

**STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
BOARD OF ACCOUNTANCY**

In the Matter of:

Dan Heard,
Licensee.

CONSENT AGREEMENT

Case No. 109-23

License No. 2336

Pursuant to South Dakota Codified Laws (SDCL) 36-1C-6 and 1-26-20, in consideration of the above-captioned matter, and as the full and final resolution of this matter, the undersigned parties do hereby consent and agree to the following:

1. The South Dakota Department of Labor and Regulation, Board of Accountancy (Board) has jurisdiction over this matter pursuant to SDCL Chapter 36-20B.
2. SDCL 36-20B-27 requires a licensed CPA to complete 120 hours of continuing professional education (CPE) in each three-year renewal cycle.
3. ARSD 20:75:04:11 requires Board licensees to submit to verification of their CPE credits claimed during a reporting period, which includes cooperating with random audits.
4. ARSD 20:75:04:15 requires Board licensees to document their CPE credits.
5. SDCL 36-20B-40(3) authorizes the Board to impose discipline upon a licensee for "failure to maintain compliance with the requirements for issuance or renewal of such license".
6. SDCL 36-20B-40(6) authorizes the Board to impose discipline upon a licensee for a violation "of any provision of this chapter or rule, promulgated

by the board pursuant to chapter 1-26, or violation of professional standards”.

7. DAN HEARD (HEARD) is licensed by the Board as a certified public accountant with certificate number 2336 and HEARD has been so licensed since July 1, 2002.
8. As a licensee of the Board, HEARD is required to report his CPE hours to the Board in the manner required by the Board.
9. For the period commencing July 1, 2019 through June 30, 2020, HEARD reported 40 CPE hours.
10. For the period commencing July 1, 2020 through June 30, 2021, HEARD reported 40 CPE hours.
11. For the period commencing July 1, 2021 through June 30, 2022, HEARD reported 40 CPE hours.
12. On September 16, 2022, the Board office mailed a letter to HEARD which stated that he was selected for a CPE audit for the three-year period commencing July 1, 2019 through June 30, 2022. The letter stated that the deadline to submit documentation was October 31, 2022.
13. On September 23, 2022, HEARD submitted partial CPE documentation to the Board office.
14. On November 18, 2022, a Board office staff member emailed HEARD detailing one course that was adjusted due to the record received from 8 hours to 7.2 hours.

15. On November 18, 2022, HEARD responded to Board office staff by email stating, "I am not aware of any other classes that I have a certificate for. I assume someone will inform w[m]e as to the consequences of this shortfall."
16. For the period commencing July 1, 2019 through June 30, 2020, HEARD provided documentation for 39.2 CPE hours.
17. For the period commencing July 1, 2020 through June 30, 2021, HEARD provided documentation for 40 CPE hours.
18. For the period commencing July 1, 2021 through June 30, 2022, HEARD provided documentation for 40 CPE hours.
19. The total documented CPE hours for HEARD for the period commencing July 1, 2019 through June 30, 2022 is 119.2 CPE hours.
20. For the rolling three-year renewal period ending June 30, 2022, HEARD documented 119.2 CPE hours, less than the required 120 CPE hours.
21. On January 30, 2023, the Board initiated a Formal Complaint against HEARD related to his shortfall of CPE hours documented during his CPE audit.
22. The above-described conduct constitutes grounds for discipline pursuant to SDCL 36-20B-40(3) and (6).
23. HEARD is aware of and understands the nature of this matter. HEARD acknowledges that he has been informed of various rights he has in this matter. These rights include, but are not limited to, the right to:
 - a. be represented by a lawyer in this matter;

- b. receive notice of any hearing in this matter;
- c. have a contested case hearing, as defined in SDCL 1-26-1(2). A contested case hearing includes the right of the licensee to be present at the hearing, be represented by legal counsel, introduce evidence, present testimony, call witnesses to testify, cross-examine all witnesses present, and submit argument on his own behalf; and
- d. appeal any decision based on the contested case hearing to circuit court and the South Dakota Supreme Court, as provided by law.

HEARD agrees that, by signing this Consent Agreement, HEARD voluntarily **waives** all of these rights, procedures, and proceedings before the Board. HEARD further waives any other rights to which he may be entitled under state or federal law as applicable to this matter.

- 24. HEARD is not represented by an attorney in this matter and is representing himself in this matter.
- 25. HEARD understands that by entering into this Consent Agreement, the Board is making a finding that HEARD violated SDCL 36-20B-27, 36-20B-40(3) and (6), and ARSD 20:75:04:11 and 20:75:04:15. In addition, HEARD understands that by entering into this Agreement, the Board is taking formal disciplinary action against HEARD.
- 26. In return for HEARD's agreement to the provisions of this Consent Agreement, the Board agrees not to proceed to formal hearing in this matter

and agrees that this Consent Agreement will constitute the final Board disposition of this matter.

27. HEARD agrees that this Consent Agreement shall serve as the final resolution of this matter, including any appeal. HEARD also agrees, in lieu of further contesting this matter, that his license shall be suspended for a period of three months which shall be stayed for a period of three years upon the following conditions:

- a. HEARD shall complete and provide proof of completion to the Board office of 0.8 hours of CPE within 90 days of the effective date of this Consent Agreement. HEARD shall only receive credit for these hours toward the period ending June 30, 2022. This shall serve as an extension of CPE period ending June 30, 2022.
- b. HEARD shall pay a fine of **\$250** to the Board office within 30 days of the effective date of this Consent Agreement.
- c. HEARD shall submit proof of completion for all claimed CPE courses for each reporting year to the Board office by August 1st of each of the following years: 2023, 2024, and 2025.
- d. HEARD shall be ineligible for any CPE extensions for the reporting periods ending in the years: 2023, 2024, and 2025. The Board office may deny any requests for extensions based solely on this Consent Agreement.

- e. HEARD shall comply with all provisions of SDCL Chapter 36-20B and ARSD Article 20:75.
- 28. If HEARD fails to comply with any of the terms of this Consent Agreement, HEARD agrees that any such violation would constitute new grounds for further discipline and/or serve as a basis for revocation of the stay.
- 29. HEARD understands and agrees that the terms of this Consent Agreement shall be public.
- 30. HEARD consents, agrees, and acknowledges that this Consent Agreement must be submitted to the Board at a public meeting for acceptance or rejection. If the Board rejects this Consent Agreement, HEARD waives any right to claim prejudice or to request recusal of any Board member by reason of any factual basis submitted to the Board in an effort to resolve this matter by Consent Agreement rather than by formal proceeding.
- 31. HEARD understands that nothing in this Consent Agreement will be deemed to restrict the Board from raising facts in reference to HEARD outside of those set forth in this Consent Agreement, if there are other material facts related to the matters under investigation that have not been set forth or disclosed herein.
- 32. HEARD understands that this Consent Agreement may be considered in any future licensing matters with the Board and for the purposes of determining the appropriate sanctions in any future actions by the Board for

any violations of laws or regulations of the State of South Dakota or for failing to abide by any order or decision of the Board.

33. HEARD has read, understands, and agrees to this Consent Agreement and is freely and voluntarily signing it. This Consent Agreement contains the entire agreement between the parties relating to the matters referenced in the Consent Agreement. HEARD is not relying on any other representations of any kind, verbal or otherwise.
34. HEARD agrees to waive any rights and procedures afforded him/her under SDCL Chapters 1-26, 36-20B, 36-1C, and ARSD Article 20:75.
35. If this Consent Agreement is approved by the Board, a copy of the executed Consent Agreement will be served by electronic mail on HEARD by emailing a copy to his email address on file with the Board.
36. This Consent Agreement shall be effective on the date it is signed by the Board Chair.

Dated this 22 day of March 2023.
(month and year)



Deidre Budahl
Board Chair

CONSENT AND ACKNOWLEDGMENT

By signing below, I accept and agree to the terms of this Consent Agreement. I agree that I have read and understand the terms of this Consent Agreement and I understand that I am waiving my due process rights and my right to a hearing. I am freely and voluntarily entering into this agreement.

Dated this 10th day of February 2023.
(month and year)



Dan Heard
Licensee