation by its clients arising out of the rendering of, or failure to render, professional services.

NOTE: Authority cited: Sections 5010 and 5157, Business and Professions Code.  
Reference: Section 5157, Business and Professions Code.

**HISTORY:**

1. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
2. Amendment filed 3-1-94; operative 3-31-94 (Register 94, No.9).

**Section 75.9. Shares: Ownership and Transfer.**

(a) Except as provided in subsection (b), the restrictions prescribed by Sections 13406 and 13407 of the Corporations Code shall be clearly set forth on each share certificate and in corporate by-laws, or the corporate by-laws and the share certificates of an accountancy corporation shall contain an appropriate passage or legend referring to the restrictions set forth in Sections 13406 and 13407 of the Corporations Code.

(b) For an accountancy corporation which has nonlicensee owners, the conditions and restrictions on nonlicensee ownership specified in Section 5079 of the Accountancy Act shall be clearly set forth on each share certificate issued to a nonlicensee and in the corporate bylaws of the accountancy corporation.

NOTE: Authority cited: Sections 5010 and 5157, Business and Professions Code. Reference: Sections 5151 and 5154, Business and Professions Code; and Sections 13403, 13406, 13407, 13408 and 13410, Corporations Code.

**HISTORY:**

1. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
2. Amendment of section and Note filed 7-22-99; operative 8-21-99 (Register 99, No. 30).

**Section 75.11. Certificate of Registration; Continuing Validity; Notification of Name and Address Changes.**

(a) A Certificate of Registration shall continue in effect until it is cancelled, suspended, or revoked. Such certificate may be cancelled for failure to renew as stated in Business and Professions Code Section 5070.7. Such certificate may be suspended or revoked for any of the grounds outlined in Section 13408 of the Corporations Code.

(b) Each accountancy corporation shall report to the board any and all changes of address, corporate name and shareholders within 30 days of any such change, giving both its old and its new address or names.

NOTE: Authority cited: Sections 5010 and 5157, Business and Professions Code. Reference: Sections 5070.7, 5152 and 5152.1, Business and Professions Code; and Section 13408, Corporations Code.

#### **HISTORY:**

1. Amendment of subsection (b) filed 1-2-73; effective thirtieth day thereafter (Register 73, No. 1).
2. Amendment filed 8-1 7-77; effective thirtieth day thereafter (Register 77, No. 34).
3. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
4. Amendment of subsection (a) and amendment of Note filed 7-22-99; operative 8-21-99 (Register 99, No. 30).

### **ARTICLE 12. CONTINUING EDUCATION**

(Sections 80 - 94)

#### **Section 80. Inactive License Status.**

Upon application, a licensee may have his/her license placed in an inactive status.

(a) The holder of an inactive license shall not engage in the practice of public accountancy as defined in Section 5051 of the Business and Professions Code. This section does not prohibit a holder of an inactive license from receiving a share of the net profits from a public accounting firm or other compensation from a public accounting firm, provided that the licensee does not otherwise engage in the practice of public accountancy, directly or indirectly.

(b) An inactive license shall be renewed during the same time period in which an active license is renewed. The renewal fee for a license in active status shall also apply for the renewal of a license in inactive status.

(c) The continuing education requirements set forth in Section 87 are not applicable at the time of renewal in inactive status.

(d) At the time of renewal, the holder of an inactive license may convert his or her license to active status by paying the renewal fee and complying with the continuing education requirements as stated in Section 87.

(e) The holder of an inactive license may convert to active status prior to his/her next renewal by meeting the continuing education requirements as stated in Section 87.1.

NOTE: Authority cited: Sections 462 and 5010, Business and Professions Code. Reference: Section 462, Business and Professions Code.

#### **HISTORY:**

1. New section filed 3-28-96; operative 7-1-96 (Register 96, No. 13).
2. Amendment of subsection (a) filed 6-1 7-98; operative 7-1-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 25).

COMMENTARY: An inactive CPA in education, government, or industry can use the CPA designation after their name on his/her business card only if does not give the impression that the firm is practicing public accounting. For example, Norman Henteleff, CPA, with the title “CFO” with the name of Delta Industries, Inc. is permitted.

## **Section 87. Basic Requirements.**

### **(a) 80 Hours.**

As a condition of active status license renewal, a licensee shall complete at least 80 hours of qualifying continuing education as described in Section 88 in the two-year period immediately preceding license expiration, and meet the reporting requirements specified in subsection (a) of Section 89. A licensee engaged in the practice of public accountancy as defined in Section 5051 of the Business and Professions Code is required to hold a license in active status. No carryover of continuing education is permitted from one two-year license renewal period to another.

### **(b) Government Auditing Continuing Education Requirement.**

A licensee who engages in planning, directing, conducting substantial portions of field work, or reporting on financial or compliance audits of a governmental agency shall complete 24 of the 80 hours required pursuant to subsection (a) in the areas of governmental accounting, auditing or related subjects. This continuing education shall be completed in the same two-year license renewal period as the report is issued. A governmental agency is defined as any department, office, commission, authority, board, government-owned corporation, or other independent establishment of any branch of federal, state or local government. Related subjects are those which maintain or enhance the licensee’s knowledge of governmental operations, laws, regulations or reports; any special requirements of governmental agencies; subjects related to the specific or unique environment in which the audited entity operates; and other auditing subjects which may be appropriate to government auditing engagements. A licensee who meets the requirements of this subsection shall be deemed to have met the requirements of subsection (c).

### **(c) Accounting and Auditing Continuing Education Requirement.**

A licensee who engages in planning, directing, performing substantial portions of the work, or reporting on an audit, review, compilation, or attestation service, shall complete 24 hours of the 80 hours of continuing education required pursuant to subsection (a) in the course subject matter specified in this subsection. Course subject matter must pertain to financial statement preparation and/or reporting (whether such statements are prepared on the basis of generally accepted accounting principles or other comprehensive bases of accounting), auditing, reviews, compilations, industry accounting, attestation services, or assurance services. This continuing education shall be completed in the same two-year license renewal period as the report is issued. If no report is issued because the financial statements are not intended for use by third parties, the continuing education shall be completed in the same two-year license renewal period as the financial statements are submitted to the client.

(d) A licensee who must complete continuing education pursuant to subsections (b) and/or (c) of this section shall also complete an additional eight hours of continuing education specifically related to the detection and/or reporting of fraud in financial statements. This continuing education shall be part of the 80 hours of continuing education required by subsection (a), but shall not be part of the continuing education required by subsection (b) or (c). This requirement applies to licensees who renew their licenses on or after July 1, 2005.

(e) New Licensees.

(1) A licensee receiving an initial CPA license from the California Board of Accountancy shall be required to complete 20 hours of continuing education as described in Section 88 for each full 6 month interval in the initial license period as a condition of active status license renewal.

(2) A licensee engaged in governmental auditing as described in subsection (b) at any time during the initial license period shall complete 6 hours of governmental continuing education as described in subsection (b) as part of each 20 hours of continuing education required for active status license renewal.

(3) A licensee who provides audit, review, compilation, or attestation services as described in subsection (c) at any time during the initial license period shall complete 6 hours of accounting and auditing continuing education as described in subsection (c) as part of each 20 hours of continuing education required for active status license renewal.

(4) If the initial license period is less than 6 full months, there is no continuing education required for license renewal.

(f) Out-of State Licensees.

Any person who applies to the Board for a certified public accountant certificate under the provisions of Section 5087, may obtain the Board's approval to engage in the practice of public accountancy under the provisions of Section 5088 subject to the applicant having completed 80 hours of qualifying continuing education within the preceding two (2) years. The Board reserves the right to verify the applicant's continuing education. If a CPA certificate is granted by the California Board of Accountancy, the provisions of subsection (d) shall apply.

(g) Failure to Comply.

A licensee's willful failure to comply with the requirements of this section shall constitute cause for disciplinary action pursuant to Section 5100(g) of the Accountancy Act.

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Sections 5026, 5027, 5028, 5051 and 5088, Business and professions Code.

HISTORY:

1. Amendment filed 12-24-75; effective thirtieth day thereafter (Register 75, No. 52).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment of subsections (a)-(c) and (e) filed 6-26-90; operative 7-26-90 (Register 90, No. 35).
4. Amendment of subsection (b)-(d) filed 8-4-95, operative 9-3-95 (Register 95, No. 31).

5. Amendment of Subsection (a) and repealer of subsection (e) filed 3-28-96; operative 7- 1-96 (Register 96, No. 13).
6. Editorial correction of subsection (d) (Register 96, No. 16).
7. Amendment filed 6-1 7-98; operative 7-1-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 25).
8. Amendment of subsections (a), (d) and (e) filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).
9. Amendment of subsection (c) filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
10. New subsection (d), subsection relettering and redesignation of portions of subsection (e) as new subsections (e)(1 )-(4) filed 7-19-2004; operative 8-18-2004 (Register 2004, No. 30).

**CASE OF VIOLATION(S):**

**Violation(s) Charged**

California Code of Regulations, Title 16, Division 1, § 87 (a).

**Cause For Discipline**

Mr. W certified under penalty of perjury completion of 82 hours of continuing education. It was later discovered during an audit of these hours that Mr. Woolley was unable to provide documentation to support any of the hours claimed. A citation and fine in the amount of \$2,000 was issued. Pursuant to this settlement, Mr. W agreed to surrender his license, and the civil fine was vacated.

**Board Actions**

Surrender of License via stipulated settlement.

**Section 87.1. Conversion to Active Status Prior to Renewal.**

(a) A licensee who has renewed his/her license in inactive status may convert to active status prior to the next license expiration date by (1) completing 80 hours of continuing education credit as described in Section 88, including the professional conduct and ethics course described in Section 87.7, in the 24 month period prior to converting to active status; (2) applying to the board in writing to convert to active status; and (3) completing any continuing education that is required pursuant to subsection (j) of Section 89. The licensee may not practice public accounting until the application for conversion to active status has been approved.

(b) A licensee who, during the 24 months prior to converting to active status, planned, directed, or conducted substantial portions of field work, or reported on financial or compliance audits of a governmental agency shall complete 24 hours of continuing education in governmental accounting and auditing as described in Section 87(b) as part of the 80 hours of continuing education required to convert to active status under subsection (a).

(c) A licensee who, during the 24 months prior to converting to active status, planned, directed, or performed substantial portions of the work or reported on an audit, review, compilation, or attestation service shall complete 24 hours of continuing education in accounting and auditing as



described in Section 87(c) as part of the 80 hours of continuing education required to convert to active status under subsection (a).

(d) A licensee who must complete continuing education pursuant to subsections (b) and/or (c) of this section shall also complete an additional eight hours of continuing education specifically related to the detection and/or reporting of fraud in financial statements. This continuing education shall be part of the 80 hours of continuing education required by subsection (a), but shall not be part of the continuing education required by subsections (b) or (c). This requirement applies to licensees who convert to active status on or after July 1, 2005.

(e) Once converted to active status, the licensee must complete 20 hours of continuing education as described in Section 88 for each full 6 month period from the date of conversion to active status to the next license expiration date in order to fulfill the continuing education requirement for license renewal. If the time period between the date of change to active status and the next license expiration date is less than 6 full months, no additional continuing education is required for license renewal.

(f) Once converted to active status, a licensee who engages in financial or compliance auditing of a governmental agency at any time between the date of conversion to active status and the next license expiration date shall complete 6 hours of governmental continuing education as part of each 20 hours of continuing education required under subsection (d). Continuing education in the areas of governmental accounting and auditing shall meet the requirements of Section 87(b).

(g) Once converted to active status, a licensee who engages in audit, review, compilation, or attestation services at any time between the date of conversion to active status and the next license expiration date shall complete 6 hours of continuing education in accounting and auditing as part of each 20 hours of continuing education required under subsection (d). Continuing education in the areas of accounting and auditing shall meet the requirements of Section 87(c).

NOTE: Authority cited: Sections 5010 and 5027, Business and Professions Code. Reference: Section 5028, Business and Professions Code.

#### HISTORY:

1. New section filed 7-5-90; operative 7-26-90 (Register 90, No. 36).
2. Amendment of section heading and repealer of subsection (b) filed 6-23-93 as an emergency; operative 6-23-93 (Register 93, No. 26).
3. Certificate of Compliance as to 6-23-93 order transmitted to OAL 10-18-93 and filed 12- 1- 93 (Register 93, No. 49).
4. New opening paragraph, amendment of subsection (a) and new subsection (b) filed 10-6- 94; operative 11-7-94 (Register 94, No. 40).
5. Change without regulatory effect amending subsection (b) filed 12-28-94 (Register 94, No. 52).

6. Amendment of section heading and section filed 3-28-96, operative 7-1-96 (Register 96, No. 13).
7. Amendment filed; operative January 1, 1997.
8. Amendment of first paragraph filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).
9. Amendment filed 6-17-98; operative 7-1-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 25).
10. Amendment of section heading and section filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).
11. Change without regulatory effect amending subsection (a) filed 7-12-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 28).
12. New subsection (d), subsection relettering and amendment of newly designated subsections (f) and (g) filed 7-19-2004; operative 8-18-2004 (Register 2004, No. 30).

### **Section 87.5. Additional Continuing Education Requirements.**

(a) Following an investigation or hearing conducted pursuant to Business and Professions Code Section 5103 the Board or its designee may order a licensee to:

(1) Complete one or more hours of continuing education not to exceed 80 hours in addition to the 80 hours qualifying continuing education required by Section 87, subsection (a), prior to permit renewal, which will contribute to the licensee's professional competence.

(2) Complete one or more of the 80 hours of qualifying continuing education required by Section 87, subsection (a), or one or more of the hours ordered pursuant to subsection (a)(1) of this section, in a designated course of study which will contribute to the licensee's professional competence.

(3) Complete one or more of the 80 hours of qualifying continuing education required by Section 87, subsection (a), or one or more hours ordered pursuant to this section, by a specified date. Such date may be extended by the Board or its designee.

(b) Failure of a licensee to comply with an order by the Board or its designee made pursuant to this section constitutes cause for disciplinary action under Section 5100 of the Business and Professions Code.

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Sections 5026, 5027, 5028, and 5103, Business and Professions Code.

#### **HISTORY:**

1. New section filed 4-28-89; operative 5-28-89 (Register 89, No. 18).
2. Amendment of Subsections (a), (a)(3) and (b) and amendment of NOTE filed 6-17-98; operative 7-1-98 pursuant to Government Code Section 11343.4(d) (Register 98, No. 25).
3. Change without regulatory effect amending subsection (a) and Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

## **Section 87.6. Records Review Continuing Education Requirements.**

(a) The Report Quality Monitoring Committee is a committee appointed by the Board. This committee's functions include the review of financial reports selected under Section 89.1 to monitor and promote compliance with applicable accounting principles and reporting standards. The Report Quality Monitoring Committee may order a licensee to:

- (1) Complete one or more of the 80 hours of qualifying continuing education required by Section 87(a) in a designated course of study which will contribute to the licensee's professional competence.
- (2) Complete one or more of the 80 hours of qualifying continuing education required by Section 87(a) or 87.6(a)(1) by a specified date. Such date may be extended by the committee.

(b) Failure of a licensee to comply with an order by the committee made pursuant to this section constitutes cause for disciplinary action under Section 5100 of the Business and Professions Code.

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Sections 5024, 5026, 5027 and 5028, Business and Professions Code.

### **HISTORY:**

1. New section filed 4-28-89; operative 5-28-89 (Register 89, No. 18).
2. Editorial correction inserting inadvertently omitted subsection (b), Note and History 1 (Register 95, No. 50).
3. Editorial correction of subsection (a)(2) (Register 97, No. 25).
4. Amendment of subsection (a) and Note filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).

## **Section 87.7. Continuing Education in the Accountancy Act, Board Regulations, and Other Rules of Professional Conduct.**

(a) In order to renew a license in an active status a licensee shall, within the six years preceding the license expiration date, complete a continuing education course on the provisions of the Accountancy Act and the Board of Accountancy Regulations, application to current practice, and other rules of professional conduct. Such course shall be approved by the Board prior to the licensee receiving continuing education credit for the course and shall be a minimum of 8 hours.

(b) The operative date for this regulation is based on the last two digits of the license number according to the following schedule: for license numbers ending with 01-33 the operative date is January 1, 1998, for license numbers ending with 34-66 the operative date is January 1, 2000, for license numbers ending with 67-00 the operative date is January 1, 2002.

(c) Course providers shall apply to the Board for approval of the course specified in Subsection

(a), on Form CE-PCE-1 (9/96), Professional Conduct and Ethics Application for Course Approval. The term of approval shall be for a two (2) year period. The Board may cancel its approval during this two year period if the Board determines that the course fails to meet the criteria specified in this Subsection. Approval shall be based on the following criteria:

(1) The course shall be a formal educational program that meets the requirements set forth in Sections 88, 88.1, and 88.2.

(2) The course shall have written educational goals and specific learning objectives, as well as a syllabus which provides a general outline, instructional objectives and a summary of topics for the course. A copy of the educational goals, learning objectives and course syllabus shall be submitted by the provider with the approval application.

(3) The course shall provide participants with the current California Accountancy Act and California Board of Accountancy Regulations (or summary thereof).

(4) Any self-study course shall require a 90 percent passing score on a test given at the conclusion of the course. The test shall be submitted along with the course materials for approval.

(5) A certificate of completion which includes the provider approval number shall be issued to each licensee who has satisfactorily completed the course.

(6) The course content shall include the following:

(A) A review and update of the current California Accountancy Act and the Board of Accountancy Regulations.

(B) Information which will provide an understanding of how the Statutes, Regulations and cases relate to current practice situations.

(C) A review of nationally recognized Codes of Professional Conduct as they relate to professional responsibility.

(D) A discussion of recent relevant cases on ethics and professional responsibilities for the accounting profession.

(E) A bibliography of recent publications and cases on professional conduct and ethics for the accounting profession.

(d) Upon receiving approval from the Board, the provider of the Professional Conduct and Ethics course required in Subsection (a) may represent the course in promotional materials as being approved by the Board during the term of approval.

(e) On a random basis established by the Board or at the Board's request or in response to complaints about a particular course, the Board may review the records of a provider to ensure compliance with the criteria specified in this Section. Within 15 days of receipt of written notification, the provider shall submit or make available to the Board all material deemed necessary by the Board to determine whether the course complies. The Board may cancel its approval for a course found not to be in compliance.

(f) Approved course providers may allow a secondary provider to present their course through a site license, contractual arrangement, or other type of agreement.

(g) For every course presentation, including any made by a secondary provider, organization or party, the original approved provider (primary provider) who entered into the approval agreement with the California Board of Accountancy shall:

(1) Retain a written outline of the course and completion records to reflect the actual participant attendance, or in the case of self-study courses, passing test scores of 90 percent or higher. The retention period shall be eight years.

(2) Ensure that all participants who complete the course receive a certificate of completion, including all information specified in Section 89(b). If a secondary provider presented the course, the certificate shall identify both the primary and secondary providers.

(3) Be responsible for the quality and content of the course by requiring and ensuring that the course be presented only by qualified instructors and/or discussion leaders, and that presentations always include all components and content areas represented in the approval application.

(4) Periodically update course content to reflect current laws, regulations, case law decisions and standards of practice.

NOTE: Authority cited: Sections 5010 and 5027, Business and Professions Code. Reference: Section 5027, Business and Professions Code.

#### HISTORY:

1. New section operative January 1, 1997.

2. Amendment of section heading and subsections (c)(1), (c)(4) and (c)(5) and new subsections (f)-(g)(4) filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).

#### FAQs

**Q:** Can I do my CE by self-study?

**A:** Yes, 100 percent of the CE requirements may be completed in qualifying self-study programs.

#### **Section 88. Programs Which Qualify.**

(a) The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the professional competence of a licensee in public practice. It is the obligation of each licensee to select a course of study, consistent with the requirements of this section and Sections 88.1 and 88.2, which will contribute directly to his or her professional competence.

(1) Licensees who renew their licenses after July 1, 2001, shall complete a minimum of 50 percent of the required continuing education hours in the following subject areas: accounting, auditing, taxation, consulting, financial planning, professional conduct as defined in Section 87.7, computer and information technology (except for word processing), and specialized industry or

government practices that focus primarily upon the maintenance and/or enhancement of the public accounting skills and knowledge needed to competently practice public accounting.

(2) Licensees who renew their licenses after July 1, 2001, may claim no more than 50 percent of the required number of continuing education hours in the following subject areas: communication skills, word processing, sales, marketing, motivational techniques, negotiation skills, office management, practice management, and personnel management.

(3) Programs in the following subject areas are not acceptable continuing education: personal growth, self-realization, spirituality, personal health and/or fitness, sports and recreation, foreign languages and cultures and other subjects which will not contribute directly to the professional competence of the licensee.

(4) A formal program of learning is an instructional activity that meets the requirements of Sections 88.1 and 88.2 or a course for which academic credit is granted by a university, college, or other institution of learning accredited by a regional or national accrediting agency.

(b) The following types of live presentation programs are deemed to qualify as acceptable continuing education provided the standards outlined in Section 88(a), Section 88.1, and Section 88.2 are maintained.

(1) Professional development programs of national and state accounting organizations.

(2) Technical session at meetings of national and state accounting organizations and their chapters which are designed as formal educational programs.

(3) University or college courses:

(i) Credit courses--each semester hour credit shall equal 15 hours toward the requirement. Each quarter hour credit shall equal 10 hours.

(ii) Non credit courses--each classroom hour will equal one qualifying hour.

(4) Other formal educational programs provided the program meets the required standards.

(c) Formal correspondence or other individual study programs are qualifying provided the program meets the requirements of Section 88(a), Section 88.1, and Section 88.2, and the licensee receives a passing score. Self-study modules for national examinations that contribute to the professional competency of a licensee in public practice, such as the CERTIFIED FINANCIAL PLANNER<sup>TM</sup> Certification Examination or the Certified Management Accountant examination qualify as acceptable continuing education if the modules meet the above requirements.

(d) The credit as an instructor, discussion leader, or speaker will be allowed for any meeting or program provided that the session is one which would meet the continuing education requirements set forth in Section 88(a), Section 88.1, and Section 88.2. The credit allowed an instructor, discussion leader, or a speaker will be on the basis of actual presentation hours, plus up to two additional hours for actual preparation time for each hour taught. The maximum credit for such preparation and teaching will not exceed 50 percent of the renewal period requirement. For repeat presentations, an instructor shall receive no credit unless the instructor can demonstrate that the program content was substantially changed and that such change required significant additional

study or research. Credit for licensees attending, not as instructors, discussion leader, or speakers, is limited to the actual meeting time.

(e) Credit may be allowed by the Board for the following activities:

(1) writing published articles and books provided the publisher is not under the control of the licensee.

(2) writing instructional materials for any continuing education program which meets the requirements of Section 88(a), Section 88.1, and Section 88.2,

(3) writing questions for the Uniform Certified Public Accountant Examination.

The maximum credit allowed under this subsection (subsection e) shall not exceed 25 percent of the renewal period requirement.

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Sections 5027, Business and Professions Code.

#### HISTORY:

1. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

2. Amendment of subsections (b)(4), (d) and (f) filed 12-17-96; operative 1-1-97 pursuant to Government Code section 11343.4(d) (Register 96, No. 51).

3. Amendment of section and Note filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).

4. New subsection (a)(4) and amendment of subsection (c) filed 1-23-2004; operative 1-23-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 4).

5. Change without regulatory effect filed 9-2-2004; operative 9-24-2004.

#### FAQs

**Q:** What activities qualify as CE?

**A:** The following activities qualify for CE, but you are only allowed to claim up to 25 percent of the required CE hours: (1) Writing published articles and books, provided the publisher is not under the control of the licensee. (2) Writing instructional materials for any continuing education program, which meets the requirements of Regulation Sections 88(a), 88.1, and 88.2. (3) Writing questions for the Uniform Certified Public Accountant Examination.

#### Section 88.1. Provider Requirements.

(a) Live Presentation

In order to qualify as acceptable continuing education under Section 88(b) the provider of the live presentation program must:

(1) Require attendance and retain for a period of six years a record of attendance that accurately assigns the appropriate number of contact hours for participants including those who arrive late or leave early.

(2) Retain for a period of six years written educational goals and specific learning objectives, as well as a syllabus, which provides a general outline, instructional objectives, and a summary of topics for the course. A copy of the educational goals, learning objectives, and course syllabus shall be made available to the California Board of Accountancy upon request.

(3) Issue a certificate of completion to each licensee upon satisfactory completion of the course and retain records of licensees receiving certificates of completion for a period of six years. The amount of credit reflected on the certificate of completion shall be calculated in accordance with Section 88.2(a).

**(b) Self-Study**

In order to qualify as acceptable continuing education under Section 88(c) the sponsor of the self-study course must:

(1) Retain for a period of six years written educational goals and specific learning objectives, as well as a syllabus, which provides a general outline, instructional objectives, and a summary of topics for the course. A copy of the educational goals, learning objectives, and course syllabus shall be made available to the California Board of Accountancy upon request.

(2) Issue a certificate of completion to each licensee upon satisfactory completion of the course and retain records of licensees receiving certificates of completion for a period of six years. The amount of credit shall be displayed on the certificate of completion and shall be calculated in accordance with Section 88.2(b).

NOTE: Authority cited: Section 5027, Business and Professions Code, Reference: Sections 5026 and 5027, Business and Professions Code.

**HISTORY:**

1. New section filed 5-9-2000; operative 6-8-2000 (Register 2000, No.19).

**88.2. Program Measurements.**

**(a) Live Presentation**

In order to qualify as acceptable continuing education under Section 88(b) a live presentation program must:

(1) Be measured in 50 minute class hours. A program must be at least one 50 minute class hour in length to be acceptable continuing education. For a program composed of several segments in which individual segments are less than 50 minutes, the sum of the segments, in increments not less than 25 minutes, may be added together to equal a full 50 minute class hour. For a program that is longer than one 50 minute class hour, credit shall be granted for additional 25 minute segments (one-half of a 50 minute class hour). Only class hours or the equivalent (and not participant hours devoted to preparation or study time) will be used to measure the hours of continuing education.



(2) Meet the provider requirements for live presentation under Section 88.1(a).

(b) Self-Study prior to January 23, 2004.

In order to qualify as acceptable continuing education under Section 88(c) a self-study course must:

(1) Grant continuing education credit equal to the average completion time if the self-study course is interactive. An interactive self-study program is designed to use interactive learning methodologies that simulate a classroom learning process by employing software, other courseware, or technology-based systems that provide significant ongoing interactive feedback to the participant regarding his or her learning progress. These programs clearly define lesson objectives and manage the participant through the learning process by (1) requiring frequent participant response to questions that test for understanding of the material presented, (2) provide evaluated feedback to incorrectly answered questions, and (3) reinforcement feedback to correctly answered questions. Technology-based self-study courses do not constitute interactive self-study courses unless they meet the criteria set forth above.

(2) Grant continuing education credit equal to one half of the average completion time if the self-study course is non-interactive. Any self-study course that does not meet the above criteria for interactive self-study program is deemed non-interactive.

(3) Require a passing score on a test given at the conclusion of the course.

(4) Meet the provider requirements for self-study under Section 88.1(b).

(c) Self-Study on or after January 23, 2004.

In order to qualify as acceptable continuing education under Section 88(c), any self-study course completed on or after January 23, 2004 whether in electronic or paper text format must:

(1) Grant continuing education credit equal to the average completion time if the self-study course is designed to use learning methodologies that simulate a classroom learning process by employing significant ongoing interactive feedback to the participant regarding his or her learning progress. These courses clearly define lesson objectives and manage the participant through the learning process by (A) requiring frequent participant response to questions that test for understanding of the material presented, (B) provide evaluated feedback to incorrectly answered questions, and (C) reinforcement feedback to correctly answered questions. Evaluated feedback means a response specific to each incorrect answer to the study questions that explains why the particular answer is wrong, as each one is likely to be wrong for a different reason. Reinforcement feedback means a response to the correct answer of the study questions that restates and explains why the answer selected was correct.

(2) Require a passing score on a test given at the conclusion of the course.

(3) Meet the provider requirements for self-study under Section 88.1(b).

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Sections 5026 and 5027, Business and Professions Code.

**HISTORY:**

1. New section filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).
2. Amendment filed 1-23-2004; operative 1-23-2004.

**COMMENTARY:** The primary result of this change is that CPAs taking self-study CPE will receive more CPE credits than in the past.

**Section 89. Control and Reporting.**

(a) Upon renewal, a licensee who is required, pursuant to Section 87, to obtain continuing education must provide a written statement, signed under penalty of perjury, certifying that the requisite number of continuing education hours has been obtained. The licensee shall disclose the following information concerning courses or programs claimed as qualifying continuing education:

- (1) Course title or description
- (2) Date of completion
- (3) Name of school, firm or organization providing the course or program
- (4) Method of study, i.e., whether course or program is self-study or live presentation
- (5) Numbers of hours earned.

(b) If credit is claimed for completing the eight hour professional conduct and ethics course specified in Section 87.7, a licensee shall obtain and retain for six years after renewal of his or her license, a certificate of completion or its equivalent disclosing the following information:

- (1) Name of licensee
- (2) Course title
- (3) Board-issued approval number for the professional conduct and ethics course completed by the licensee
- (4) School, firm or organization providing the course
- (5) Date of completion.

(c) If continuing education credit for attending a continuing education course is claimed, the licensee shall obtain and retain for four years after renewal a certificate of completion or its equivalent disclosing the following information:

- (1) Name of licensee in attendance
- (2) School, firm or organization conducting course
- (3) Location of course attended

- (4) Title of course or description of content

(5) Dates of attendance except when the licensee attended a course for academic credit given by a college, university, or other institution of higher learning accredited by an association recognized by the Secretary of the United States Department of Education, in which case the applicant may provide evidence of a grade of pass or “credit” to satisfy this requirement.

(6) Number of hours of actual attendance except when the licensee attended a course for academic credit given by a college, university, or other institution of higher learning accredited by an association recognized by the Secretary of the United States Department of Education, in which case the applicant may provide evidence of a grade of pass or “credit” to satisfy this requirement.

(d) If continuing education credit is claimed for completing a self-study course, the licensee shall obtain and retain for four years after renewal a certificate of completion of its equivalent disclosing the following information:

- (1) Name of licensee taking the course
- (2) School, firm, or organization providing the course
- (3) Title of course or description of contents
- (4) Date of completion
- (5) Number of hours of continued education credit granted for completing the course.

(e) If credit as an instructor, discussion leader, or speaker is claimed, the licensee shall retain for four years after renewal the following information:

- (1) School, firm or organization providing course
- (1) Location of course presented
- (2) Title of the course or description of content
- (3) Course outline
- (4) Dates and evidence of presentation
- (5) Number of hours of actual preparation time and presentation time.

(f) If credit is claimed for writing continuing education instructional materials, the following information shall be maintained for four years after renewal:

- (1) Name of the course provider or publisher
- (2) Title of the course and a description of the instructional materials
- (3) Date of completion of the instructional materials or publication date
- (4) A copy of the instructional materials
- (5) Hours claimed.

(g) If credit for published articles and books is claimed, the following information shall be maintained for four years after renewal:

- (1) Name and address of publisher
- (2) Title of publication

(3) Brief description

(4) Date(s) of publication

(5) Copy of  
publication (6)  
Hours claimed.

(h) If credit for writing questions for the Uniform CPA Examination is claimed, the licensee shall obtain and retain for four years after renewal a letter or other statement from the American Institute of Certified Public Accountants documenting the licensee's participation and the number of hours of continuing education credit the licensee has received.

(i) The Board will solicit and verify such information on a test basis. If a licensee is found to have a deficiency, the licensee shall be so notified. Upon request, the licensee may be granted a reasonable period of time in which to correct the deficiency.

(j) A licensee who is determined by the Board at renewal not to have completed the required number of hours of qualifying continuing education shall be required to make up any deficiency. A licensee who is required to make up a deficiency shall be ineligible for active status license renewal or conversion to active status pursuant to Section 87.1 until such time as documentation to support the required hours of continuing education for license renewal has been submitted and approved by the Board.

(k) A licensee's willful making of any false or misleading statement, in writing, regarding his or her continuing education shall constitute cause for disciplinary action pursuant to section 5100(g) of the Accountancy Act.

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Section 5027, Business and Professions Code.

HISTORY:

1. Amendment filed 12-24-75; effective thirtieth day thereafter (Register 75, No. 52).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
3. Amendment of subsections (a) and (b) and new subsections (c) and (d) filed 12-10-90; operative 1-9-91 (Register 91, No. 3).
4. Amendment filed 11-30-93; operative 12-30-93 (Register 93, No. 49).
5. New subsection (f) and subsection relettering filed 3-28-96; operative 7-1-96 (register 96, No. 13).
6. Editorial correction of subsection (a) (Register 97, No. 25).
7. Amendment of subsection (f) filed 6-16-97; operative 6-30-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
8. Amendment filed 5-9-2000; operative 6-8-2000 (Register 2000, No. 19).

9. Change without regulatory effect amending subsection (k) filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

### **Section 89.1. Review of Financial Statements.**

(a) For purposes of monitoring and promoting compliance with applicable accounting principles and reporting standards, the Report Quality Monitoring Committee may require licensees, selected on the basis of a statistical sampling or upon referral from another committee of the Board, to supply copies of selected financial reports they have issued during the previous two years. This requirement applies to any licensee who had primary responsibility for, and authority to sign, at least one financial report that was issued the previous two years. The financial report or reports to be submitted shall be selected by the responding licensee and shall reflect the highest level of service rendered by such licensee during the period.

For purposes of this regulation, financial report shall mean

(1) the licensee's report issued as the result of an engagement covered by generally accepted auditing standards or government auditing standards (audit), or standards for accounting and review services (compilation or review), or attestation standards (attest engagements),

(2) accompanying financial statements or other client assertion,

(3) accompanying footnotes, and

(4) supplementary financial data, if any.

(b) Willful failure or refusal of a licensee to comply with the Board's written request for a copy of financial report(s), within 30 calendar days of the licensee's receipt of that request, constitutes a violation of Section 5100(g) of the Accountancy Act.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010 and 5018, Business and Professions Code.

#### **HISTORY:**

1. New section filed 6-5-87; operative 7-5-87 (Register 87, No. 24).
2. Amendment of subsection (a) and Note filed 11-17-93; operative 12-17-93 (Register 93, No. 47).
3. Amendment of section heading and subsection (a) and new subsections (a)(1)-(4) filed 7-22-99; operative 8-21-99 (Register 99, No. 30).
4. Change without regulatory effect amending subsection (a) filed 9-19-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 38).
5. Amendment of subsection (a) filed 2-18-2003; operative 3-20-2003 (Register 2003, No. 8).
6. Change without regulatory effect amending subsection (b) filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

## **Section 90. Exceptions and Extensions.**

(a) A renewal applicant may be granted either an extension of time to complete continuing education requirements or an exception from continuing education requirements. Extensions or exceptions may be granted by the Board for the following causes:

- (1) Reasons of health, certified by a medical doctor, which prevent compliance by the licensee;
- (2) Service of the licensee on extended active duty with the Armed Forces of the United States;
- (3) Other good cause.

(b) No extension or exception shall be made solely because of age.

(c) Willful failure of a licensee to complete applicable continuing education within a specified extension of time shall constitute cause for disciplinary action pursuant to section 5100 (g) of the Accountancy Act.

(d) A renewal applicant who has met the requirement of Section 87 (a) and becomes subject to continuing education pursuant to Section 87(b), (c), or (d) during the last 6 months of a two-year license renewal period shall be granted, upon request, an extension of time of up to 6 months in which to complete the continuing education required by Section 87 (b), (c), or (d). Continuing education completed pursuant to this extension shall be part of the 80 hours of continuing education required under Section 87(a) for the next two-year renewal period. However, it shall not be part of the 24 hours of continuing education required under Section 87(b) or (c) or the 8 hours of continuing education required under Section 87(d) for the next two-year renewal period.

NOTE: Authority cited: Section 5027, Business and Professions Code. Reference: Sections 5028 and 5100 (g), Business and Professions Code.

### **HISTORY:**

1. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).
2. Amendment renumbering subsections (a), (b), and (d) to (a)(1), (2) and (4) and new subsections (a) and (c) filed 6-27-90; operative 7-27-90 (Register 90, No. 35).
3. Amendment operative January 1, 1997.
4. Amendment of subsection (a) and Note filed 12-17-96; operative 1-1-97 (Register 96, No. 51).
5. Repealer and new subsection (d) filed 6-1 7-98; operative 7-1-98 (Register 98, No. 25).
6. Amendment of subsections (c)-(d) and amendment of Note filed 7-19-2004; operative 8-18-2004 (Register 2004, No. 30).

### **Section 93. Unexpired Licenses.**

Permits issued under these rules expire at 12 midnight on the last day of the birth month of an odd numbered year if the licensee was born in an odd numbered year or of an even numbered year if the licensee was born in an even numbered year. Permit renewal is the responsibility of the licensee. To renew an unexpired permit, a certificate holder or registrant shall, before the time at which the permit would otherwise expire, apply for renewal on a form prescribed by the board, pay the renewal fee prescribed and give evidence to the board that

the continuing education provisions of these regulations have been complied with. Renewal of an unexpired permit shall continue the permit in effect for the two-year renewal cycle ending in the licensee's birth month unless otherwise provided for in these regulations or the California Accountancy Act.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 152.6, 5070.5 and 5134, Business and Professions Code.

#### **HISTORY:**

1. Amendment filed 6-1-79; designated effective 7-1-79 (Register 79, No. 22).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

### **Section 94. Failure to Comply.**

Failure to comply with these continuing education rules by a licensee engaged in public practice, as defined in Business and Professions Code Section 5051, constitutes cause for disciplinary action under Section 5100.

NOTE: Authority cited: Sections 5018 and 5027, Business and Professions Code. Reference: Sections 5026 and 5100, Business and Professions Code.

#### **HISTORY:**

1. New section filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

## **ARTICLE 12.5. CITATIONS AND FINES**

(Sections 95 - 95.6)

### **Section 95. Citations.**

The executive officer of the board, in lieu of filing an accusation seeking the suspension or revocation of any permit or certificate or the censure of the holder of any such permit or certificate

pursuant to Sections 5100, 5101 and 5156 of the Business and Professions Code, may issue a citation to any person as defined in Section 5035 of the Business and Professions Code who holds a permit or certificate from the board for a violation of any provision of the Accountancy Act or any regulation adopted by the board.

NOTE: Authority cited: Sections 125.9 and 5010, Business and Professions Code.

Reference: Sections 125.9, Business and Professions Code.

**HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Change without regulatory effect amending Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

**Section 95.1. Citation Format.**

Each citation:

- a) shall be in writing;
- b) shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated;
- c) may contain an assessment of an administrative fine, an order of correction or abatement fixing a reasonable period of time for correction or abatement of the violation, or both an administrative fine and an order of correction or abatement;
- d) shall be served in accordance with the provisions of Section 11505 (c) of the Government Code;
- e) shall inform the cited person that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 calendar days of the issuance of the citation or assessment.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.

Reference: Sections 125.9 and 148, Business and Professions Code.

**HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment operative January 1, 1997.

**Section 95.2. Fines.**

The executive officer of the Board shall assess fines in accordance with the following schedule: provided, however, in no case shall the total exceed \$2,500 for each investigation.

*Rule\* Description*

*Range of Fines*

---



3	Notification of Change of Address	\$100	to	\$1,000
5	Observance of Rules	200	to	2,000
52	Response to Board Inquiry	200	to	2,000
52.1	Failure to Appear	200	to	2,000
53	Discrimination Prohibited	200	to	2,000
54.1	Disclosure of Confidential Information Prohibited	200	to	2,000
54.2	Recipients of Confidential Information	200	to	2,000
56	Commissions-Basic Disclosure Requirement	500	to	2,500
56.1	Commissions-Professional Services Provided to the Client	500	to	2,500
57	Incompatible Occupations/Conflict of Interest	200	to	2,000
58	Accountant's Report	200	to	2,000
62	Contingent Fees	150	to	2,000
63	Advertising	100	to	2,000
65	Independence	300	to	2,500
67	Approval of Use of Fictitious Name	100	to	2,000
68	Retention of Client's Records	150	to	2,000
68.1	Working Papers Defined; Retention	500	to	2,500
69	Certification of Applicant's Experience	150	to	2,000
75.11	Certificate of Registration; Continuing Validity	100	to	1,000
80	Inactive License Status	150	to	2,000
87	Basic Requirements	100	to	2,000
87.1	Return to Active Status Prior to Renewal	100	to	2,000
87.5	Additional Continuing Education Requirements	100	to	2,000
87.6	Records Review Continuing Education Requirements	100	to	2,000
87.7	Continuing Education in the Accountancy Act, Board Rules, and Other Rules of Professional Conduct	100	to	2,000
89	Control and Reporting	100	to	1,000
89.1	Review of Financial Statements	100	to	1,000
90	Exceptions and Extensions	100	to	2,000
94	Failure to Comply	150	to	2,000

\*References for Rules are to sections of Title 16 of the California Code of Regulations.

---

***Business and Professions Code Section***

123	Subversion of the Licensing Examination	\$100	to	\$1,000
490	Conviction of a Crime—Substantial Relationship Required	200	to	2,000
496	Violation of Exam Security	100	to	1,000
5027	Continuing Education Regulations	100	to	2,000
5037	Ownership of Accountants' Work Papers	150	to	2,000
5050	Practice Without a Valid Permit: Temporary Practice, Out-of-State Licensee	150	to	2,000
5055	Title of Certified Public Accountant	150	to	2,000
5056	Title of Public Accountant	150	to	2,000
5058	Use of Confusing Titles or Designations Prohibited	100	to	2,000
5060	Name of Firm	100	to	1,000
5061	Commissions	500	to	2,500
5062	Reports on Financial Statement Required Report Conforming to Professional Standards	200	to	2,500
5063	Reportable Events	100	to	1,000
5071	Restriction on Practice as Partnership	100	to	1,000
5072	Requirements for Registration as a Certified Public Accountant Partnership	150	to	2,000
5076	Termination of Partnership	150	to	2,000
5078	Offices Not Under Personal Management of a Certified Public Accountant or Public Accountant; Supervision	100	to	2,000
5079	Non-Licensee Ownership	100	to	2,000
5081	Requirements for Admission to Certified Public Accountant Examination	100	to	1,000
5081.1	Educational Requirements	100	to	1,000
5100	Discipline in General (a) through (j)	500	to	2,500
5101	Discipline of Partnership	100	to	2,000
5104	Relinquishment of Certificate or Permit	100	to	2,000
5105	Delinquency in Payment of Renewal Fee	100	to	2,000
5151	Application for Registration as Corporation	100	to	1,000
5152	Corporation Reports	100	to	1,000
5152.1	Accountancy Corporation Renewal of Permit to Practice	100	to	1,000
5154	Directors, Shareholders and Officers Must Be Licensed	100	to	1,000
5155	Disqualified Shareholder Non-participation	100	to	1,000
5156	Unprofessional Conduct	200	to	2,000
5158	Practice of Public Accountancy;			

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.  
Reference: Sections 125.9, 148 and 5100(g), Business and Professions Code.

**HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment of section filed 9-23-91; operative 10-23-91 (Register 91, No. 52).
3. Amendment filed 11-30-93; operative 12-30-93 (Register 93, No. 49).
4. Amendment of section and Note filed 12-17-96; operative 1-1-97 pursuant to Government Code section 11343.4(d) (Register 96, No. 51).
5. Amendment filed 1-7-99; operative 1-7-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 2).
6. Amendment filed 7-22-99; operative 8-21-99 (Register 99, No. 30).
7. Change without regulatory effect amending section and Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).
8. Editorial correction of second table (Register 2005, No. 47).

**Section 95.3. Citation Factors.**

In assessing an administrative fine or issuing an order of correction or abatement, the executive officer of the board shall give due consideration to the following factors:

- (a) The gravity of the violation.
- (b) The good or bad faith of the cited person or entity.
- (c) The history of previous violations.
- (d) Evidence that the violation was or was not willful.
- (e) The extent to which the cited person or entity has cooperated with the board's investigation.
- (f) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.  
Reference: Sections 125.9, 148 and 5100(g), Business and Professions Code.

**HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment operative January 1, 1997.
3. Change without regulatory effect amending Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

**Section 95.4. Failure to Comply with Order.**

The failure of a licensee to comply with a citation containing an assessment of

administrative fine, an order of correction or abatement or both an administrative fine and an order of correction or abatement after this citation is final and has been served in accordance with the provisions of Section 11505(c) of the Government Code shall constitute a ground for revocation or suspension of the license or permit.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.

Reference: Sections 125.9, 148 and 5100(g), Business and Professions Code.

**HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment operative January 1, 1997.
3. Change without regulatory effect amending Note filed 11-15-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 46).

**Section 95.5. Appeals.**

Any person or entity served with a citation pursuant to this Article and Sections 125.9 and 148 of the Business and Professions Code may contest the citation by appealing to the board in writing within 30 calendar days of the issuance of the citation. The cited person or entity may contest any or all of the following aspects of the citation:

- (a) The occurrence of a violation of the Accountancy Act or a regulation adopted by the board.
- (b) The reasonableness of the order of correction or abatement.
- (c) The period of time allowed for correction in the order of correction or abatement.
- (d) The amount of the administrative fine.

If the cited person or entity fails to notify the Board of his/her/its intent to contest the citation, the citation shall be deemed a final order of the Board and shall not be subject to administrative review.

If a cited person or entity notifies the Board that he/she/it intends to contest a citation, the Board shall afford an opportunity for a hearing. The Board shall thereafter issue a decision, based on findings of fact, affirming, modifying or vacating the citation or penalty or both, or directing other appropriate relief. The proceedings under this Section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code (the California Administrative Procedure Act).

The failure of a cited person or entity who has appealed to the Board to appear at the time and place of the hearing shall be deemed a withdrawal of his, her or its appeal, and the citation shall constitute a final order of the Board and shall not be subject to administrative review.

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.

Reference: Sections 125.9 and 148, Business and Professions Code.

**HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).
2. Amendment operative January 1, 1997.

**Section 95.6. Unlicensed, Unregulated Practice.**

The executive officer of the board may issue citations, in accordance with Section 125.9 of the Business and Professions Code, against any person defined in Business and Professions Code Section 5035 who is acting in the capacity of a licensee under the jurisdiction of the Board. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. Administrative fines shall be in a range from \$100 to \$2,500 for each investigation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 125.95 and 5010, Business and Professions Code.  
Reference: Sections 125.9, 125.95, 5050 and 5051, Business and Professions Code.

**HISTORY:**

1. New section filed 1-5-90; operative 2-4-90 (Register 90, No. 3).

**ARTICLE 13. DENIAL, SUSPENSION, AND REVOCATION OF CERTIFICATES, PERMITS, OR LICENSES**  
(Sections 98 - 99.1)

**Section 98. Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (6<sup>th</sup> edition, 2005) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

NOTE: Authority cited: Sections 5010, 5018, and 5116 Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 5018, 5100, and 5116 - 5116-6, Business and Professions Code; and Section 11425.50(e), Government Code.

**HISTORY:**

1. New section filed 6-16-97; operative 6-30-97 pursuant to Government Code Section 11343.4(d) (Register 97, No. 25).

2. Amendment of section and NOTE filed 5-3-2001; operative 7-1-2001 (Register 2001, No. 18).

3. Amendment filed 1-23-2004; operative 1-23-2004.

4. Amendment of section and Note filed 12-12-2005; operative 1-1 -2006 pursuant to Government Code section 11343.4 (Register 2005, No. 50).

### **Section 98.1. Mediation Guidelines.**

The guidelines, entitled “California Board of Accountancy Mediation Guidelines” (July 17, 1998), which are hereby incorporated by reference, constitute the Board’s guidelines for determining whether an enforcement matter under Article 6 of the Accountancy Act is appropriate for referral to mediation and for the procedures and the form of the mediation process.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5010 and 5018, Business and Professions Code, Section 11420.10 Government Code.

#### **HISTORY:**

1. New section filed 1-18-2000; operative 2-17-2000 (Register 2000, No.3).

### **Section 99. Substantial Relationship Criteria.**

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) Fiscal dishonesty or breach of fiduciary responsibility of any kind;
- (b) Fraud or deceit in obtaining a certified public accountant's certificate or a public accountant's permit under Chapter 1, Division III of the Business and Professions Code;
- (c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052 of the code;
- (d) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference:

Sections 481 and 5100, Business and Professions Code.

**HISTORY:**

1. New section filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

**Section 99.1. Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty, Etc.**

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

- 1) Nature and severity of the act(s) or offense(s).
- 2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.
- 3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).
- 4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.
- 5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- 6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

NOTE: Authority cited: Section 5010, Business and Professions Code. Reference: Sections 480, 481, 482, 486, 5100 and 5106, Business and Professions Code; and Section 1203.4, Penal Code.

**HISTORY:**

1. New Article 13 filed 2-9-73 as an emergency; designated effective 3-7-73 (Chap. 903, 1972 Stats.) (Register 73, No. 8).
2. Certificate of Compliance filed 7-3-73 (Register 73, No. 27).
3. Renumbering from Section 100.1 filed 4-9-74; effective thirtieth day thereafter (Register 74, No. 15).
4. Amendment filed 2-14-75; effective thirtieth day thereafter.
5. Amendment filed 4-12-83; effective thirtieth.

## GLOSSARY

**ATTEST ENGAGEMENT TEAM** participants in the engagement, including partners who perform concurring or second reviews and all employees and contractors retained by the firm, but excluding specialists.

**CORPORATE GOVERNANCE** The system of checks and balances designed to ensure that corporate managers are just as vigilant on behalf of long-term shareholder value as they would be if it was their own money at risk. It is also the process whereby shareholders—the actual owners of any publicly traded firm—assert their ownership rights, through an elected board of directors and the CEO and other officers and managers they appoint and oversee.

**DEONTOLOGY (KANTIAN ETHICS)** the concept of duty and the rightness of acts. It emphasizes maxims, duties, rules, and principles that are so important that they should be followed whatever the consequences.

**ETHICS** standards of professional conduct and business practices adhered to by professionals in order to enhance their profession and maximize idealism, justice and fairness when dealing with the public, clients and other members of their profession.

**IMMEDIATE FAMILY** a covered member's spouse, equivalent of a spouse, or dependents.

**INTERNAL CONTROL REPORT** a report on the company's internal control over financial reporting required under Section 404 of the Sarbanes-Oxley Act. For example, the report must include a statement of management's responsibility for internal control.

**JOINT CLOSELY HELD INVESTMENT** an investment in any entity or property by the member and (1) the client, (2) the client's officers or directors, or (3) an owner who can exercise significant influence if the investment permits such parties to control the entity or property.

**LAWS** bodies of rules governing members of a community, state, organization, professional, etc ... and enforced by authority or compelling legislation.

### MANAGED EARNINGS

Manipulating (pumping up or down) earnings to shed a more favorable light on companies. All companies have flexibility in how they account for some revenues and costs. For example, they can depreciate a capital cost (say, a fleet of cars) in one year or over several years. If they take it in one chunk, their earnings look lower that year and larger every year after that. If they report it in many smaller pieces, they avoid the big hit in the first year. Even though earnings are not perfect, investors' love affair with earnings is here to stay.



**MORAL** an accepted rule or standard of human behavior.

**OBJECTIVITY** a state of mind, a quality that lends itself to a member's services. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest.

**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)**

([www.pcaobus.com](http://www.pcaobus.com)) established in 2002 as a result of the Sarbanes-Oxley Act, a private sector, non-profit corporation set up to oversee the audits of public companies and ensure that accountancy firms should no longer derive non-audit revenue streams, such as consultancy, from their audit clients.

**SARBANES-OXLEY (SOX) ACT** wide-ranging U.S. corporate reform legislation, coauthored by the Democrat in charge of the Senate Banking Committee, Paul Sarbanes, and Republican Congressman Michael Oxley. The Act, which became law in July 2002, lays down stringent procedures regarding the accuracy and reliability of corporate disclosures, places restrictions on auditors providing non-audit services and obliges top executives to verify their accounts personally. Section 409 is especially tough and requires that companies must disclose information on material changes in the financial condition or operations of the issuer on a rapid and current basis.

**SPECIAL PURPOSE ENTITIES (SPES)** a type of corporate entity or limited partnership created for a specific transaction or business, especially one unrelated to a company's main business. Their losses and risks generally aren't recorded on a company's balance sheet.

**UTILITARIANISM (TELEOLOGICAL ETHICS)** the promotion that the best long-term interest of everyone concerned should be the moral standard. One should take those actions that lead to the greatest balance of good versus bad consequences.

## **BIBLIOGRAPHY**

### ***HARDCOPY DOCUMENTS***

The following references are to hardcopy documents that provide information about managing ethics in the workplace:

Berenbeim, R. E. (1992, Spring). "The Corporate Ethics Test". *Business and Society Review*, 31(1), 77-80.

Brenner, S. N. (1992). "Ethics Programs and Their Dimensions". *Journal of Business Ethics*, 11, 391-399.

Buchholz, R. A. (1989). "Fundamental Concepts and Problems in Business Ethics". In Madsen, P., & Shafritz, J. M. (Eds.) (1990). *"Essentials of Business Ethics"*. New York: Penguin Books.

Carroll, A. B. (1990). "Principles of Business Ethics: Their Role in Decision Making and in Initial Consensus". *Management Decision*, 28(8), 21-23.

Dean, P. J. (1992). "Making Codes of Ethics 'Real'." *Journal of Business Ethics*, 11, 285-290.

Deborah, B. (1991, January/February). "Asking for Help: A Guide to Using Socially Responsible Consultants". *Business Ethics Magazine*, pp. 24-29.

Francis, David R. (1991, June). "Prevent Trouble by Improving Ethics". *Christian Science Monitor*, p. 9.

Fulcrum Consulting Group, 1093 Snelling Ave. South, Saint Paul, MN 55116. Phone 1-800-55-ETHIC.

Gandz, J. & Bird, F. G. (1989, Autumn). "Designing Ethical Organizations". *Business Quarterly*, 54(2), 108-112.

Genfan, H. (1987, November). "Formalizing Business Ethics". *Training and Development Journal*, pp. 35-37.

Josephson Institute of Ethics, 310 Washington Boulevard, Suite 104, Marina del Rey, California. Phone 310-306-1868.

Kirrane, D.E. (1990, November). "Managing Values: A Systematic Approach to Business Ethics". *Training and Development Journal*, pp. 53-60.

Madsen, P., Ph. D., & Shafritz, J. M., Ph. D. (Eds.). (1990). *"Essentials of Business Ethics"*. New York: Penguin Books.

McDonald, G., & Zepp, R. (1990). "What Should Be Done? A Practical Approach to Business Ethics". *Management Decision*, 28(1), 9-13.

Nash, L. (1981). "Ethics Without the Sermon". *Harvard Business Review*, (59).

Navran Associates Management Consultants, 3037 Wembley Ridge, Atlanta, GA. Phone 404-493-8886.

Reynolds, L. (1992, July/August). "The Ethics Audit. *Business Ethics Magazine*", pp. 20-22.

Sims, R. R. (1991). "Institutionalization of Organizational Ethics". *Journal of Business Ethics*, 10, 493-506.

Strong, K. C., & Meyer, G. (1992). "An Integrative Descriptive Model of Ethics Decision Making". *Journal of Business Ethics*, 11, 89-94.

Thompson, T. (1991, Spring). "Managing Business Ethics". *Canadian Public Administration*, 34(1), 153-157.

Toffler, B. (1991, Winter). "Doing Ethics: An Approach to Business Ethics Consulting". *Moral Education Forum*, 16(4), 14-20.

### ***ENRON AND WORLD COM CASES***

The following are links to Web sites about Enron and Worldcom cases.

"Lay and Skilling's day of reckoning," by Shaheen Pasha and Jessica Seid, CNNMoney.com staff writers, May 25, 2006.

[http://money.cnn.com/2006/05/25/news/newsmakers/enron\\_verdict/index.htm](http://money.cnn.com/2006/05/25/news/newsmakers/enron_verdict/index.htm).

"Ex-CEO of WorldCom set to start 25-year prison sentence," by Holbrook Mohr, Associated Press Writer. September 26, 2006. <http://news.findlaw.com/ap/f/66/09-26-2006/4eb200048e2efc2d.html>.

Enron and Worldcom Bankruptcy Documents,  
[www.virtualchase.com/topics/court\\_records\\_federal.shtm](http://www.virtualchase.com/topics/court_records_federal.shtm)

### ***WORLD WIDE WEB LINKS***

The following are links to Web sites about business ethics.

[Extensive list of lists of Web sites](http://www.duke.edu/~wgrobin/ethics/surfing.html), of institutes and of topics  
([www.duke.edu/~wgrobin/ethics/surfing.html](http://www.duke.edu/~wgrobin/ethics/surfing.html))

[General business ethics resources at the Center for Applied Ethics](http://www.ethics.ubc.ca/resources/business/)  
([www.ethics.ubc.ca/resources/business/](http://www.ethics.ubc.ca/resources/business/))

[General site for ethics on the Web](http://commfaculty.fullerton.edu/lester/ethics/ethics_list.html)  
([http://commfaculty.fullerton.edu/lester/ethics/ethics\\_list.html](http://commfaculty.fullerton.edu/lester/ethics/ethics_list.html))

[Ethics updates](http://ethics.acusd.edu/index.html) (this list is mostly for ethics instructors and students rather than managers, but it is extensive and well organized) (<http://ethics.acusd.edu/index.html>)

[Center for Applied Ethics](http://www.ethics.ubc.ca/) at [www.ethics.ubc.ca/](http://www.ethics.ubc.ca/)

[List of listservers and groups](http://commfaculty.fullerton.edu/lester/ethics/listserver.html) (<http://commfaculty.fullerton.edu/lester/ethics/listserver.html>)

#### *CALIFORNIA SITES*

[www.dca.ca.gov/cba/acnt\\_act.htm](http://www.dca.ca.gov/cba/acnt_act.htm) California State Board of Accountancy Act site

[www.dca.ca.gov/cba/regs.htm](http://www.dca.ca.gov/cba/regs.htm) California Board of Accountancy Regulations site