



**SOUTH DAKOTA
BOARD OF ACCOUNTANCY**

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Agenda
South Dakota Board of Accountancy Meeting
Conference Call
9:00 a.m. (CT)
December 10, 2015

A=Action	
D=Discussion	
I=Information	PAGE
A-Approval of Minutes of Meeting November 5, 2015.....	2-3
A-Approval of Certificates and Firm Permits.....	4-5
D-Executive Director's Report.....	6
AICPA	
D-BOE Meeting Highlights October 1-2, 2015.....	7-11
I-State Responses to Exam Exposure Draft.....	12-18
CT, IL, TX	
NASBA	
I-White Paper – NC Dental Case Decision, Implications for State Boards of Accountancy....	19-34
D-Candidate Concerns 3Q15.....	35-39
D-Exposure Draft – Revisions to the UAA.....	40-47
D-Board of Directors meeting minutes July 17, 2015.....	48-55
D-Board of Directors meeting highlights October 23 & 27, 2015.....	56-57
D-Regional Directors October Focus Questions Executive Summary & Report.....	58-103
A-Quarterly Focus Questions.....	104-105
EXECUTIVE SESSION	
Equivalent Reviews, South Dakota Reviews and follow-ups for Board Approval.....	Spt. Pkt.
FUTURE MEETING DATES (all times CT)	
January 15, 2016 – 9:00 Conference Call	
March 24, 2016 – 9:00 Conference Call	



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South Dakota Board of Accountancy
Minutes of Meeting-Conference Call
November 5, 2015 - 9:00 a.m.

The Board of Accountancy held a meeting by conference call on Thursday, November 5, 2015. Vice-Chair Holly Brunick called the meeting to order at 9:09 a.m.

Roll call was taken to confirm that the following members were present: Marty Guindon, Jeff Smith, John Linn, Jr., Holly Brunick and John Mitchell. A quorum was present.

Also present were Nicole Kasin, Executive Director and Julie Iverson, Sr. Secretary.

Vice Chair Holly Brunick asked if there were any additions to the agenda. The following were added:
Additions to Peer Review
CPE extension requests

A motion was made by Marty Guindon and seconded by John Mitchell to approve the August 14, 2015 meeting minutes. A roll call vote was taken. The motion unanimously carried. (Guindon-yea; Smith-yea; Linn, Jr.-yea; Brunick-yea; Mitchell-yea)

A motion was made by John Mitchell and seconded by Jeff Smith to approve the issuance of individual certificates and firm permits through October 29, 2015. A roll call vote was taken. The motion unanimously carried. (Guindon-yea; Smith-yea; Linn, Jr.-yea; Brunick-yea; Mitchell-yea)

A motion was made by John Linn, Jr. and seconded by Marty Guindon to approve the financial statements through August 2015. A roll call vote was taken. The motion unanimously carried. (Guindon-yea; Smith-yea; Linn, Jr.-yea; Brunick-yea; Mitchell-yea)

The Board reviewed the report on the CPA exam grades for the 46th Window.

A motion was made by Marty Guindon and seconded by John Mitchell to approve the CPA exam scores for the 46th Window through September 2015. A roll call was taken. The motion unanimously carried. (Guindon-yea; Smith-yea; Linn, Jr.-yea; Brunick-yea; Mitchell-yea)

Aaron Arnold, Legal Counsel and Department of Labor & Regulation joined the meeting at 9:24.

Executive Director Kasin discussed her report with an update on the new database, CPE audits, and a recap from the NASBA Annual Meeting.

Aaron Arnold discussed upcoming power points and training for Board members. When details become available he will provide more information to the Board members.

The Board discussed the CPE extension requests for Jeff Berzina and Michael Kabeiseman. It was determined that they were in compliance with the rules. A motion was made by John Linn, Jr. and seconded by Marty Guindon to approve the CPE extensions. A roll call vote was taken. The motion unanimously carried. (Guindon-yea; Smith-yea; Linn, Jr.-yea; Brunick-yea; Mitchell-yea)

The Board discussed the AICPA Uniform CPA Exam Exposure Draft.

A motion was made by John Linn, Jr. and seconded by John Mitchell to enter into executive session for the deliberative process for peer reviews and peer review follow-ups for Board approval. A roll

call vote was taken. The motion unanimously carried. (Guindon-yea; Smith-yea; Linn, Jr.-yea; Brunick-yea; Mitchell-yea)

The Board came out of executive session.

A motion was made by John Mitchell and seconded by Marty Guindon to accept the peer reviews and peer review follow-ups as discussed in executive session. A roll call vote was taken. The motion unanimously carried. (Guindon-yea; Smith-yea; Linn, Jr.-yea; Brunick-yea; Mitchell-yea)

FUTURE MEETING DATES (all times CT)


December 10, 2015 – 9 a.m. Conference call

January 15, 2016 – 9 a.m. Conference call

March 24, 2016 – 9 a.m. Conference call

A motion was made by Marty Guindon and seconded by John Linn, Jr. to adjourn the meeting. A roll call vote was taken. The motion unanimously carried. (Guindon-yea; Smith-yea; Linn, Jr.-yea; Brunick-yea; Mitchell-yea)

All business having come before the board was concluded and Vice-Chair Brunick adjourned the meeting at 10:12 a.m.



David Pummel, CPA, Chair

Attest: 
Nicole Kasin, Executive Director


Jeff Smith, Sec/Treasurer

**CERTIFIED PUBLIC ACCOUNTANT CERTIFICATES
BOARD COPY**

Issued Through December 3, 2015

Number	Name	Date Issued	Location
3231	Scotty Shane Showalter	11/06/15	Rapid City, SD
3232	David J. Adelman	11/09/15	Rapid City, SD
3233	Alyssa Marie Veurink	11/23/15	Sioux Falls, SD
3234	Caitlin Makai Olson	11/24/15	Sioux Falls, SD
3235	Daniel J. Korthals	11/25/15	Sioux Falls, SD

**FIRM PERMITS TO PRACTICE PUBLIC ACCOUNTANCY
BOARD COPY**

**Issued Through
December 3, 2015**

Number	Name	Date Issued	Basis/Comments
1657	Lattimore Black Morgan & Cain, PC Brentwood, TN	11/09/15	New Firm
1658	Schellman & Company, Inc. Tampa, FL	11/24/15	Name Change

EXECUTIVE DIRECTOR'S REPORT

Nicole Kasin

Database update

The contract with GL Solutions has been signed and Board staff has begun the processes for the database project. An introductory kick off conference call was held on 11-25-15 with GL Solutions Will Fairchild as our agency partner and main contact throughout the process and Marcy Merlot, the relationship management personnel with GL Solutions. A second call was held on 12-3-15 as a business process interview to develop a goals and scope document to work off of during the development and design process. Additional calls will be set up for future meetings and a timeline is also being developed with the goal of a "Go Live" date in 2016.

CPE Audits

The list of licensees has been selected for CPE audits and letters were sent out to those selected on September 4, 2015. The documentation is due in our office no later than October 30, 2015. The following chart shows the status of the audits as of December 3, 2015.

	Selected	Complied	Not Complied	Granted Extension	Approved CPE Audit	Failed CPE Audit
CPA (Active)	54	54	0	0	33	0
CPA (Active in Firm)	50	50	0	0	40	0

Board Discussion

- Any New Business/topics?



AICPA BOARD OF EXAMINERS (BOE) MEETING HIGHLIGHTS October 1 - 2, 2015

Participants

BOE Members: Rick Niswander (Chair), Barry Berkowitz, Allan Cohen, Michael Daggett, Steve DelVecchio, Damon DeSue, Russ Friedewald, Bucky Glover, Jeff Hoops, Kristine Hull, Gary Lubin, Leslie Mostow, Roberta Newhouse, Gina Pruitt, Mark Shermis, Amy Sutherland, Tom Winkler

AICPA Staff: Michael Decker (Staff Liaison), Noel Albertson, Rich Gallagher, Michael Horan, Joe Maslott, John Mattar, Robin Stackhouse

NASBA Staff: Onita Porter (NASBA ERB - Examination Review Board)

BOE Appointments

It is with great gratitude and appreciation that we said thank you and goodbye to Rick Niswander, Russ Friedewald, Leslie Mostow, and Steve DelVecchio who have made exceptional contributions to the CPA Examination and in support of the Examinations Team. They will be missed.

At its October 2015 meeting, the BOE heard reports from the State Board Committee, the Psychometric Oversight Committee and the Content Committee.

Roberta Newhouse, Chair of the State Board Committee (SBC), reported on the prior day's meeting, where much of the meeting was spent on the next version of the Exam and the Exposure Draft.

In order to promote and support greater participation on the Practice Analysis Exposure Draft (ED) responses due November 30th, the SBC strongly supported NASBA's recommendation to hold a conference call with the State Boards to address any questions they might have. The SBC understands the challenges to the candidates inherent in launching a new licensure exam and stressed communications with the candidates and State Boards in advance of the launch.

The SBC is also keenly interested in strengthening our understanding of the candidate pipeline and discussed the opportunities for improving candidate convenience amidst the challenges of administering a licensure exam across 55 jurisdictions.

Mark Shermis, Chair of the Psychometric Oversight Committee (POC), reported on the POC's support of the potential changes to the next version of the CPA Examination. The POC was supportive of the break design proposal where a 15 minute break will be inserted into each section.

Understanding the potential impact of the score hold to the candidates that test in the launch window, the POC stressed the need to complete a quality and proven standard setting process, especially given the new Exam and the newer skills being assessed.

Significant discussion was held with the POC and staff regarding the design of the new candidate score report required as a result of the next version of the Exam. Staff is designing a new score report to be reviewed at the next POC meeting.

The POC had also discussed possible changes with respect to the Test Administration Model (TAM). The POC supports the extension of the testing windows to allow candidates additional days to test.

Lastly, the POC recommended additional research into the number of candidates (and their performance) running into the 18 month eligibility period and the number of candidates (and their performance) employing their own retesting strategies across consecutive windows.

Amy Sutherland, Chair of the Content Committee (CC), reported that the CC reviewed the content status of the current Exam at its most recent meeting and concluded that the current Exam is quite solid. Amy reported on the build of the next version of the Exam and the Examination team's plans to develop task-based simulations (TBSs) that will cover the blueprint content and skills, particularly the need for items at the analysis and evaluation skill levels. This will be a significant challenge in terms of the potential impact on the subcommittee members' time commitment. The Examination's team has been working to make this process as effective and efficient as possible and will continue to work with the CC and each of the subcommittees to identify best practices to develop and review items.

Finally, Amy discussed a proposal to amend the BOE's policy with respect to new pronouncements. Given changes in how accounting and auditing standard-setting organizations are issuing standards with both early adoption provisions and mandatory effective dates that differ for different types of entities (e.g. public business entities vs. nonpublic business entities) it is very difficult (if not impossible) to test both existing and new pronouncements as is allowed under the current Exam policy. AICPA Examinations staff reviewed several alternatives. The CC is recommending Option 1 as described in the paper distributed in advance of the BOE Meeting. Option 1 is below.

Option 1: A standard becomes eligible for testing on the CPA Exam in the later of: (1) the first testing window beginning after the standard's earliest mandatory effective date without regard to the type of entity or (2) the first testing window beginning six months after the standard's issuance date.

Following discussion, this recommendation was brought to a BOE vote and was approved unanimously with the words "without regard to the type of entity" deleted.

Michael Decker, VP – Examinations, provided the BOE with an update on the AICPA's and the Examination Team's communications and other initiatives supporting the AICPA and CPA brands and promotion of the pipeline to the CPA profession.

The Examinations Team will be improving the www.aicpa.org/Exam area of the website, will continue its relationships with educators, employers, and the regulators to better understand the pipeline influences and potential future changes to the Exam.

The AICPA's research and initiatives are focused around three themes:

1. Increasing our presence on campus
 - Pilot a state society pipeline project
 - Partner with Beta Alpha Psi to bring AICPA and State Society resources to chapters
 - Arm Review Course Providers with CPA materials
 - Create more campus champions
2. Expanding our reach beyond 4-year colleges
 - Increase high school programming
 - Build community college initiative:
 - Accounting competition
 - Scholarships
 - Summer enrichment program
3. Building our relationship with academics
 - Build an AICPA campus champion program
 - CPA candidate success research
 - ADS 2.0
 - New academic newsletter: *Extra Credit*

Rich Gallagher, Director of Content, and Joe Maslott, Senior Technical Manager provided the BOE with an update on the issuance of the Exposure Draft and high level review of timing of the process to review comment responses, involvement of subcommittees and the CC, and the anticipated BOE approval at the February 2016 meeting. In addition, breaks, Excel implementation and score release matters were discussed. The BOE voted unanimously to support breaks that do not count against Exam time – this matter had been discussed at the August BOE meeting and a white paper on breaks was distributed to the BOE prior to this meeting. The BOE also was supportive of the planned approach initially to implement Excel as a “scratch spreadsheet” on the Exam in 2018 and for the Examination's team to continue to explore how further to enhance Excel or alternative software usage with respect to higher order skill testing, including potentially data analysis in the future. The BOE acknowledged the concerns on score release delays in connection with establishing the new cut score but at the same time understands the criticality of establishing the scoring standards.

Rich, Joe and **Robin Stackhouse (Director of Exam Development and Production)** reviewed the Inventory Development Plan to support the blueprint of the next version of the Exam, including the demands this will place both on staff and volunteer bandwidth. It will be necessary for the subcommittees to review and approve (on average) two to three TBSs per month through 2017 to support the build-out of the next version of the Exam. The Examination's team has introduced Google docs as a process improvement for the subcommittee review process. This is a collaborative tool, operating in a secure environment that will help to facilitate the review process, which has been favorably received by subcommittee members since late August. The Examination's team will continue to focus on additional potential process efficiency and effectiveness improvements and to share best practices with the subcommittees. Rich shared some thoughts on supplementing Exam staff with independent contractors who could assist in either content development and / or TAR (Technical Accuracy Review), obsolescence and quality reviews. The BOE acknowledged and supported the Examination's team and Content Committee efforts to date and asked to be kept abreast of progress to achieve the item development goals.

Noel Albertson, Director of Project and Technology Delivery, reported that the NextGen project continues on budget and on schedule in the development of a state-of-the-art, web-based test delivery driver, item authoring environment and changes to support the next version of the CPA Exam. Software releases are scheduled for:

- 2016: Deployment of the new driver and support for a DRS (Document Review Simulation) item type). The candidate will experience a small change in the non-content portion of the interface.
- 2017: Support for the next version of the CPA Exam
- 2018: A modernized candidate experience on a large monitor, a web-based authoring environment and an item bank converted to new-style, portable, web-based content

The AICPA has embraced AGILE software development and LEAN methodologies and are now looking to implement that thinking throughout the Examinations' Team and the larger AICPA in select areas.

BOE Sponsor and BOE Oversight Group Reports

The BOE received updates from the Financial Oversight Group (FOG) and Volunteer Recruiting.

Leslie Mostow, Barry Berkowitz, and Michael Decker presented an overview of the budget in the FOG Report. The Group reviewed budgeting for the technology and Practice Analysis projects, all of which fall within the scope of the domestic contract.

The BOE also discussed the impact that flat volumes, increased test development and software development costs, and the necessary increased price of the next version of the Exam would have on the budget through 2024.

The annual budget and the forecast through 2024 include allocations for the following items:

- Full staff beginning in Fiscal Year 2016
- Complete software development costs
 - Development of the Hybrid Driver
 - New Item - Document Review Simulation implementation
 - Conversion of current content to Web
 - User Experience (UX) design consultant
 - ADA support for Jaws
 - Research and implementation of new item types
 - ARC market analysis research suggestions
 - Implementation of Excel in 2018
 - Authoritative Literature upgrade in 2018
 - Research of electronic essay scoring and professional skepticism
 - Future Practice Analysis

We are still exploring budget allocations for the following items:

- International expansion
- Future of Licensure studies
- Additional market studies
- Implementation of:
 - Electronic essay scoring
 - Professional skepticism

Another strong year for **Volunteer Recruiting** will soon be underway as the AICPA is working closely with NASBA on the BOE and other appointments. Achieving our diversity and inclusion goals will be a key focus for us in the 2016 appointment year.

Strategic Plan and Operational Update

Michael Decker, Vice President of Examinations, led a discussion with the BOE on the following three themes:

- Protecting the Core Market
- Expanding into Adjacent Markets
- Creating New Markets through Disruptive Innovation

The goal is to help us set the research and implementation agenda to ensure we are prepared for the future.

“Protecting the Core Market” initiatives included:

- Continued research on Professional skepticism, Short answer and essay scoring
- The integration of Excel and research on its advanced uses
- Continued exploration of Lean methodologies implementation
- Streamline item and simulation development and the development of a full item bank
- Improved candidate convenience and the “Total Candidate Experience” improvements
- Strengthened relationships with educators, firms and employers

“Expanding into Adjacent Markets” initiatives included continued international expansion.

“Creating New Markets through Disruptive Innovation” includes addressing the following questions (and will be discussed in greater detail at the next meeting):

- What is the Future of Assessment and Licensure for the CPA?
- Do there need to be changes to the base licensure?
- Increased specialization?



Connecticut State Board of Accountancy
Office of the Secretary of the State
State of Connecticut

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November 20, 2015

Board of Examiners AICPA
America Institute of CPAS
1000 Princeton South, Suite 200
Ewing, NJ 08628

RE: Exposure Draft CPA Exam

Dear Board of Examiners:

The Connecticut State Board of Accountancy welcomes your invitation to comment on the Exposure Draft of proposed changes to the Uniform Certified Public Accounting Examination.

We have received and read with approval the extensive and thoughtful Comment Document submitted to you on October 23, 2015, by the National Association of State Boards of Accountancy (NASBA). We affirm our support for their discussion and recommendations.

We wish to augment the October 23rd NASBA document by emphasizing, and augmenting, a few of its key salient points. These are:

*The diminution of the coverage of Business Law in the REG section is very ill-advised. While recognizing that the purpose of the Uniform Examination is to certify accountants for public practice, and not a Bar Examination for attorneys, we believe that the proposed decrease in the requirement of legal knowledge for prospective CPA s is ill-advised. It is of paramount importance for effective client counseling that CPAs be able to recognize potential legal problems. If the accountant has so little legal knowledge that he/she cannot identify legal issues and, as appropriate, suggest that the client consult legal counsel, the accountant will not be able to effectively serve the client's needs. The reduction of the amount of legal coverage in the proposed revised CPA Examination, and the elimination of much critical subject matter areas including sales contracts and a number of important federal laws, will be a detriment to the value of public accounting to society at large. As a very clear example, at present, CPA s often need to make decisions about how to describe retained individuals for taxation and other business purposes (e.g., "regular employees" vs. "1099 independent contractors"). The proposed changes in the CPA Examination would remove requirements to be knowledgeable in employment law, including ERISA. Further, we assume that test questions involving contract evaluation will continue to be used. If applicants have no grounding in basic contract law, and particularly the law of Sales under the Uniform Commercial Code, they will not be prepared to adequately evaluate these issues.

John H. Schuyler, CPA
Chairman

Timothy F. Egan, CPA

Dannell R. Lyne, CPA

Marcia L. Marien, CPA

Peter J. Niedermeyer, CPA

Karla H. Fox, Esq.

Martha S. Triplett, Esq.

Mark Aronowitz

James F. Spallone
Deputy Secretary of the State

Sonia Worrell Asare
Legal Counsel

We endorse the October 23rd NASBA Comments on page 4 that recommend no diminution in the present Business Law percentage and content areas, and perhaps even an increase to as much as 20%. We strongly agree with the NASBA October 23rd document that the possibility of reducing the Business Law coverage to 5% of the exam is extreme and very detrimental.

*The focus on written analysis is useful, but could be more targeted. Emphasizing the need for written evaluation and analysis is positive. However, to be the most meaningful and useful, we suggest that the written parts be evaluated both on writing ability, and also on substantive knowledge content. The October 23rd NASBA document (VI.b.) appears to draw this conclusion. Although all sections of the CPA Examination could serve as substantive areas for content evaluation, perhaps one method to achieve an acceptable level of Business Law content (see our comment directly above) would be to use Business Law topics in the written section.

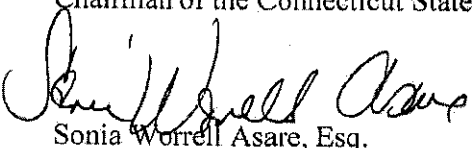
*The new Document Review Simulation item type is positive. This exercise aligns with the types of work CPAs undertake in their practice, and is therefore an important evaluation tool. We agree with the NASBA October 23 document (page 2), which makes this point.

In closing, once again, we wish to thank the AICPA for soliciting input from legally constituted bodies such as ours.

Yours truly,
Members, Connecticut State Board of Accountancy



John C. Schuyler, CPA
Chairman of the Connecticut State Board of Accountancy



Sonia Worrell Asare, Esq.
Legal Counsel/ Acting Executive Director



Illinois Board of Examiners

1120 E. DIEHL ROAD • SUITE 107 • NAPERVILLE, ILLINOIS 60563

November 23, 2015

Board of Examiners
American Institute of CPAs
100 Princeton South, Suite 200
Ewing, NY 08628
Via email to: ExposureDraft@aicpa.org.

The Illinois Board of Examiners (ILBOE) appreciates the opportunity to respond to the questions listed on page 7 of *Exposure Draft: Maintaining the Relevance of the Uniform CPA Examination* (Exposure Draft). The mission of the ILBOE is to protect the public interest by examining and certifying candidates who have met all educational and examination requirements for licensure in Illinois. The ILBOE awards the Certificate of CPA Exam Completion to a candidate upon passing the Uniform CPA examination and the AICPA Ethics course.

The ILBOE met on November 18, 2015 to discuss the Exposure Draft. At that time, we also considered NASBA's comments sent to you in their letter dated October 23, 2015. Our responses to the questions regarding the next version of the Exam as listed on page 5 of the Exposure Draft are as follows:

- I. The Exam should contain an increased focus on testing of higher order skills. To accommodate this change, we support the increase in testing time from 14 to 16 total hours, thus allowing four hours per section.
- II. The analyses and related conclusions on pages 8 to 14 of the Exposure Draft are appropriate and supportive of the assessment of competent and newly licensed performance.
 - a. We encourage you to develop ways of testing written communication that includes assessments of the candidates' writing abilities and their content knowledge. This is very important since newly licensed CPAs must frequently gather and analyze information and then prepare appropriate documentation.
 - b. Given that Microsoft regularly updates Excel, which may involve significant interface changes, we recommend that you consider standardizing on a certain version of Excel or developing a way to support multiple versions of Excel.
 - c. Every effort should be made to minimize increases to costs of the Exam.
- III. Regarding the REG exam, we believe there are some areas of Business Law that can be reduced. However, given the one-hour increase in the REG exam, the overall Business Law content percentage in the REG exam should not be reduced. CPAs must make many decisions based on an understanding of the law, e.g., has a sale occurred or is an act illegal. Therefore, knowledge of business law is important for all CPAs. If REG must be devoted to 85% - 95% taxation, we suggest that the Board of Examiners consider moving Business Law to the BEC section of the exam and making the REG exam only taxation.

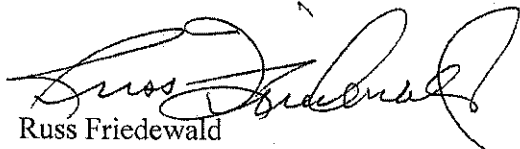
- IV. We see no significant areas of the content that should be excluded.
- V. We believe that the content ranges align with the content knowledge required of newly licensed CPAs.
- VI. We believe that the skill level ranges are representative of the skill levels required by newly licensed CPAs.
- VII. While the representative tasks should not be viewed as an all-inclusive list of tasks that may be tested on the Exam, they are very useful examples to assist candidates in their preparation. Shown below are the number of representative tasks listed in the Blueprint for each section of the Exam. Given the addition of Task Based Simulations to BEC, we encourage the Board of Examiners to develop additional representative tasks so that the number in the BEC blueprint is consistent with the other three sections of the Exam.

Section	# of Representative Tasks by Skill Level				
	Total	Remembering & Understanding	Application	Analysis	Evaluation
AUD	153	58	64	21	10
BEC	55	12	28	15	0
FAR	198	51	123	24	0
REG	185	61	98	26	0

Regarding The Future of Practice Analysis section and future versions of the Exam, we hope that a process can be developed to shorten the time needed to update the Exam. The current revision began in January 2014 and will be implemented during the second quarter of 2017. While a thorough practice analysis is critical, something identified at the beginning of a three year long updating process may not be as critical once the Exam is finalized.

Finally, we commend the Board of Examiners on the thoroughness and transparency of this process. We would be happy to further discuss our comments in detail if requested.

On behalf of the Illinois Board of Examiners



Russ Friedewald
Executive Director



TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY
WILLIAM TREACY, EXECUTIVE DIRECTOR

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November 19, 2015

Board of Examiners
American Institute of CPAs
1000 Princeton South, Suite 200
Ewing, NJ 08628

RE: Exposure Draft: Maintaining Relevance of the Uniform CPA Examination

The Texas State Board of Public Accountancy (the Board) through its Qualifications Committee has reviewed and discussed the American Institute of CPA's (the AICPA) *Exposure Draft: Maintaining the Relevance of the Uniform CPA Examination Invitation to Comment*. The comments provided to boards of accountancy by the National Association of State Boards of Accountancy (NASBA) were also considered.

The Board supports the ongoing efforts of the AICPA, Board of Examiners, and NASBA as it continues to provide a high stakes licensure examination for the accounting profession. Great strides continue to be made to insure that the CPA exam is legally defensible, contains higher-order cognitive skills, tests for professional and ethical responsibilities, addresses the business environment and processes, and demonstrates effective written communication skills.

While the Board concurs with NASBA's comprehensive assessment of the Exposure Draft, there are specific areas that we would like to address.

The Future of the Practice Analysis

The Qualifications Committee members, many of whom are accounting educators, discussed the frequency of the Practice Analysis (the PA). Due to the comprehensive nature of the PA and the numerous stakeholders, we understand that this is an arduous task that takes many years. The Board proposes that the PA be conducted at five-year intervals with a timeline for implementation of new topics and formats. The timeline is needed to assist educational institutions with the following:

- Develop or adjust courses and curriculum
- Employ new faculty members with the skillset needed to teach the courses
- Work with the administration at the institutions to make the needed changes, and
- Teach the curriculum to students who will be taking the CPA exam

A shortened interval between PAs is needed to maintain the relevance of accounting pronouncements and methodology that CPAs are expected to know and to use in the workplace. Conceptually, after the five-year period for the PA and development of new questions, it may take up to two years for educational institutions to make changes to

curriculum, and another two years for students to take the updated courses in preparation for the exam. Does this mean that nine years would be needed before students should be tested on new material identified in the PA?

Along with the shortened PA and the timeline for implementation, it is recommended that sample questions be provided to educators detailing the higher-order cognitive skills that may be included on the CPA exam. These sample questions will help accounting educators determine the curriculum and how to present the material in such a way that students can learn and apply the new concepts from the classroom, to the exam, and ultimately into the workplace.

Comments on the Next Version of the Examination as Defined in the Exposure Draft

- I. We concur that the rate of change should be kept modest to allow candidates to adjust to new item types and the new blueprint structure.
- II. The Board supports the AICPA's efforts to integrate content in the exam. Also, we agree with the increased inclusion of background material and data that exam candidates are required to review in responding to the new Document Review Simulation as well as the current Task-Based Simulations. We remain concerned with the methodology that is used to test written communications and urge the AICPA to continue to research ways that content can be tested in conjunction with written communication skills in a cost-effective manner.

The Board remains concerned with any additional costs that may be borne by the exam candidates for testing written communications, maintaining an item bank of relevant questions and extending the overall length of the exam. While we understand that additional costs are warranted, the AICPA should be mindful of the static number of exam candidates and how an increased cost of the exam may continue to impact these numbers. Exam candidates who do not work for major accounting firms generally must pay all examination costs. Candidates who have limited resources may decide to, either, not take the exam at all, or, if unsuccessful on the first attempt, opt out of subsequent opportunities to test. This is in conflict with the Board's desire to bring diversity to the profession.

- III. The Board has reviewed the details of the CPA exam blueprint and finds that there are areas where additional coverage is recommended.

Candidates should be tested on boards of accountancy licensing and regulations of the profession. New CPAs may not understand the role of boards of accountancy as regulators of the profession and that there are rules that must be followed to maintain a license.

As the profession moves from audit sampling to data mining and analytics, the Board urges the AICPA to begin item development. New CPAs will be asked to employ these technical resources and therefore preparations for testing should begin.

The Board recommends that the AICPA reinstate testing on the Uniform Commercial Code as well as other federal laws and regulations. Knowledge of these laws and rules are used by new CPAs throughout the profession. CPAs must rely on this

information as they respond to clients questions and concerns in various areas of business.

- IV. The Board believes that the AICPA has covered significant areas of content in the blueprint. It is recommended that the AICPA continue to review the item bank of questions to insure that they are current for the rules, regulations, and the marketplace.
- V. The Board concurs with the overall comments made by NASBA in its response. The broadening of the content ranges does not provide exam candidates with the level of detail to adequately prepare for the CPA exam. The new content ranges may also permit candidates to receive numerous questions on a specific content area while other candidates' exams may have a smaller number of questions in the same content area, or even none at all.

A person who holds the designation of CPA should be tested on Accounting and Review Services, as well as attestation engagements. While many students specialize in tax, audit or information systems, the CPA by designation is licensed to perform attest services which include Accounting and Review Services, and therefore, should be tested in this area.

- VI. The Board concurs with NASBA's comments concerning the skill levels required by newly licensed CPAs.
- VII. The Board commends the AICPA and Board of Examiners in developing a thorough Exposure Draft. We believe that the exam overall, will continue to provide the public with an assurance that CPAs are tested on current accounting issues, problem solving skills, critical thinking and professional skepticism.

The Board appreciates the opportunity that the AICPA has provided to all boards of accountancy to share our thoughts and concerns. We look forward to the new exam and working alongside all stakeholders.

Best regards,
Texas State Board of Public Accountancy



J. Coalter Baker, CPA
Presiding Officer



William Treacy
Executive Director

Cc: Qualifications Committee - TSBPA

NORTH CAROLINA DENTAL CASE DECISION

IMPLICATIONS FOR STATE BOARDS OF ACCOUNTANCY

November 23, 2015



NASBA

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The U.S. Supreme Court's Decision in
North Carolina State Board of Dental Examiners v. Federal Trade Commission
and Implications for State Boards of Accountancy

Table of Contents

Executive Summary	2
Overview	3
State Regulation of CPAs Is Uniquely Procompetitive	3
State Action Background	4
What Did the Supreme Court Hold?	5
FTC Releases Its Staff Guidance	6
What Is Active State Supervision?	8
What Activities Should Be Subject to Active State Supervision?	11
Related Issues	13
Does a Board's Member Selection Process Affect the Active Supervision Requirement? ..	13
Do States Need to Indemnify?	14
Conclusion	15

Executive Summary¹

For more than 70 years, state boards of accountancy have been presumed to be immune from federal antitrust laws. This was true as long as their otherwise anticompetitive actions were clearly authorized by state statutes. However, the Supreme Court's 2015 holding in *N.C. State Board of Dental Examiners v. Federal Trade Commission* ("*NC Dental Board*")² now requires that licensee-controlled state boards also be "actively supervised" by a neutral state entity in order to enjoy immunity from federal antitrust law.

The Supreme Court's decision has left state regulators with questions concerning the extent of the decision's application to boards of accountancy. For example, the Court did not detail how many licensee board members would constitute a controlling interest on the board or whether their particular area of practice would be a factor, leading to speculation as to whether traditional state oversight of boards of accountancy, along with the potential for court review of enforcement actions, would be sufficient supervision to ensure antitrust immunity.

As a result, some states' executive branches and legislatures are reacting to the *NC Dental Board* decision with an abundance of caution, proposing bills and enacting executive orders to create new supervision mechanisms. Further reactions, including changes to board composition and internal board enforcement and rulemaking procedures, might be proposed in the coming months. It is imperative that states and state boards not permit knee-jerk reactions and, instead, undertake a risk-management evaluation of their internal processes and procedures in light of the increased scrutiny and uncertainty.

Questions on state board antitrust exposure can be addressed by applying useful interpretive guidance drawn from several sources. This includes existing court precedent, the text of the Federal Trade Commission ("FTC") Order against the North Carolina State Board of Dental Examiners ("Dental Board"), FTC staff guidance released in October 2015, and decisions in a number of pending and future court cases on the subject. By drawing on these sources, this paper concludes that state boards of accountancy are already largely functioning in compliance with antitrust law requirements. Thus, while the Supreme Court's decision has given rise to some interpretive questions regarding the active supervision requirement, it does not appear that dramatic changes to accountancy boards' functioning or relevant state laws will be necessary.

¹ This document has been prepared by NASBA in conjunction with Allen, Pinnix & Nichols, P.A., NASBA's outside Legal Counsel, for the exclusive use of NASBA's members, the state boards of accountancy. The areas of law addressed herein are rapidly changing and also affected by state laws. As such, state boards and others should rely upon their own legal counsel's interpretations of the legal issues discussed herein. The opinions and statements contained in this document are not necessarily those of NASBA or any state board.

² 135 S. Ct. 1101 (2015) (hereinafter "*NC Dental Board*").

Overview

The following provides an overview of the procompetitive aspects of accountancy regulation, the history of state licensing board immunity, the effects of the Supreme Court's decision in *NC Dental Board*, and implications for state boards of accountancy going forward. This paper is intended to be an evergreen document that may be updated as future litigation and state and federal guidance provide greater clarity on this topic.

State Regulation of CPAs Is Uniquely Procompetitive

Procompetitive benefits and efficiencies are key factors when undertaking an antitrust analysis and could weigh heavily in favor of state boards when evaluating the antitrust implications of actions that might otherwise be considered anticompetitive. The 55 state boards of accountancy around the nation have worked diligently with the National Association of State Boards of Accountancy ("NASBA") to reduce barriers to trade in accountancy services. Beginning in 1997, the state boards, NASBA, and the American Institute of Certified Public Accountants ("AICPA") embarked upon a national legislative effort to remove impediments to interstate practice, ease restrictions on firm ownership, lift anticompetitive limits on fee arrangements, and permit the use of trade names. Concurrently, NASBA and the AICPA developed and promoted these changes through the Uniform Accountancy Act ("UAA"), an evergreen model law developed to provide a comprehensive, uniform approach to regulation of the accounting profession. As stated in the "Introductory Comments" to the UAA 7th Edition: "these changes achieve the goals of enhancing public protection, facilitating consumer choice, and supporting the efficient operation of the capital markets." In the past two decades, these procompetitive changes have been adopted in almost all U.S. jurisdictions and serve as a model for states and professional licensing generally for so long as boards operate within their statutory authorization.

As a result of these efforts, the regulation of accountancy among the states is uniquely efficient and procompetitive. For example, under the UAA, as implemented by state laws:

- CPAs only need to be licensed in the state of their principal place of business. UAA §§ 3(p), 23.
- CPAs can practice in another jurisdiction without notice or fee. UAA § 23.
- CPAs are subject to substantially equivalent licensing requirements. UAA § 6(c)(2).
- Only titles that have the capacity or tendency to deceive are prohibited. UAA §§ 2, 14(c)-(h).
- Holders of substantially equivalent foreign credentials are allowed to provide certain services in the states. UAA § 14(j).
- Nonlicensees are allowed to render many accounting services to the public. UAA § 14(a).

State Action Background

The Supreme Court first established its state action antitrust immunity doctrine in 1943 in *Parker v. Brown*.³ At issue in *Parker* was the legality of a California state program, implemented pursuant to state law, to monitor the sale of, and set prices for, raisin production. This case interpreted decades-old federal antitrust law, concluding that Congress had not used its Commerce Clause power to preempt state restraints on competition. Thus, the Court concluded that federal antitrust law “makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state.”⁴ In the decades that followed *Parker*, courts determined that the “state” included at least the state legislature and the state supreme court and, as such, these bodies were entitled to automatic immunity. Presumably, as the third branch of state government, governors could have been deemed automatically immune from federal antitrust law under *Parker* as well. However, few court decisions considered the question of how *Parker* might apply to state agencies or private parties implementing state law.

In 1980, the Supreme Court elaborated on the state action doctrine in *California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*,⁵ in order to limit abuse of the antitrust law exception by private parties. *Midcal* established two requirements for private parties seeking to invoke state action immunity—clear articulation and active state supervision. Then, in 1985, the Supreme Court held in *Town of Hallie v. City of Eau Claire* that municipalities (themselves sub-state entities) need only demonstrate clear articulation and not active supervision because “[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement.”⁶

In recent decades, other federal court cases have dealt with the application of *Parker* with regard to state agencies, including licensing boards. The focus of these cases was generally the clear articulation prong and whether the state agencies had acted pursuant to their statutory authorization, or in the case of a state bar, pursuant to the mandate imposed on them by the state supreme court. Courts, including the Supreme Court, tended to conclude that state agencies were not required to show active supervision in order to enjoy immunity, so long as they acted pursuant to state law.⁷

³ 317 U.S. 341 (1943).

⁴ *Id.* at 351.

⁵ 445 U.S. 97, 105 (1980).

⁶ 471 U.S. 34, 47 (1985).

⁷ In *Hallie*, the Supreme Court opined in a footnote that “[i]n cases in which the actor is a state agency, it is likely that active state supervision would also not be required, although we do not here decide that issue.” *Id.* at 46 n.10.

In *NC Dental Board*, the clear articulation prong was assumed by the Supreme Court to be met and not at issue. However, it is important to understand how State Boards can and must meet this standard. Under the clear articulation standard, a proposed board action should be supported by a state statute authorizing the proposed action. As the Supreme Court recently stated: “to pass the clear articulation test, a state legislature need not expressly state in a statute or its legislative history that the legislature intends for the delegated action to have anticompetitive effects.”⁸ Instead, the displacement of competition should be “the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals.”⁹

What Did the Supreme Court Hold?

In *NC Dental Board*, the Supreme Court held that state agencies controlled by active market participants in the industry they regulate must demonstrate both clear articulation and active state supervision in order to invoke state action immunity. The Supreme Court affirmed the U.S. Court of Appeals for the Fourth Circuit, which denied the Dental Board’s petition for review of the FTC’s Order.

The *NC Dental Board* case stemmed from the Dental Board’s practice of sending cease and desist letters to unlicensed teeth whitening service providers and warning letters to property management companies. Some of these letters ordered the recipients to cease and desist from the unauthorized practice of dentistry. While the Dental Board has statutory authority to sue individuals for unauthorized practice in court or to refer matters to other officials for criminal prosecution, it does not have express statutory authority to send cease and desist letters or orders. The letters had the effect of limiting the provision of teeth whitening services within North Carolina. In 2008, the FTC opened an investigation and subsequently brought an administrative complaint against the Dental Board in 2010.

Ultimately, the FTC determined that the Dental Board must demonstrate active supervision because the board was controlled by market participants and such supervision was lacking with regards to the issuance of the cease and desist letters. On the merits (beyond state action immunity), the FTC found that the

⁸ *FTC v. Phoebe Putney Health Sys.*, 133 S. Ct. 1003, 1011 (2013) (internal citations and quotations omitted). In *Phoebe* (a quintessential clear articulation case), the Court was faced with the issue of “whether a Georgia law that creates special-purpose public entities called hospital authorities and gives those entities general corporate powers, including the power to acquire hospitals, clearly articulates and affirmatively expresses a state policy to permit acquisitions that substantially lessen competition.” *Id.* at 1007. The Court held that “[b]ecause Georgia’s grant of general corporate powers to hospital authorities does not include permission to use those powers anticompetitively, . . . the clear-articulation test is not satisfied and state-action immunity does not apply.” *Id.* In contrast, state accountancy acts contain extensive mandates for state boards to act anticompetitively but the boards must ensure their conduct is pursuant to and within such mandates.

⁹ *N.C. State Bd. of Dental Exam’rs v. FTC*, 135 S. Ct. at 1112.

Dental Board had restrained trade in violation of the federal antitrust laws. The FTC ordered the Board to not send cease and desist letters or other communications that stated nondentists may not offer teeth whitening services and products. It is important to note that the issue of public protection and evidence of harm was not before the Supreme Court although the Dental Board had introduced evidence before the FTC of individuals being physically harmed by unlicensed teeth whitening service providers.

FTC Releases Its Staff Guidance

In October 2015, the FTC's Bureau of Competition released its "FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants."¹⁰ This document sets forth FTC staff's views on the active supervision requirement as it applies to state regulatory boards in the wake of the *NC Dental Board* case. Significantly, the Staff Guidance is not binding on the FTC, and FTC staff has reserved the right to modify, rescind, or revoke the guidance.

The Staff Guidance sets out to respond to two questions: "First, when does a state regulatory board require active supervision in order to invoke the state action defense? Second, what factors are relevant to determining whether the active supervision requirement is satisfied?"¹¹ Before explaining the answers to those two questions, the guidance sets forth some important caveats for state legislators to consider: Federal antitrust law does not require that a state legislature provide for active supervision of any state regulatory board.¹² Moreover, "[t]his document contains guidance developed by the staff of the Federal Trade Commission. Deviation from this guidance does not necessarily mean that the state action defense is inapplicable, or that a violation of the antitrust laws has occurred."¹³ These caveats acknowledge the fact that it is a state's prerogative as to whether or not to shield its regulatory boards from antitrust oversight and that there is no one-size-fits-all approach when it comes to state action immunity and any potential antitrust liability.

Beyond state action immunity, the Staff Guidance addresses some general points regarding board actions and the applicability of antitrust law:

1. Reasonable restraints on competition do not violate the antitrust laws, even where the economic interests of a competitor have been injured.

...

¹⁰ Available at https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf (hereinafter "Staff Guidance" or "FTC Staff Guidance").

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.* at 3.

2. The ministerial (non-discretionary) acts of a regulatory board engaged in good faith implementation of an anticompetitive statutory regime do not give rise to antitrust liability.

...

3. In general, the initiation and prosecution of a lawsuit by a regulatory board does not give rise to antitrust liability unless it falls within the "sham exception."¹⁴

The Staff Guidance continues by addressing two of the key issues that remain unresolved by the Supreme Court and will continue to be at issue in the lower courts. First, it sets forth who will be considered an active market participant: "[a] member of a state regulatory board will be considered to be an active market participant in the occupation the board regulates if such person (i) is licensed by the board or (ii) provides any service that is subject to the regulatory authority of the board."¹⁵ This broad view appears to encompass retiree or inactive licensee board members, board members who practice exclusively in a different specialty than one at issue before the board, and board members whose work is limited to academia.

Second, the Staff Guidance leaves open the question of what constitutes a controlling number of licensee board members: "[w]hether a particular restraint has been imposed by a 'controlling number of decisionmakers [who] are active market participants' is a fact-bound inquiry that must be made on a case-by-case basis."¹⁶ That said, FTC staff does provide the following factors that will be considered in such an analysis:

The structure of the regulatory board (including the number of board members who are/are not active market participants) and the rules governing the exercise of the board's authority.

Whether the board members who are active market participants have veto power over the board's regulatory decisions.

...

The level of participation, engagement, and authority of the non-market participant members in the business of the board – generally and with regard to the particular restraint at issue.

Whether the participation, engagement, and authority of the non-market participant board members in the business of the board differs from that of board members who are active market participants – generally and with regard to the particular restraint at issue.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

Whether the active market participants have in fact exercised, controlled, or usurped the decisionmaking power of the board.¹⁷

The Staff Guidance provides some insights as to what constitutes active supervision and what factors are relevant to determining whether the active supervision requirement has been satisfied. These insights will not be repeated in detail here, but, in essence, they make clear that the FTC staff is looking for the active supervisor to review the substance of a proposed board action prior to the implementation of such action. Moreover, the reviewer should gather all necessary information to make an informed decision as to whether to approve, modify, or veto the proposed action. Then, the reviewer should issue a written decision as to the outcome of the review in order to demonstrate the meaningful review that occurred and to serve an evidentiary function. Finally, the Staff Guidance sets forth examples of what does and does not constitute active supervision in the rulemaking and disciplinary setting.

The information contained in the Staff Guidance is one important source that state boards and state legislators should consider when evaluating potential responses to the *NC Dental Board* case. While the guidance raises further questions, it does give readers some of the parameters that FTC staff will employ when evaluating the potentially anticompetitive conduct of state boards. Additionally, missing details will likely be provided in the coming months and years by pending and future court cases challenging licensing board immunity.

What Is Active State Supervision?

Active supervision requires “that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.”¹⁸ The Supreme Court further elaborated on the active supervision requirement in *NC Dental Board*:

Midcal’s supervision rule “stems from the recognition that ‘[w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.’” . . . Concern about the private incentives of active market participants animates *Midcal’s* supervision mandate, which demands “realistic assurance that a private party’s anticompetitive conduct promotes state policy, rather than merely the party’s individual interests.”¹⁹

In order to effectuate the active supervision requirement, the Supreme Court has declined to offer a bright-line test or checklist. Instead, each case will be

¹⁷ *Id.*

¹⁸ *Patrick v. Burget*, 486 U.S. 94, 101 (1988).

¹⁹ 135 S. Ct. at 1112 (internal citations omitted).

evaluated on the conduct at issue and the measures taken to ensure independent state oversight. Nonetheless, the Court did offer guidance on the role of the state supervisor:

[T]he supervisor must review the substance of the anticompetitive decision; . . . the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; . . . and the “mere potential for state supervision is not an adequate substitute for a decision by the State.”²⁰

This guidance may be put into practice in a variety of state-created structures and entities. As states continue to respond to *NC Dental Board*, each state will have to review its own entities and procedures to determine the best course of action for its agencies. This review will require a balancing of regulatory efficiency and public protection with the need for antitrust supervision and the risks that flow from potential liability.

Some models for supervision already exist or are being developed. With regard to rulemaking, the rules of many state boards are already subject to review by an executive or legislative branch commission charged with rules review oversight. Whether or not a state’s rules review mechanism is sufficient will likely depend upon whether there is a substantive review of the promulgating entity’s statutory authority to propose such a rule and whether the disinterested reviewer has the power to modify or veto the proposed rule.

With regard to state board actions outside of rulemaking, including enforcement activities, there are many potential responses that states can consider. The first and most likely response may be to make no changes beyond ensuring that state boards operate within and pursuant to their statutory mandates for all actions. Doing so will generally limit the antitrust risks for state boards and allow states to continue their public protection mission in the most regulatorily efficient manner, without the additional layers of bureaucracy.

In several states, active supervision review entities have been proposed, with the anticipated role of vetting potentially anticompetitive decisions by state boards. These entities range from designated parties within the Attorney General’s office to stand-alone agencies or similar entities empowered to approve, modify, or veto proposed board actions. There are many questions as to the extent of the role these review entities will play in overseeing board activities, whether they will be funded by licensees or general funds, whether their decisions will be subject to time limits, and whether there will be avenues for appeal. It is also important to note that the

²⁰ 135 S. Ct. at 1107 (internal citation omitted).

FTC has emphasized that any such independent review agency must review the substance of the proposed board action and not merely serve as a rubber stamp.²¹

A minority of state boards operate under umbrella agencies that oversee and in some instances carry out much of the work of state boards. So long as the umbrella agency has the authority to review and either modify or veto a proposed board action, such a structure is not likely to require further active supervision changes.

Another potential response could be the dilution of the membership of market participants on state boards to the point where licensees make up less than a controlling interest. This response would lessen the role of licensees and increase the role of public members on state boards so that board actions may not require active state supervision in the first place. However, such changes pose practical and regulatory concerns. Significant questions will arise for states considering this option because, according to the *NC Dental Board* dissent, “it is not clear what sorts of changes are needed to satisfy the test that the Court now adopts.”²² Indeed, without further court guidance, it is unclear who may be considered an “active market participant” and what is a “controlling interest.” The FTC has weighed in with its Staff Guidance, adopting a broad stroke for both concepts.

FTC staff states that an individual “will be considered to be an active market participant in the occupation the board regulates if such person (i) is licensed by the board or (ii) provides any service that is subject to the regulatory authority of the board.”²³ Furthermore, the inquiry as to whether a board is “controlled” by active market participants “is a fact-bound inquiry that must be made on a case-by-case basis.”²⁴ The FTC Staff Guidance sets forth the following factors that it will consider in the inquiry regarding the existence of a controlling interest: “The structure of the regulatory board (including the number of board members who are/are not active market participants) and the rules governing the exercise of the board’s authority. Whether the board members who are active market participants have veto power over the board’s regulatory decisions.”²⁵ Thus, any licensee of a

²¹ Per the examples found on page 13 of the FTC’s Staff Guidance, the following scenarios do not constitute active supervision:

- An independent state agency is staffed, funded, and empowered by law to evaluate, and then to veto or modify, particular recommendations of the regulatory board. However, in practice such recommendations are subject to only cursory review by the independent state agency.
- The independent state agency perfunctorily approves the recommendations of the regulatory board. . . .
- An independent state agency reviews the actions of the regulatory board and approves all actions that comply with the procedural requirements of the state administrative procedure act, without undertaking a substantive review of the actions of the regulatory board.

²² 135 S. Ct. at 1123 (Alito, J., dissenting).

²³ FTC Staff Guidance at 7.

²⁴ *Id.* at 8.

²⁵ *Id.*

state board may be considered an active market participant, and the controlling interest analysis does not necessarily turn on majority licensee status alone.

In addition to the open structural questions regarding board composition, states considering the dilution of licensee board members could also jeopardize the technical expertise and cost-saving benefits that flow from staffing boards of accountancy with licensees. Large and small boards rely on their members' experience, and often highly specific and advanced knowledge, to handle enforcement matters, standards adoption and interpretation, and evaluation of harm or potential harm to the public.

Undoubtedly, there are other possible responses beyond those referenced above. Any potential response must be evaluated in light of the FTC's and the Supreme Court's focus on certain board activities requiring supervision—not all activities undertaken by state boards. As a practical matter, any response should also be subject to an evaluation of costs and benefits to boards' public protection missions.

What Activities Should Be Subject to Active State Supervision?

Not all state board activities require active supervision because most board activities are not the focus of antitrust enforcement and potential liability. As the FTC stated in its brief before the Supreme Court: “[e]ven where the prerequisites for an exemption are absent, finding lack of state action immunity does not prove the violation.”²⁶ Further, “the great majority of practices found non-immune are undoubtedly not antitrust violations to begin with.”²⁷ As a result, the focus of active supervision has been on state board actions where immunity would actually be of legal significance. This includes potentially unauthorized actions that seek to restrain competition by excluding unlicensed competitors who engage in activities that may or may not be prohibited by a particular practice act.

Thus, active state supervision is generally not needed for routine operations, such as most licensure decisions, license renewals, and most licensee discipline. Rather, supervision should focus on state board conduct that could be deemed an unreasonable restraint on trade under federal antitrust laws. This conclusion is supported by the Supreme Court's decision, which laid out the scope of the Court's antitrust concerns:

Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide realistic assurance that a nonsovereign actor's anticompetitive conduct

²⁶ Brief for the Respondent at 56, *N.C. State Bd. of Dental Examiners v. FTC*, No. 13-534 (U.S. July 30, 2014) (internal citation and quotes omitted).

²⁷ *Id.* (internal citation omitted).

promotes state policy, rather than merely the party's individual interests.²⁸

As previously noted, the FTC's Order details the actions that the Dental Board may and may not take pursuant to federal antitrust law. The FTC's Order allows the Dental Board to continue to legally engage in conduct that is within its statutory prerogative. For example, under the terms of the FTC's Order, the Dental Board may continue to take the following actions without any new supervision requirement:

- (i) investigate a Non-Dentist Provider for suspected violations of the Dental Practice Act;
- (ii) file, or cause to be filed, a court action against a Non-Dentist Provider for an alleged violation of the Dental Practice Act; or
- (iii) pursue any administrative remedies against a Dentist pursuant to and in accordance with the North Carolina Annotated Code....²⁹

Consistent with (ii) above, the initiation of a lawsuit generally will not require active supervision as it would not constitute an antitrust violation in the first place. This position is consistent with the FTC Staff Guidance which states that "the initiation and prosecution of a lawsuit by a regulatory board does not give rise to antitrust liability unless it falls within the 'sham exception.'"³⁰

Under the FTC's Order, the Dental Board is also generally permitted to continue communicating with third parties regarding the content of its authorizing statute and the limits that the Dental Practice Act places on unauthorized practice, without active state supervision. The Dental Board may also continue with licensee enforcement, unchanged, pursuant to state law. The practical effect of the Order is thus limited to addressing actions taken against unlicensed teeth whitening service providers without statutory authorization.

It appears that the Supreme Court and the FTC are focusing their attention on a pattern of unilateral board actions to restrain competition without oversight from an independent state body. The FTC is not concerned with Dental Board enforcement actions against a single competitor.³¹ This focus is supported by the premise that federal antitrust laws are directed at injuries to competition, not injuries to individual competitors or potential competitors. Indeed, the FTC Staff

²⁸ 135 S. Ct. at 1116 (emphasis added) (internal quotes omitted).

²⁹ Final Order at 4, *In re N.C. Bd. of Dental Examiners*, Docket No. 9343 (F.T.C. Dec. 7, 2011).

³⁰ FTC Staff Guidance at 6.

³¹ "[T]he Board had decided teeth whitening constitutes 'the practice of dentistry' and sought to prohibit those who competed against dentists from participating in the teeth whitening market. . . . [T]here is no evidence here of any decision by the State to initiate or concur with the Board's actions against the nondentists." 135 S. Ct. at 1116.

Guidance notes “that a disciplinary action taken by a regulatory board affecting a single licensee will typically have only a de minimis effect on competition.”³² It goes on to state, however, that “[a] pattern or program of disciplinary actions by a regulatory board affecting multiple licensees may have a substantial effect on competition.”³³

This distinction was recently illustrated in the U.S. District Court for the Eastern District of Virginia case of *Petri v. Virginia Board of Medicine*.³⁴ Petri, a chiropractor licensee of the Medical Board, was disciplined by the board and, in response, she sued the board alleging an antitrust violation. The court rejected Petri’s claim not on state action immunity grounds but under a full antitrust analysis of whether her situation was the type of claim that is meant to be addressed by antitrust law. Petri argued that her “individual injury constitutes harm to the overall competition.”³⁵ The court held that:

[T]he law is clear that “the elimination of a single competitor, standing alone, does not prove the anticompetitive effect necessary to establish antitrust injury.” . . . Petri has shown no evidence that pricing in the market was altered or that other chiropractors failed to join, or left, the market as a result of the Board’s actions. Without such a showing, Plaintiff has failed to show the necessary anticompetitive effects of a Sherman Act violation.³⁶

Therefore, from the FTC’s Order, the Supreme Court’s decision, and the developing body of federal antitrust law on this subject, it is likely that the active supervision requirement need not extend broadly to issues such as initial licensure, examination, peer review, continuing education, renewals, or most licensee discipline. Instead, it appears that the Supreme Court’s intent is to ensure that enforcement actions against unlicensed persons, taken without the clear authorization of state law, must occur under active supervision.

Related Issues

Does a Board’s Member Selection Process Affect the Active Supervision Requirement?

The Supreme Court did not view the Dental Board’s member selection process as an applicable factor in its analysis of whether active supervision applies. The FTC Staff Guidance expressly rejects selection method as a determining factor on the active market participant analysis (though it does not address selection

³² FTC Staff Guidance at 12.

³³ *Id.*

³⁴ No. 1:13-cv-01486, 2014 U.S. Dist. LEXIS 166228 (E.D. Va. Dec. 1, 2014).

³⁵ *Id.* at *7.

³⁶ *Id.* at *7-*8 (internal citations omitted).

method as a factor in whether active supervision should be or is present): “The method by which a person is selected to serve on a state regulatory board is not determinative of whether that person is an active market participant in the occupation that the board regulates.”³⁷

However, it is conceivable that a board’s member selection process might be a factor in determining the amount or degree of state supervision required in a particular case. In the Dental Board’s case, dentist board members were elected by North Carolina’s dentists.³⁸ This practice is unusual among licensing boards, and is not used by any U.S. boards of accountancy, which instead generally rely on executive branch appointments. While the Court’s decision did not address the Dental Board’s unusual selection practice, a concurring judge’s opinion in the Fourth Circuit Court of Appeals’ decision highlighted the Dental Board’s selection methods as a key factor in her conclusion that a violation of federal antitrust law occurred.³⁹

Do States Need to Indemnify?

Private antitrust lawsuits against state boards, their staffs, and their members have proliferated in the months following the *NC Dental Board* decision. Antitrust liability carries significant risks, including potential treble damages and attorneys’ fees. The Supreme Court noted that “States may provide for the defense and indemnification of agency members in the event of litigation.”⁴⁰ The issue of board member and board staff indemnification and defense is one that many states will grapple with in this case’s wake. Many states already provide for board member and board staff indemnification statutorily, and changes to these practices will not be required unless states wish to expressly provide for the defense of these individuals. Other states may wish to amend their statutes so that they provide for the indemnification and defense of state board members and their staffs. Some state boards may be permitted to, and may opt to, carry insurance that helps to defend against and offset any potential antitrust liability.

³⁷ FTC Staff Guidance at 7.

³⁸ The Dental Board’s membership also includes a dental hygienist, who is elected by the state’s dental hygienists, and a consumer member who is appointed by the governor.

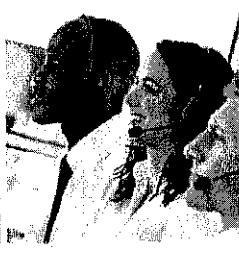
³⁹ “In this context, it is useful to state what our opinion does not hold. We do not hold that a state agency must always satisfy the active supervision prong of the standard set forth in *Midcal* to qualify for antitrust immunity under the state action doctrine. Nor do we hold that a state agency comprised, in whole or in part, of members participating in the market regulated by that state agency is a private actor subject to *Midcal*’s active supervision prong. Instead, our holding that the Board is a private actor for purposes of the state action doctrine turns on the fact that the members of the Board, who are market participants, are elected by other private participants in the market.” *N.C. State Bd. of Dental Examiners v. FTC*, 717 F.3d 359, 376 (4th Cir. 2013) (Keenan, J., concurring).

⁴⁰ 135 S. Ct. at 1106.

Conclusion

In light of the outcome of the *NC Dental Board* case, there are a number of considerations for states and their boards of accountancy. The current lack of certainty regarding the effect of federal antitrust law and the potential threat of increased private litigation on this subject reveals the need for a cautious and measured approach.

Regardless of how state governments react to this case, boards of accountancy should ensure that enforcement actions against nonlicensees are taken with explicit, specific statutory support or clear court precedent. Similarly, rulemaking implicating unlicensed practice or rulemaking with the effect of increasing requirements imposed for licensure or renewal must be undertaken pursuant to clearly-articulated state law. Most boards of accountancy already operate in an environment and with procedures that do not give rise to significant antitrust exposure. Therefore, it is essential that state governments seeking to alter board of accountancy structures or practices understand the nuances of state action immunity, the Supreme Court's holding, and the FTC's intentions. Otherwise, a state may respond to the *NC Dental Board* case in a manner that unnecessarily hampers regulatory efficiency, increases costs, and threatens public protection.



NASBA

NATIONAL ASSOCIATION OF STATE BOARDS OF ACCOUNTANCY



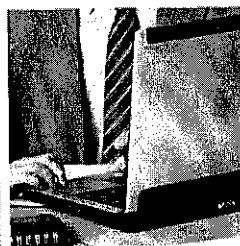
CANDIDATE CONCERNS 15Q3

CANDIDATE CARE DEPARTMENT

JULY 1-AUGUST 31, 2015

PENNY VERNON, MANAGER.

150 Fourth Avenue North, Suite 700 Nashville, TN 37219-2417 Tel 615/880-4200 fax 615/880-4290
Web www.nasba.org




CANDIDATE CARE CONCERNS 15Q3

July 1 – August 31, 2015

The July/August 2015 testing window was relatively quiet in terms of the severity of issues reported by candidates. However, there continued to be an increase in the number of errors made by candidates, which often affected their testing experience and performance. In an effort to create more awareness of these situations, NASBA's Communications Department was asked to assist in creating a campaign to reach all candidates. They have created 12 images of the most common scenarios affecting candidates.

- All 12 images with titles and scenarios have been uploaded to NASBA.org.
- They have been featured on the NASBA homepage as well.
- A couple of images, where appropriate, have been added to the Candidate Bulletin.
- Images were submitted to social media.
- A series of mass e-mailings, each presenting a few of the tips, is also planned over the next few weeks.
- You can view each image by following [this link](#), and an explanation of each tip is provided below.



Don't Text and Test

After months of preparation, Jenny was confident and prepared for the CPA Exam. During her scheduled break, Jenny sent a text message to her mother to say things were going well. Unfortunately, this is a direct violation of Exam policy. Prometric is required to write up the incident and report it to the Board of Accountancy for further investigation. This may jeopardize Jenny's score. Don't Text and Test like Jenny! Follow the instructions and leave your cell phone turned off in the locker.

Cell Phones: Once you enter the testing center, you may NOT access your cell phone. This includes using your cell phone during a scheduled break.

DON'T TEXT AND TEST:

This is a problem that has increased over the past few testing windows. Center Problem Reports ("CPRs") sent from Prometric testing centers indicated that candidates were accessing their cell phones during breaks. While often innocent, it does pose a possible security risk. Candidates are no longer permitted to access their cell phones during testing.

DON'T BE LATE!

Candidates do not always take the time to familiarize themselves with the location of the testing center and allow for possible traffic issues. They rely solely on their GPS devices and arrive late for their scheduled appointments.

OH NO! WRONG NTS!

Because candidates often take the same section more than once and keep their used NTSs, in the heat of the moment, they sometimes grab the wrong NTS to take to the exam.

WHAT NTS?

Candidates are advised in the Candidate Bulletin as well as on the NTS that they must arrive at the testing center with the NTS or they will not be permitted to test. However, some neglect to follow this instruction or take the appointment confirmation they received from Prometric instead.

DON'T GET CAUGHT IN TIME-OUT

Candidates do not familiarize themselves with the instructions about starting the exam, and after entering the launch code, just watch the clock count down during the 10 minutes allotted to go through the introductory screens. Without actually proceeding through the screens, the exam times out.

DON'T STRESS

Rather than reporting an issue to the staff at the testing center immediately, candidates wait until after the exam has finished to let them know they had a problem. This prevents the staff from witnessing the issue in order to attempt to resolve it.

NOT MY FAULT!

As stated in the Candidate Bulletin as well as on the Confirmation of Attendance that is received at the end of each exam, candidates are required, if necessary, to issue a formal complaint of their test experience to NASBA's Candidate Care Department within five days of taking the exam, and not to wait until the score has been received.

BUT I RESCHEDULED!

Too many candidates do not proceed to the "appointment complete" screen when they try to reschedule an appointment, and do not check to make sure that they have received an email from Prometric confirming the appointment change and details.

BUT I WANT TO SIT NOW!

The volume of candidates wishing to test increases as each window progresses. Candidates often do not take the advice to schedule well in advance and end up not being able to find a seat in their area. This forces them to travel or to wait until the next testing window.

OOPS! FORGOT SOMETHING

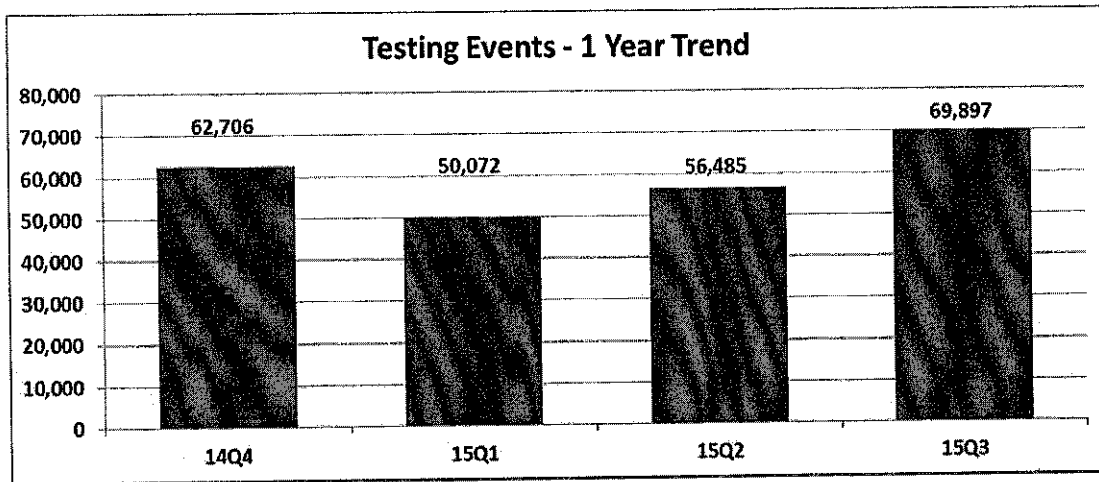
Oftentimes, candidates neglect to run through the tutorial and sample tests on the AICPA website and are not familiar with how to navigate through the exam. When they click on the wrong navigational button, they are given a warning as to what they are about to do and instructions on how to correct the situation; however, under the stress of taking the exam, they often do not heed the warnings, which results in terminating the exam or skipping a testlet.

ONLY TEN MINUTES

This is currently the most common error candidates make. Review course providers often recommend to candidates that the 10 minutes allotted to go through the introductory screens is a good opportunity to jot down notes on the noteboards provided. The problem is that they play a game of "beat the clock," often not leaving enough time to actually proceed through the screens before the time expires.

Summary of Candidate Concerns

Category	14Q4	15Q1	15Q2	15Q3
AICPA & Test Content	21	12	16	8
Candidate Error	73	61	67	85
Confirmation of Attendance	135	101	74	61
Environment	10	158	21	12
International Exam	56	55	62	58
Prometric Scheduling Issues	26	21	35	31
Prometric Site Issues	53	50	54	79
Technical	114	110	64	62
Subtotal	488	568	393	396
*Coordinator follow-up	402	410	395	401
*CPAES & NCD	230	203	189	156
Total	1120	1181	977	953



We appreciate being able to serve your candidates as their advocate and are looking forward to all of the new changes expected in the next couple of years. If you have any questions or comments, please contact me via email (pvernon@nasba.org) or phone (615-880-4209).

Penny Vernon
Manager Candidate Care
NASBA

EXPOSURE DRAFT

PROPOSED REVISIONS TO

AICPA/NASBA UNIFORM ACCOUNTANCY ACT and NASBA UNIFORM ACCOUNTANCY ACT RULES

SECTION 6(d) and Rule 6-7

November 2015

2014 – 2015 AICPA UAA Committee

Gary McIntosh, CPA – Chair
Gregory Burke, CPA
Leroy Dennis, CPA
Steven Geisenberger, CPA
Nancy Juron, CPA
Debbie Lambert, CPA
Robert Mancini
Thomas Neill, CPA
Stephanie Peters
Tammy Velasquez

2014 – 2015 NASBA UAA Committee

J. Coalter Baker, CPA - Chair
Barton W. Baldwin, CPA
David L. Dennis, CPA
Lori J. Druse, CPA
Andrew L. DuBoff, CPA
Karen Garrett, CPA
Kenneth R. Odom, CPA
John E. Patterson, Esq.
Donovan W. Rulien, CPA
Dan Sweetwood

Please submit comments by February 2, 2016 to:

Mat Young, Vice President – State Regulatory & Legislative Affairs –
RetiredExposureDraft@aicpa.org

and

Louise Dratler Haberman, Vice President, Information & Research –
lhberman@nasba.org

TABLE OF CONTENTS

Overview and Background of Proposed Revisions.....	Page 3
Text of Proposed Statute Revisions	Page 5
Text of Proposed Rules Revisions	Page 7

OVERVIEW

In September and October, the AICPA Board of Directors and the NASBA Board of Directors each approved for exposure the accompanying changes to the Uniform Accountancy Act and the Model Rules that would provide for the creation of a Retired-CPA status. Comments on this proposal are requested by February 2, 2016.

BACKGROUND

The AICPA and NASBA have worked together since 1984 to produce the Uniform Accountancy Act (UAA) and UAA Model Rules to serve as reference documents for all U.S. states and jurisdictions as they update their own statutes. They are evergreen documents that are regularly reviewed and updated by the joint AICPA/NASBA Committee, subject to the final approval of the two organizations' board of directors.

For several years, there has been a discussion as to whether or not there should be a Retired-CPA status in the UAA. Currently, there is an Inactive-CPA status, which simply indicates that a CPA has chosen not to maintain the requisite amount of continuing professional education and can no longer hold out as a CPA while his or her CPE is not current. State Boards have come to NASBA to request guidance on how to recognize both inactive and retired CPAs. With no uniform approach, a majority of states have adopted their own retired status in their statutes and/or rules. These variations in state policies have led to inconsistencies in expectations and treatment of this class of CPAs.

Coupled with these national differences in policy, demographic changes – in particular the wave of Baby Boomers retiring or preparing to retire – are further driving the debate about the need for a Retired-CPA status. Indeed, the AICPA estimates that approximately 75% of its members will be eligible to retire by 2020. Many of these retirees are well-respected business leaders in their communities who would like to find ways to continue to be of service, without necessarily remaining an active CPA in practice.

The UAA Committee has debated and reviewed this matter and is recommending the creation of a uniform Retired-CPA status. Furthermore, it would like to allow those Retired-CPAs to offer a limited array of volunteer, uncompensated services to the public.

THE PROPOSAL

The UAA Committee is recommending that Inactive CPAs, at least age 55, be allowed to:

- Refer to themselves as “Retired-CPA” with appropriate registration with their State Board
- Offer volunteer tax preparation services if competent
- Participate in government-sponsored business mentoring programs if competent
- Serve on the board of a non-profit organization if competent.

All of these activities would be uncompensated and are activities that can currently be offered by non-CPAs. Examples of these volunteer programs include the IRS's Volunteer Income Tax Assistance (VITA) program and the Small Business Administration's SCORE business mentoring program. Under no circumstances could the Retired-CPA provide services that require signature and use of the CPA title.

Furthermore, Retired-CPAs would be required to affirm to State Boards of Accountancy that they: (1) understand the scope of limitations on what services they offer, (2) agree not to use their retired status in any way which could be misleading, and (3) maintain professional competency, without a specific CPE requirement, when offering any of the permitted volunteer services.

TEXT OF PROPOSED STATUTE REVISIONS

Note: The material set out below is the proposed statutory text and commentary of the relevant UAA provisions. The proposed language to be added is underlined.

Section 6(d):

(d) For renewal of a certificate under this Section each licensee shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the Board. The Board may by rule create an exception to this requirement for certificate holders who do not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Licensees granted such an exception by the Board must place the word "inactive" adjacent to their CPA title or PA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate or PA registration, on which their CPA or PA title appears. In addition, inactive CPAs, at least 55 years of age, may, in lieu of "inactive", place the word "retired" adjacent to their CPA title or PA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate or PA registration, on which their CPA or PA title appears. Nothing in this section shall preclude an inactive CPA, at least 55 years of age, from providing the following volunteer, uncompensated services; tax preparation services, participating in a government-sponsored business mentoring program, or serving on the board of directors for a non-profit organization. Licensees may only convert to inactive status if they hold a license in good standing .

COMMENT: A licensee is deemed competent to serve the public when he or she initially meets the requirements for licensure. However, a dynamic professional environment requires a licensee to continuously maintain and enhance his or her knowledge, skills and abilities. The board of accountancy may specify any reasonable approach to meeting this requirement using as a guideline the Statement on Standards for Continuing Professional Education (CPE) Programs jointly approved by the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountants (AICPA). Furthermore, this section acknowledges that CPAs may, for a number of different reasons, place their license in inactive status and not continue with CPE requirements. In order to protect the public,

these CPAs should not use their “inactive CPA” status to continue to perform or offer to perform professional services. However, for CPAs who go inactive because they are at the end of their careers, this provision offers an exception to ensure that they can continue to offer a limited number of volunteer, uncompensated services to the public (such as participation in the Internal Revenue Service’s Volunteer Income Tax Assistance (VITA) program and the Small Business Administration’s SCORE program). These services are narrow in scope, may be offered by non-CPAs, and the provision acknowledges that these CPAs still have much to contribute to their communities during retirement. In order to protect the public the board of accountancy may consider requiring these CPAs to affirm their understanding of the limited types of activities in which they may engage while in inactive CPA status and their understanding that they have a professional duty to ensure that they hold the professional competencies necessary to offer these limited services.

TEXT OF PROPOSED RULES REVISIONS BY ARTICLE

Note: The material set out below is the proposed rules text and commentary of the relevant UAA provisions. The proposed language to be added is underlined, and proposed deleted language is stricken-through.

Rule 6-7 – Exceptions.

- (a) The Board may make an exception to the requirement set out in Rule 6-4(a) for a licensee who is inactive or who does not perform or offer to perform for the public one of more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements or other compilation communication, or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.
- (b) The Board may in particular cases make exceptions to the requirements set out in Rule 6-4(a) for reasons of individual hardship including health, military service, foreign residence, or other good cause. At the time the exception is granted and for as long as the license remains in “inactive” or “retired” status, the license, and any other license issued by another state, must be in good standing and not be revoked, suspended, refused renewal, subject to revoked or limited privileges under Section 23, or under any other sanction. Nothing herein shall be construed to limit the Board’s disciplinary authority with regards to a license in “inactive” or “retired” status.
- (c) Licensees granted such an exception by the Board must place the word “inactive” adjacent to their CPA title or PA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate or PA registration, on which their CPA or PA title appears. Licensees granted the exception who are at least fifty-five (55) years of age may replace “inactive” with “retired.” Any of these terms must not be applied in such a manner that could likely confuse the public as to the current status of the licensee.

- (d) Licensees granted the use of “inactive” or “retired” must affirm in writing their understanding of the limitations placed on them by being given an exception from CPE.
- (e) Licensees granted the use of “inactive” or “retired” may provide volunteer, uncompensated services to their community, to the extent provided in statute, unless such involvement could likely mislead the public as to the ongoing competence or status of such licensee. Licensees providing such volunteer, uncompensated services still have the responsibility to maintain professional competence relative to the volunteer services they provide even though excepted from the specific CPE requirements of Rule 6-4(a).
- (f) Licensees granted the use of “inactive” or “retired” may not sign documents using CPA with any of these terms attached when rendering one of the services allowed under UAA§A6(d) [volunteer, uncompensated services to the public or serving on the board of directors for a non-profit organization]. As UAA§6(d) provides, an inactive or retired licensee cannot offer or render professional services that require their signature and use of the CPA title either with or without “inactive” or “retired” attached.
- (g) Licensees granted an exception by the Board must comply with a re-entry competency requirement defined by the Board as set out in Rule 6-4(c) before they may discontinue use of the word “inactive” in association with their CPA or PA title.

National Association of State Boards of Accountancy, Inc.

Meeting of the Board of Directors

July 17, 2015 – Olive 8 Hyatt - Seattle, WA

1. Call to Order

A duly scheduled meeting of the Board of Directors of the National Association of State Boards of Accountancy was called to order by Chair Walter C. Davenport at 9:00 a.m. on Friday, July 17, 2015 at the Olive 8 Hyatt in Seattle, WA.

2. Report of Attendance

President Ken L. Bishop reported the following were present:

Officers

Walter C. Davenport, CPA (NC), Chair
Donald H. Burkett, CPA (SC), Vice Chair
Carlos E. Johnson, CPA (OK), Past Chair
E. Kent Smoll, CPA (KS), Treasurer
Laurie J. Tish, CPA (WA), Secretary

Directors-at-Large

A. Carlos Barrera, CPA (TX)
Jimmy E. Burkes, CPA (MS)
Janice L. Gray, CPA (OK)
Raymond N. Johnson, CPA (OR)
Telford A. Lodden, CPA (IA)
Harry O. Parsons, CPA (NV)
Richard N. Reisig, CPA (MT)

Regional Directors

J. Coalter Baker, CPA (TX), Southwest Regional Director
Maria E. Caldwell, CPA (FL), Southeast Regional Director – Via Conference Call
Robert J. Cochran, CPA (VA), Middle Atlantic Regional Director
John F. Dailey, Jr., CPA (NJ), Northeast Regional Director
W. Michael Fritz, CPA (OH), Great Lakes Regional Director
Edwin G. Jolicoeur, CPA (WA), Pacific Regional Director
Benjamin C. Steele, CPA (NV), Mountain Regional Director

Russ Friedewald (IL) – Executive Directors Committee Liaison

Absent

Janeth Glenn, CPA-Inactive (NE), Central Regional Director

Staff

Ken L. Bishop, President and Chief Executive Officer

Colleen K. Conrad, CPA, Executive Vice President and Chief Operating Officer
Michael R. Bryant, CPA, Senior Vice President and Chief Financial Officer
Louise Dratler Haberman, Vice President - Information and Research
Thomas G. Kenny, Director - Communications
Noel L. Allen, Esq., Outside Legal Counsel

3. Approval of Minutes

Secretary Laurie Tish presented the minutes of the Board of Directors' April 2015 meeting and moved for their approval. Coalter Baker seconded and the minutes were unanimously approved as presented.

4. Chair's Report

Chair Davenport reported the Executive Committee had met on July 16 and had nothing to bring forward to a vote of the Board in open session. He commended the Regional Directors for the success of the 2015 Regional Meetings, which were well attended, covered informative topics and evoked helpful conversations.

Wendy Perez (CA) was selected for appointment to the CPA Examination Review Board. Mr. Baker moved to approve the appointment, Mr. Reisig seconded and all approved. Another person has been selected to serve as a member of the ERB but final confirmation of her interest and availability had not yet been received.

NASBA and AICPA leadership will be holding their Summit meeting on August 6, 2015 in New York City. Mr. Davenport thanked the Regional Directors for recommending some points to be discussed at their meeting on July 16 and he invited other members of the Board to suggest discussion items as well.

Chair Davenport read the names of the winners of the 2015 NASBA awards: William H. Van Rensselaer Award to Samuel K. Cotterell (IA); Lorraine P. Sachs Standard of Excellence Award to Dan Sweetwood (NE); and Distinguished Service Award to Kenneth R. Odom (AL). Mr. Lodden moved to approve the award recipients as recommended by the Awards Committee, Ms. Tish seconded and the awards were unanimously approved.

5. President's Report

President Bishop reported on personnel matters, including: Chief Relationship Officer Alfonzo Alexander has been named chair of 100 Black Men of Middle Tennessee; Former NASBA Director Linda Biek has extended her contract with the Hong Kong Institute of CPAs; and Ryan Hirsch has received his MBA from Vanderbilt University and has been promoted.

Executive Vice President and Chief Operating Officer Conrad described the work continuing to improve NASBA's web services. Security measures are being implemented and encryption has been started.

Plans for the redesign of the Nashville office space are moving ahead, President Bishop reported. He congratulated Senior Vice President Michael Bryant and Facilities Manager Mary Lane for keeping the project on schedule. Included in the redesign will be a staircase between the sixth and seventh floors within the NASBA office space and space for new business growth.

Positive relationships with the state CPA societies continue to grow, Ms. Conrad observed. Societies are reaching out to NASBA Director of Legislative and Governmental Affairs John Johnson for help with their efforts. Just as contacts have been established with the Department of Labor, NASBA is focused on developing contacts with other federal agencies, including the Department of Education, HUD and HHS. Dialogs on sharing enforcement data are starting, she reported.

President Bishop announced that he would be the keynote speaker at the Ph.D. Project meeting on August 9, 2015 in Chicago. He observed that this effort has helped to get NASBA known early in the careers of young people who will one day be in key positions.

Chair Walter Davenport will be attending the upcoming Private Company Council meeting and FAF CEO Terry Polley will be meeting with NASBA.

A meeting with South African Institute of Chartered Accountants CEO Terrence Nombembe will be held on September 7 in Nashville. President Bishop said SAICA is not ready to accept a mutual recognition agreement covering CPAs who only have one year of experience. Mr. Bishop pointed out the rest of the world has tiered licensing of accountants, something the United States has moved away from. He intends to bring this discussion to the AICPA/NASBA at future Summit meetings. Board members questioned if changing the experience requirement might damage mobility or open the door for other CPA specialties. Mr. Bishop said such considerations would all be part of the conversation.

NASBA has reached out to accreditation bodies and has received a positive response from them on getting together for a meeting cosponsored by the AICPA.

Notre Dame hosted a "data summit" in July for NASBA, Ms. Conrad reported. The goal was to continue to refine the kinds of candidate information that would be most useful to the schools and the State Boards.

The Peer Review Oversight Committee Summit was held on July 10 and drew the largest attendance in its history. On September 9-11 the National Registry Summit will be held with the CPE Standards exposure draft a central topic for discussion. There are close to 2,100 sponsors now on the CPE Registry, Ms. Conrad said. She noted that the Virgin Islands, Georgia and Montana had recently added to the services NASBA is providing to them.

A new service to provide potential CPA candidates with information on courses they are missing to qualify for the Examination is being considered. President Bishop said the Ph.D. Project provides this kind of service to those in its program. Many of the Board members voiced their support of this kind of offering.

President Bishop said this had been another extraordinary year for NASBA, with net assets up to \$41.3 million and \$8.7 million being spent on services to State Boards this year. For next year services to State Boards is projected to be \$9.6 million.

The NASBA Center for the Public Trust is now 10 years old President Bishop stated. He noted the success of the Center for the Public Trust student chapters and certification program and congratulated the CPT staff under the leadership of Alfonzo Alexander.

Both AEQUO and NIES continue to do well, President Bishop said.

5. Report from Vice President

Mr. Burkett reminded all that the Annual Meeting will be in Dana Point, CA. The agenda for that meeting is being worked on. He assured the Board that it would be another important meeting that all Boards will want to attend.

6. Report from Chief Information Security Officer

NASBA Chief Information Security Officer Roy Hall reported to the Board, via conference call, that he had been requested to address the Board by Audit Committee Chair Rick Isserman. He thanked President Bishop and Executive Vice President Conrad for their support of the NASBA security team. His presentation covered six key areas: governance process overview; IT audit results, both internal and external; today's cyber security threat overview; NASBA's control opportunities; security incident trending; and security program road map update.

He explained that NASBA's Security Program Road Map is part of IT's three-year plan and is constantly evolving. Daily web server vulnerability scans are done and NASBA has many key IT controls in place. There are monthly control testing status meetings to make sure all groups are properly executing those controls.

7. Report of the Nominating Committee

Nominating Committee Chair Carlos Johnson presented the Committee's report as included in the Board of Directors' agenda materials.

Directors-at-Large (three-year term)

Tyrone E. Dickerson (VA – Associate)
Raymond N. Johnson (OR – Associate)
E. Kent Smoll (KS – Associate)

Regional Directors (one-year term)

Southwest	J. Coalter Baker (TX – Delegate)
Southeast	Maria E. Caldwell (FL – Delegate)
Middle Atlantic	<i>To be determined by Nominating Committee</i>
Northeast	John F. Dailey, Jr. (NJ – Delegate)
Great Lakes	W. Michael Fritz (OH – Delegate)
Pacific	Edwin G. Jolicoeur (WA – Delegate)
Mountain	Benjamin C. Steele (NV – Delegate)
Central	Sharon A. Jensen (MN – Delegate)

Nominating Committee Chair Johnson explained that the nominee for Middle Atlantic Regional Director had not yet been named and would be chosen at a special meeting of the Nominating Committee on August 21, 2015. Robert Cochran had originally been selected to be Middle Atlantic Regional Director; however, he had withdrawn his name for personal reasons. Vice Chair Donny Burkett will accede to Chair and, as announced earlier, Telford Lodden (IA – Associate) has been nominated by the Committee for Vice Chair.

8. Report of the Audit Committee

On behalf of Audit Committee Chair Rick Isserman, NASBA Senior Vice President and Chief Financial Officer Bryant reported the audit planning meeting was held in May with the Audit Committee and with representatives of the audit firm, Lattimore Black Morgan & Cain, PC, in attendance. Mr. Bryant quickly summarized for the Board a version of a presentation regarding internal controls around receipts, which had been presented to the Audit Committee. He also reported on the Audit Committee's input into NASBA's response letter to the Financial Accounting Standards Board Topic 958, Presentations of Financial Statements of Not-for-Profit Entities, which was released in April 2015.

9. Report of the Regulatory Response Committee

Regulatory Response Committee Chair Fritz distributed copies of the NASBA response to FASB Topic 958 and asked the Board members to present any fatal flaw comments to him. [The letter was submitted to the FASB on July 20, 2015.] Other NASBA responses issued during the quarter were included in the Board's agenda materials.

10. Report of the Administration and Finance Committee

A&F Committee Chair and Treasurer Smoll discussed the Investment Committee's and Administration and Finance Committee's meeting from the previous two days. Chief Financial Officer Bryant discussed the expectation for the current year's results. He then presented the FY 2016 operating budgets for NASBA, CPT, and Aequo and the capital budget for NASBA. Mr. Bryant informed the Board that the CPT Board had approved the CPT budget subject to NASBA's approval of the NASBA budget which includes a contribution of \$150,000 over the next year to CPT.

An update on the Nashville office space renovation and a summary of costs that were reflected in the capital budget were presented by Mr. Bryant. Mr. Smoll said the A&F committee recommended that the Board approve the budgets as presented. The Board voted unanimously to approve the operating and capital budgets for NASBA and Aequo.

Mr. Smoll talked about the overall asset allocation of NASBA's long-term investments and the goal of moving to a 50:50 portfolio of fixed income to equities and alternative strategy investments. Such a move, he continued, would result in a violation of the current asset allocation targets established in the Board-approved investment policy for the long-term fund. Mr. Smoll requested that the Board approve an exception to the investment policy which would allow the portfolio to be reallocated to the 50:50 split until such time as the policy can be revised and brought to the Board for approval. Mr. Bryant estimated that approximately \$1.9 million of investments would need to be reallocated out of the fixed income segment of the long-term fund in order to attain the desired 50:50 goal and this was the A&F Committee's recommendation subject to the Board's approval of an exception to policy. This could be accomplished over the near-term as determined by the investment adviser.

The Board passed the following motion granting the exception to policy and the reallocation as recommended by the A&F Committee:

“WHEREAS it is the desire of the NASBA Board of Directors to rebalance the long-term investments of the Association to an asset allocation of 50 percent to fixed income class investments and

“WHEREAS such action would be in conflict with the investment allocation targets existing in the Board-approved investment policy

“NOW THEREFORE THE BOARD OF DIRECTORS DOES HEREBY RESOLVE, DETERMINE AND APPROVE AS FOLLOWS:

“An exception to the Investment Policy of the Association to allow the desired rebalancing to proceed until such time as the Board of Directors approves a revised Investment Policy specifying asset allocation targets which align with the goal of a 50% allocation to fixed income class investments.”

11. Executive Session

The Board went into a closed executive session to discuss executive compensation.

The Board of Directors in executive session ratified certain Executive Committee recommendations related to confidential (personnel) matters.

12. Report of the Bylaws Committee

Bylaws Committee Chair Jolicoeur reported the Bylaws Committee met on May 26 in Nashville and considered the comments on the proposed Bylaws raised at the April Board of Directors meeting. Some modifications were made based on those comments. Mr. Jolicoeur reported the bulk of the recommendations came from the Nominations Process Task Force, chaired by Kathy Allen (NY).

Following discussion by the Board, it was determined that proposed Bylaws amendments to the following Sections should be sent to the member Boards for their consideration and vote at the Annual Business Meeting on October 26, 2015:

- Responsibilities of Regional Directors (Section 4.3.5)
- Regional Meetings (Section 5.3)
- Unexpired Board of Directors' Terms (Section 4.5.6)
- Eligibility to Serve as Vice Chair (Section 4.5.9)
- Nominating Committee Responsibilities and Procedures (Sections 7.1.10, 7.12, 7.2.1.1.-.2)
- CPA Examination Review Board Terms (Section 8.6.2).

13. Report of the Compliance Assurance Committee

Compliance Assurance Committee Chair Gray reported the PROC (Peer Review Oversight Committee) Summit, held on July 10, 2015 in the Omni in Nashville, drew its largest attendance since it was inaugurated. Approximately 90 people were there including representatives from 30 states, both from State Boards and State Societies. Nine Board Executive Directors, 11 PROC members from eight states, 24 State Society representatives and other Board members and staff were present. The program included breakout sessions for those just beginning a PROC and those for maintaining one. Col. Francis Ryan was an excellent

speaker who brought his perspective of what being on a not-for-profit board means, Ms. Gray reported. More than 35 questions were raised by the audience.

Currently 22 states have PROCs, but all 55 should have them, Ms. Gray stated. The Board discussed the need for State Boards to close the gap between the State Societies and the State Boards in this area. Ms. Gray said the Boards need to get out and do their own investigations to ensure firms will not practice in an area where they are deficient.

14. Report of the Uniform Accountancy Act Committee

UAA Committee Chair Baker detailed the process the task force on inactive/retired CPAs is going through. The concept of “retired CPA” has not yet been considered by the task force, and, consequently, no recommendation is ready from that task force.

15. Policy Discussions

CPT Committee Chair Reisig reported he had seen a draft of the practice analysis’ findings. It includes the content for the next version of the Uniform CPA Examination and he believes it is a good document with fair reporting. Executive Vice President Conrad said the biggest items in the report are that that examination will continue to have four parts and that REG and BEC will each be extended so that all four sections are the same length. She reported the NASBA CBT Administration Committee and the Executive Directors Committee had provided input to the practice analysis. She stressed the importance of Boards commenting on issues related to examination administration, which is under the purview of the State Boards. Some states may need to change their statute and rules to administer the new Examination and it will be important to work with the UAA Committee to ensure that it contains language that the states might need to administer the new version of the Uniform CPA Examination, Mr. Reisig stated.

Past Chair Johnson summarized the findings of the Leadership Development Group, which included Samuel K. Cotterell (ID), J. Michael Kirkland (NY), George Krull (IL), Cathy Landau-Painter (ME), and Sandra A. Suran (OR). The group was charged with making recommendations to the NASBA Chair as to how best to identify, recruit, develop and promote a diverse pool of men and women for appointments within NASBA and external appointments in the sphere of accounting regulation. Among their recommendations was providing training to polish the communication skills of those volunteers likely to represent NASBA in future appointed positions.

Mr. Cochran reported on the Education Committee’s staff contacting the higher education accrediting bodies to bring about a discussion to ensure they are validating schools that are providing quality accounting education. A summit meeting of the accrediting bodies, cosponsored by the AICPA, is under development.

16. Upcoming Meetings

Chair Davenport reported the next NASBA Board meeting will be held on October 23 in the Laguna Cliffs Marriott Resort in Dana Point, CA. It will be followed by NASBA's 108th Annual Meeting, which will be held October 25-28, 2015.

17. Adjournment

The meeting was adjourned at 4:25 p.m.

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HIGHLIGHTS OF THE BOARD OF DIRECTORS MEETING

OCTOBER 23, 2015

DANA POINT, CALIFORNIA

At a duly called meeting of the 2014-2015 Board of Directors of the National Association of State Boards of Accountancy, Inc., held on Friday, October 23, 2015 at the Marriott Laguna Cliffs Resort in Dana Point, CA, the Board took the following actions:

- Approved the 90-day exposure for comment of the proposed revisions to Section 6(d) of the Uniform Accountancy Act and Model Rule 6-7, as recommended by the NASBA/AICPA UAA Committee and presented by NASBA UAA Committee Chair J. Coalter Baker (TX). The proposed change would establish a "CPA-retired" license classification within the "CPA-inactive" category for those at least 55 years of age, and would permit limited voluntary services when using that title.
- Approved NASBA's strategic plan as presented by NASBA Vice President – Strategic Planning and Program Management Ed Barnicott. The updated plan includes new objectives to increase the diversity of NASBA's leadership and State Boards, build the number of candidates in the CPA licensing pipeline and facilitate NASBA leadership development.
- Received a report from NASBA Chair Walter Davenport (NC) on his meetings during the last quarter with representatives from: Chartered Accountants of Ireland, South African Institute of Chartered Accountants, American Institute of CPAs' Council and the biennial "summit meeting" with AICPA leadership.
- Learned from President and CEO Ken Bishop that NASBA leaders have been in discussion with AICPA leaders regarding the AICPA's offering of the CGMA credential to non-CPAs to try to mitigate public confusion over which individuals are licensed CPAs and possible harm to the CPA pipeline.
- Heard from Executive Vice President and COO Colleen Conrad that conversations are continuing to make enforcement more collaborative among the State Boards, professional associations and federal regulators. NASBA is working with State Boards to ensure referrals sent out by the Department of Labor are reaching the appropriate people in the jurisdictions.
- Received a report from CBT Administration Committee Chair Richard N. Reisig (MT) on the comment letter developed by several NASBA Committees in response to the Board of Examiners' Exposure Draft on the future Uniform CPA Examination's content. Mr. Reisig also outlined several

administrative issues under discussion by the CBT Administration Committee, including possible extension of testing windows by ten days commencing in the second quarter of 2017.

- Approved the extension of the mutual recognition agreement with the Chartered Accountants of Ireland until March 31, 2016, as recommended by the NASBA/AICPA International Qualifications Appraisal Board to provide both CAI and IQAB additional time to develop a new agreement that clearly outlines what professionals will need to do to become licensed. IQAB Chair Telford A. Lodden (IA) also reported IQAB has included comments for the Board of Examiners to consider in revising the Uniform CPA Examination if the REG section is to continue to serve as IQEX.
- Ratified the Executive Committee's acceptance of the Audited Financial Statements and their inclusion in NASBA's annual report. On a motion by Treasurer E. Kent Smoll (KS) and duly seconded, the Executive Committee's approval of the reappointment of LBMC (formerly Lattimore Black Morgan & Cain, LLP) as NASBA's independent auditor for the year ending July 31, 2016 was ratified by the Board. The Board also approved the change in NASBA's investment policy recommended by the Administration and Finance Committee.
- Approved changes to the Audit Committee's charter, as presented by Audit Committee Chair Rick Isserman (NY). The charter will be published on www.nasba.org.
- Thanked Chair Davenport, retiring Central Regional Director Janeth Glenn (NE), Middle Atlantic Regional Director Robert J. Cochran (VA), Past Chair Carlos E. Johnson (OK) and Executive Directors' Liaison to the NASBA Board Russ Friedewald (IL) for their service to NASBA.

Highlights of the Board of Directors Meeting

October 27, 2015 – Dana Point, CA

At a duly called meeting of the 2015-2016 Board of Directors of the National Association of State Boards of Accountancy, Inc., held on Friday, October 27, 2015 at the Marriott Laguna Cliffs Resort in Dana Point, CA, the Board took the following actions:

- Re-elected E. Kent Smoll to serve as NASBA Treasurer.
- Re-elected Laurie J. Tish (WA) to serve as NASBA Secretary.
- Elected Jimmy E. Burkes (NC) to serve as NASBA's representative on the Board of the NASBA Center for the Public Trust.

The next meeting of the NASBA Board of Directors will be on January 22, 2016 in Miami Beach, FL.

Distribution: State Board Chairs/Presidents, Members and Executive Directors, NASBA Committee Chairs, NASBA Board of Directors, NASBA Staff Directors.

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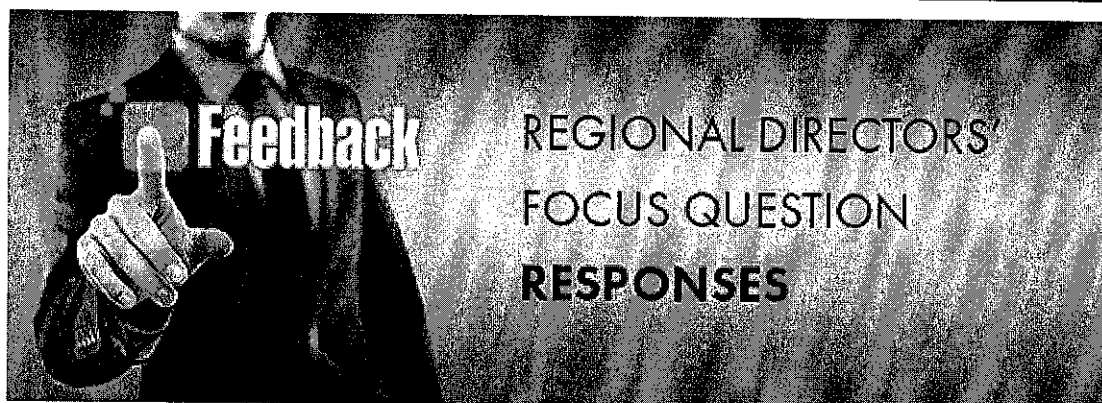
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Executive Summary
August –October 2015
Regional Directors' Focus Question Responses
38 Boards Responding

Boards have received questionnaires from the AICPA Professional Ethics Executive Committee related to how closely the state's Code of Conduct relates to the AICPA's. This is a part of a joint NASBA/AICPA effort to arrive at a uniform Code of Conduct throughout the U.S. by focusing on differences and reaching interpretations acceptable to all. Does your Code presently differ from the AICPA's in any significant way and, if so, in what way?

No: 24 Yes: 12 Not sure/haven't addressed: 2

In what way? See Report for details.

Has your Board discussed the U.S. Supreme Court's February 25, 2015 decision in Federal Trade Commission v. North Carolina State Board of Dental Examiners?

No: 12 Yes: 26

NASBA's Regional Directors have expressed concern over the length of time it takes to remove substandard firms from practice. How quickly and under what circumstances does your Board become aware of a firm in your state having failed or passed with deficiencies its peer review? Does your Board monitor remediation measures prescribed and how effective they have been in improving the firm's practice?

Responses include: AK, AL, GA, NV – During renewal process; IL DFPR – When receive a complaint; CA – Firms are required to provide us with a copy of peer review reports with ratings of fail and, and peer review program providers are required to send a report with fail rating.

What is happening in your jurisdiction that is important for other State Boards and NASBA to know about?

Responses include: OH – Aggressively investigating and disciplining firms and individuals doing ERISA audits that are not registered to do attest work; FL – Amending rules for firm licensure and peer review; AK – Fee increases coming in October.

Can NASBA be of any assistance to your Board at this time?

Responses include: CA – Encourage Boards to complete California's attest study survey; MS – Assist with proposed legislation if consolidation or other unfavorable legislation is proposed; OK – Assist in analyzing and providing feedback to Executive Order and letter from Attorney General; OR – Will need help in assessing whether or not to propose achieving semi-independent state agency status during 2017 Legislation Session.

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NASBA REGIONAL DIRECTORS' REPORT

The following is a summary of the written responses to focus questions gathered from the member boards by NASBA's Regional Directors between July 30, 2015, and October 5, 2015. Responses which indicated nothing to report have not been included in this summary.

Respectfully submitted,

John F. Dailey, Jr. (NJ) – Chair, Committee on Relations with Member Boards

Northeast Regional Director

J. Coalter Baker (TX) – Southwest Regional Director

Maria E. Caldwell (FL) – Southeast Regional Director

Robert J. Cochran (VA) – Middle Atlantic Regional Director

W. Michael Fritz (OH) – Great Lakes Regional Director

Janeth Glenn (NE) – Central Regional Director

Edwin G. Jolicoeur (WA) – Pacific Regional Director

Benjamin C. Steele (NV) – Mountain Regional Director

1. Boards have received questionnaires from the AICPA Professional Ethics Executive Committee related to how closely the state's Code of Conduct relates to the AICPA's. This is a part of a joint NASBA/AICPA effort to arrive at a uniform Code of Conduct throughout the U.S. by focusing on differences and reaching interpretations acceptable to all. Does your Code presently differ from the AICPA's in any significant way and, if so, in what way?

Alabama – No.

Alaska – The Board reviewed the June 2015 questionnaire from AICPA and only indicated that AK differs from the AICPA code regarding member-prepared records/member's work product. The Board indicated that holding member prepared records for unpaid fees can cause further harm; holding the papers until there is an agreement in place for receiving payment is likely a better solution.

Arizona – Arizona Administrative Code Article 4 Rules R4-1-455 – R4-1-455.04 are very abbreviated in comparison to the AICPA Code of Conduct. The state of Arizona currently has a rulemaking moratorium in place and any rulemaking must be approved by the Governor's office. The Board does have draft rules that would incorporate the AICPA Code of Conduct by reference and the Board intends to seek approval to move forward with its rulemaking.

A.R.S. §41-1028. Incorporation by reference

A. An agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.

B. The reference in the agency rules shall fully identify the incorporated matter by location, date and otherwise and shall state that the rule does not include any later amendments or editions of the incorporated matter.

C. An agency may incorporate by reference such matter in its rules only if the agency, organization or association originally issuing that matter makes copies of it readily available to the public for inspection and reproduction.

D. The rules shall state where copies of the incorporated matter are available from the agency issuing the rule and from the agency of the United States or this state or the organization or association originally issuing the matter.

E. An agency may incorporate later amendments or editions of the incorporated matter only after compliance with the rule making requirements of this chapter.

Arkansas – We have not compared our code of conduct with the AICPA’s version.

California – The questionnaire received by the Board of Accountancy (CBA) focuses on records requests. In most instances, California’s statutes and regulations align closely with those included in the AICPA Code of Professional Conduct. The primary deviations noted in the CBA’s responses relates to retention of clients’ records for purposes of obtaining payment of a fee. California’s statutes and regulations are designed to promote consumer protection.

Colorado – The Colorado Board adopted the AICPA Code of Conduct by incorporating it by reference in its rules. The differences from the Code are highlighted in the attached Appendix A.

Connecticut – Yes, the Connecticut statutes and regulations differ from the AICPA Code of Conduct regarding commission and contingency fees.

Florida – No significant differences. We require return of client records only a single time, except in the case of a natural disaster.

Georgia – I believe NASBA or the AICPA have already compared Georgia’s Rules to the Code of conduct and noted differences.

Guam – No, we adopted the AICPA Code through reference.

Illinois BOE – IL PARLC has added the current dated Code of Conduct to its Administrative Rules that will be pending with the IL Joint Committee on Rules and hope they are adopted this year.

Illinois DFPR – The Department of Financial and Professional Regulation plans to adopt the AICPA Code of Conduct in its administrative rules within 2015. However, Section 1.700 of the Code of Conduct is in conflict with Section 27 (Confidentiality of licensees and registrant’s records) of the Illinois Public Accounting Act, so this provision may not be adopted via administrative rule.

Indiana – The Indiana statute and regulations refer to the AICPA Code of Conduct by reference, as of a specific date. This was an issue our legal counsel struggled with.

Iowa – Executive Director is certain there are differences but not certain how significant.

Kansas – The only diversion we have from the AICPA’s code of professional conduct is that we do not adopt Sections 1.800 Form of Organization & Name; 1.810.020, Partner designation; 1.810.030, “A member’s responsibility for nonmember practitioners”; 1.810.040, “attest engagement performed with a former partner”, 1.810.050, “Alternative practice structures”; and 1.820.040, “use of a common brand name in firm name”, as we have other regulations that cover these sections.

Kentucky – No.

Louisiana – Our rules are more restrictive than the AICPA rules of conduct with regard to independence (audit sensitive positions and definition of client) but otherwise, our rules do not differ significantly from AICPA's Code.

Michigan – Michigan's Code of Conduct is directly linked to the AICPA's Code. However, it is based on the Code as of a specified date which is currently the Code as of June 1, 2011. Periodically, Michigan's Administrative Rules are updated. At the time of the next update, the then latest AICPA Code will be referenced.

Minnesota – No.

Mississippi – While the Mississippi State Board of Public Accountancy's Statutes, Rules and Regulations do not specifically cite the AICPA Rules of Professional Conduct, they do not differ significantly.

Nebraska – The Board does have separate Rules of Professional Conduct within Board regulations Chapter 5 (http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Board_of_Public_Accountancy/Title-288/Chapter-05-pdf). The Board determined a review should be conducted to determine if any updates and/or changes were appropriate. It is anticipated this review will be conducted in 2016 led by Board member Dr. Thomas Purcell with the assistance of staff. The review will determine specific differences between the AICPA Code and current regulations.

Nevada – The Nevada Board references the AICPA Code of Conduct and has some exceptions.

New Hampshire – New Hampshire adopted the AICPA Code in 2014.

New Jersey – Major differences include: withholding records for payment of fees for licensee prepared client records (NJ follows the UAA model rule); copies of clients' records must be made upon request within a reasonable period of time in New Jersey even if a copy had been previously provided; disclosure of commissions must be provided in writing; and advertising may not include commentary regarding quality of service.

New Mexico – The New Mexico statute states that all licensees will abide by the AICPA Code of Conduct PLUS some New Mexico rules regarding Board communications, reportable events, frivolous complaints and conflict of interest.

New York – To date, NY has not received a questionnaire from the AICPA PEEC. NYS does not have a code of conduct. Rather we have regulations that define what is considered unprofessional conduct.

North Dakota – We no longer maintain a state-based Code. Our regulations make the AICPA Code applicable to our licensees.

Ohio – The Ohio Board does not have a Code of Conduct per se, but the rules and regulations for Ohio CPA's do require the same type of compliance as the AICPA regarding CPA conduct. CPA's

are required to maintain integrity, objectivity, avoid conflicts, confidentiality and exercise due care in performance of professional services.

Oklahoma – Oklahoma adopted the AICPA's Code of professional conduct. There is no difference.

Oregon – Oregon submitted a questionnaire response which outlined that Oregon's code differs in two ways primarily:

- 1) On the policy issue of ever allowing a practitioner to withhold records over failure to pay, Oregon laws and rules simply do not permit this. Oregon indicated that this was not an arena where any motion is under way to change policy.
- 2) The AICPA code does have a lot more specificity in its approach than Oregon's code of conduct does. This second main difference approach between AICPA and Oregon laws and rules has raised awareness in our jurisdiction that it may be beneficial to review AICPA's approach to determine if any additions to Oregon's Code of Conduct should be made – while stopping short of making a policy change as discussed in number 1 above.

Pennsylvania – The Pennsylvania code does differ from the AICPA COPC because Pennsylvania does not incorporate the AICPA COPC by reference but rather codifies specific requirements. Updates to the AICPA COPC throughout the years have not been updated by our state, however. This was brought to the attention of Vice Chair Barry Berkowitz by Raymond Johnson at a previous meeting. We are currently working with John Johnson of NASBA to change the PA code to conform to the AICPA COPC and keep pace with it as any further updates are made.

Rhode Island – No (adopted no changes).

South Dakota – No, our Code does not differ in a significant way.

Texas – The Board's Code of Professional Conduct is similar to the AICPA's. In fact, there are specific provisions of the AICPA's Code of Conduct that have been adopted by the Board by reference. One area of difference that is noteworthy is the area of client confidentiality. The Board does not permit the disclosure of client communications pursuant to a subpoena unless it's an IRS, SEC or Grand Jury subpoena. Other subpoenas are not recognized unless signed by a judge. The Board's rules also address frivolous complaints, the reporting of adverse judgments against a licensee and requiring substantive responses to Board requests for information from licensees.

Vermont – Our board does not have separate a code per se and generally follows the AICPA Code of Conduct. We specifically reference the AICPA Code of Conduct in our ethical mandate within the VT rules and statute. Our administrative rules concerning the return of client work papers distinguishes between original client-provided records and reproductions. Otherwise the Vermont rules and statutes appeared to be consistent with the AICPA Code. (See Appendix C for a copy of our response to the AICPA's Questionnaire detailing our comparison of the Vermont statute and rules to the AICPA Code of Conduct.)

Virginia – No, our code does not differ from the Code of Conduct. Our language is as follows: §54.1-4413.3. Standards of conduct and practice. Persons using the CPA title in Virginia and firms providing attest services, compilation services, or financial statement preparation services to

persons or entities located in Virginia shall conform to the following standards of conduct and practice:

1. Exercise sensitive professional and moral judgment in all activities.
2. Act in a way that serves the public interest, honors the public trust, and demonstrates commitment to professionalism.
3. Perform all professional responsibilities with the highest sense of integrity, maintain objectivity and freedom from conflicts of interest in discharging professional responsibilities, and avoid knowingly misrepresenting facts or inappropriately subordinating judgment to others.
4. Follow the Code of Professional Conduct, and the related interpretive guidance, issued by the American Institute of Certified Public Accountants, or any successor standard-setting authorities.
5. Follow the technical standards, and the related interpretive guidance, issued by committees and boards of the American Institute of Certified Public Accountants that are designated by the Council of the American Institute of Certified Public Accountants to promulgate technical standards, or that are issued by any successor standard-setting authorities.
6. Follow the standards, and the related interpretive guidance, as applicable under the circumstances, issued by the Comptroller General of the United States, the Federal Accounting Standards Advisory Board, the Financial Accounting Standards Board, the Governmental Accounting Standards Board, the Public Company Accounting Oversight Board, the U. S. Securities and Exchange Commission, comparable international standard-setting authorities, or any successor standard-setting authorities.
7. Do not engage in any activity that is false, misleading, or deceptive.

Washington – Board Chairs' Position: As the Board Chair mentioned in response to the questionnaire regarding client records, Boards of Accountancy and the AICPA each have a different stated purpose for their organizations. It is unrealistic to believe the AICPA Code of Conduct would be uniform with Board rules unless the AICPA wants to significantly raise the bar on their Code of Conduct to increase protections for the public and protect the public interest. The Board Chair believes that is the discussion we should be having prior to trying to identify differences and promote uniformity. (See Appendix B for certain more restrictive board rules prepared by the Washington Board's Executive Director.)

Wyoming – This Board has not received such a questionnaire; however, the Board's rules at Chapter 6 reference outdated incorporations by reference and will need to be updated. We anticipate that the Code of Conduct will be incorporated by reference in its entirety which should mean that the Board's rule and the Code of conduct should not differ; however, that is only speculation at this time.

2. Has your Board discussed the U.S. Supreme Court's February 25, 2015 decision in *Federal Trade Commission v. North Carolina State Board of Dental Examiners*?

Alabama – There has been some discussion at the last two Board meetings; however, no action has been deemed to be necessary at this time.

Alaska – The Board has not discussed this case or its impact on policies.

Arizona – The Board has discussed the case and is awaiting further input from the Attorney General's Office. At this time, there has been no change in policy or procedure.

Arkansas – The Board has had a lot of discussion about this case with our legal counsel. It is too soon to tell if we will change policies but we are monitoring other Boards and awaiting a response from our Attorney General's and/or Governor's office.

California – The California Board of Accountancy has been briefed on U.S. Supreme Court's February 25, 2015, decision in *Federal Trade Commission v. North Carolina State Board of Dental Examiners*; however, no formal discussion has been held.

Colorado – Yes.

Connecticut – Yes, the Connecticut State Board of Accountancy has discussed the matter at length with our Governor's counsel, our Attorney General's Office and has reviewed our policies and procedures regarding the unauthorized practice and use of the CPA title.

Florida – Yes, there has been general discussion of this case at the July 31, 2015 meeting. The Attorney General is studying this for all professions and we expect to have a requirement for an increased involvement of non-licensees appointed to the licensing boards.

Georgia – The Board has not had any discussions on how this case would affect Georgia.

Guam – Yes, it has been discussed, but we do not foresee a need to change present policy since it does not constitute a restrictive barrier to entry into the profession.

Illinois Board of Examiners – The Illinois BOE has not discussed this case. It should be addressed by IL PARLC.

Illinois Department of Financial and Professional Regulation – The Public Accountant Registration and Licensure Committee discussed this case at its June 30, 2015 meeting. Under the Illinois Public Accounting Act, the Committee is advisory and accordingly has no need to change its policies.

Indiana – The only discussion that the Indiana Board of Accountancy has had in relation to the North Carolina Dental Board is as a follow up to Noel Allen's NASBA regional meeting presentations. Neither our Board, nor legal counsel, has weighed in on the implications to our profession or State.

Iowa – It has been discussed and we received updates as available. Options are being discussed but not decisions as yet.

Kansas – Yes.

Kentucky – No.

Louisiana – No.

Michigan – Not as of this time.

Minnesota – Yes, we have discussed it at length and we are following what is happening in other states relative to the position being taken. We are not changing our policies as a result of the case.

Mississippi – Yes, the Board has discussed the decision but has taken no action and is awaiting further clarifications.

Nebraska – Yes, the Board discussed and was updated by the Board Attorney on concerns of the case. The Board reviewed a letter provided by the Nebraska Attorney General regarding his concerns and recommendations regarding the case.

Nevada – Yes, the Board has reviewed and discussed the matter.

New Hampshire – The Board is aware and has discussed this issue with their attorney.

New Jersey – While the issue has been provided to the Board members, there has been no formal discussion of the case.

New Mexico – Yes, and we believe that we have some safe harbors like public members, appointed by the Governor, and review by the Regulation and Licensing Department.

New York – The New York State Board for public accountancy has not discussed the FTC v. North Carolina Dental Board due to the fact that all decisions regarding professional licensees are made by the Board of Regents and the NYS Education Department and not made by the members of the board for public accountancy. The members of the NYS board for public accountancy act in an advisory role to the Board of Regents and Department.

North Dakota – Not formally.

Ohio – The Board has discussed this decision but it has not altered how the Board handles unlicensed, as the Board has always deferred matters that do not fall within their jurisdiction to local authorities.

Oklahoma – Oklahoma's Governor issued Executive Order 2015-33 and the Attorney General has issued a letter regarding the case. As a result, many procedures must be amended and policies will be reviewed.

Oregon – The Oregon Board will receive legal advice on this issue on October 19, 2015. The Board is not prepared to discuss that further in a public document nor would it be appropriate at this time to speculate ahead of Board consideration if the advice will result in any policy changes. That said, it appears likely that by the 2015 Annual Meeting it will be known if any policy changes will result in Oregon.

Pennsylvania – We have not had any formal discussions regarding the case, other than bringing it to the Board’s attention at an update by the Chairperson of the Board following the 2014 Annual Meeting. Our Board Counsel has reviewed this particular case and has advised the Board that under our current statute and regulations, he believes we have no exposure. Pennsylvania Law substantially inhibits the ability of its professional Boards to perform any function other than regulatory and quasi-judiciary. We also incorporate non licensees as a required component of our Board membership.

Rhode Island – Yes.

South Dakota – Yes, the Board has discussed the case and follow-up briefings have been presented to us from our legal counsel.

Texas – Yes, the Board has been briefed on the effect of Board members being considered “market participants” by the courts and how “active state supervision” may affect the validity of a Board decision. The same issue has been raised in a recent lawsuit, subsequent to the North Carolina decision, that has been brought against the Texas Medical Board.

Vermont – No, not at this time.

Virginia – The Virginia Board has had some discussion, but not in any great detail. The Board is aware, and we continue to monitor what’s happening nationally as it relates to the decision (primarily through NASBA updates). The Board has chosen to wait for guidance from the Attorney General’s Office here in Virginia. Some minor changes have been made to our enforcement process as a result, to include eliminating the use of “cease and desist” letters and terminology.

Washington – Yes; The Board Chair evaluated the court case and presented his view to the Board. The Chair concluded there are significant differences between the Washington Board of Accountancy structure and oversight and the fact pattern in the U.S. Supreme Court case such that the case presents no concern to the way the Washington Board of Accountancy is structured and operates.

Wyoming – The Board has had a brief discussion regarding the case. The Office of Attorney General staff is continuing to study the issue to determine whether policy changes need to occur at the Board level and/or at the State level.

3. NASBA’s Regional Directors have expressed concern over the length of time it takes to remove substandard firms from practice. How quickly and under what circumstances does your Board become aware of a firm in your state having failed or passed with deficiencies its peer review? Does your Board monitor remediation measures prescribed and how effective they have been in improving the firm’s practice?

Alabama – If a firm receives a failed or passed with deficiencies peer review, it is the responsibility of the firm to notify the Board. If the information is available through the AICPA website, it can be retrieved from the website by our staff. If the peer review is not completed within a specified period, notice of hearing is mailed to the firm and disciplinary action is taken by the Board. A firm permit to practice is not issued if the firm does not complete its peer review. Follow up of remediation would be a function of the ASCPA Peer Review Committee.

Alaska – The Board only requires updated information about peer review at renewal (December of odd numbered years). The State Society holds the contract for the State's peer review (currently with CalCPA). The Board does typically receive copies of the peer review acceptance letters and those that show fail or pass with deficiencies may be forwarded to the investigator for additional review.

Arizona – The Board just recently discussed this issue at a special meeting on September 9 and the Board's Law Review Committee discussed as well at its meeting on September 10. Currently, the Board does not take disciplinary action solely on the basis of a pass with deficiency or failed report. On occasion, the Board has exercised its powers under A.R.S. §32-742.01 which allows the Board on its own motion, or on receiving a complaint or *any other information* suggesting violations of its statutes or rules to open an initial analysis investigation file. The Board has used the peer review reports as *any other information* to evaluate further the need to protect the public. The current discussions, while not yet formalized, are leading to either the Board's Peer Review Oversight Committee reviewing the specific deficiencies in the peer review reports and making a recommendation to the Board on whether or not to open an initial analysis investigation file.

Arkansas – Firms in our state that have a failed peer review can go through our Quality Review program – peer review is not a requirement for firm licensure here. We are trying to make it a requirement via new legislation.

California – The California Board of Accountancy receives information on an accounting firm's peer review rating via the following ways:

- An accounting firm that receives a peer review rating of *fail* is required to submit a copy of the peer review report, including any documents prescribing remedial or corrective actions imposed within 45 days of the peer review report being accepted.
- An accounting firm receiving a peer review rating of *pass with deficiency* is required to submit a copy of peer review report, including any documents prescribing remedial or corrective actions imposed upon request from the CBA (which would need to be done within 30 days of the request).
- A CBA-recognized peer review program provider is required to submit a copy of a peer review report with a rating of fail to the CBA within 60 days of the report being accepted.
- At the time of license renewal an accounting firm is required to complete a peer review report form, on which the firm must document the peer review rating received for its most recent peer review.

For all accounting firms receiving a peer review rating of *fail*, the CBA reviews the peer review report, including any accompanying documentation to determine if further investigation is warranted. In instances where no additional investigation is required, the CBA will monitor the remedial/corrective actions to ensure they are completed. In instances where further investigation is warranted, the CBA will conduct a thorough and in-depth investigation to determine if possible disciplinary action is necessary to ensure consumer protection.

Colorado – The peer review requirement is new for Colorado, so the Board does not have enough experience in this area to provide a response. The CPA firms had to attest to having undergone a peer review during the renewal period in August, 2014. The CPAs will need to attest this upcoming renewal cycle, November 2015.

Connecticut – The Connecticut State Board of Accountancy requests that peer review acceptance letters be filed during the renewal process. The Board does not monitor firms who pass with deficiency or fail the audit. The Board currently relies on the peer review administrators to cure any defects with non-passing firms. We hope to work to strengthen our statutes and regulations to include more oversight in this process in the future.

Florida – We do not have a process to receive peer review reports.

Georgia – The Board typically finds out about deficiencies during the firm renewal process when firms are required to submit their peer review results. The Board does monitor the results to get back to a pass rating.

Guam – All firms are required to submit their peer review results with their license renewal so we usually know upon completion of the review. We do monitor remediation measures required of firms with deficiencies for completion. We have not seen repetitive deficiencies to date.

Illinois BOE – This should be on the agenda for IL PARLC to address.

Illinois DFPR – The Department becomes aware of a substandard firm upon receipt of a complaint. The Department monitors remediation measures when necessary.

Indiana – This is a fair and valid question. Unfortunately, it is almost a two-year turnaround from the peer review report date until resolution in Indiana. Due to privacy issues, the Indiana Board does not become aware of a deficient peer review until it has completed the AICPA process which is then referred by the administrative entity (in most cases the Indiana CPA Society), to the INCPAS Peer Review Committee, then to the Peer Review Oversight Committee (PROC is a subcommittee appointed by the Indiana Board of Accountancy). PROC will then refer to the Indiana Attorney General's Office as a complaint. The 2013 failed peer reviews were referred in late 2014 and early 2015. As an example, an April 2013 failed system review was referred for settlement in May 2015 and approved by our Board at the September 2015 meeting. As a point of reference there were 49 system reviews in 2013, with one fail, and 107 engagement reviews, with 5 fails.

Iowa – We rely on complaints being filed, on notification from the State Auditor. Peer review is also required.

Kansas – Usually during the Peer Review process, if the peer review has been in process for a while; and for sure at the very end when they are issued their letter of completion. The Kansas board is able to limit the scope of practice of a firm that has received 2 pass with deficiencies within a 12-year period (does not have to be consecutive) and upon the first failed peer review.

Kentucky – The members review all failed and pass with deficiencies reports when they are received from the firm. Staff maintains a timeline on each firm to ensure a report is received when due. The members receive the associated documents and decide whether to impose sanctions in addition to those imposed by the peer review program including sending an investigator to review the firm's practice. In some cases the sanctions have included the firm giving up its attest practice.

Louisiana – We have access to AICPA's FSBA website which we monitor monthly, so we know very quickly when a firm in our state has failed or passed with deficiencies. We also know if a firm

has not completed the peer review by its due date. We send an inquiry letter to firms who fail requesting that certain information be retained for future availability should the firm receive another fail or pass with deficiency. We send an inquiry letter to firms who appear to be late asking for an explanation of what steps are being taken to remedy the situation if it is correct and a specific date the peer review is expected to be completed. Regulatory action may be and has been taken on late filers.

Minnesota – The Board reviews all peer review reports and also has taken action against firms.

Mississippi – The State Society and the Board have a formal agreement whereby the Society provides the Board twice per year with a list of firms enrolled in the peer review program and a list of firms removed from enrollment and the reason for removal.

The Board also requires firms which perform engagements requiring peer review to enroll in the peer review program and either post the peer review on the AICPA Facilitated State Board Access (FSBA) website or provide the State Board with a copy of the peer review. Another means the Board uses to monitor firms is the requirement to disclose information about types of engagements performed, date of last peer review, and name of reviewer on Board applications and firm permit renewal forms.

By using the information provided by the Society, and from ESBA, and information obtained from firm registration, the Board is able to detect firms that have failed the peer review or have passed with deficiencies. The Board may monitor remediation measures prescribed by the peer review program. However, the Board does follow-up and opens discipline cases on firms when remediation fails, and may require such firms to enter into pre-issuance review agreements, or may suggest a resolution where the firm agrees to cease performing certain levels of engagements.

Nebraska – The Board is in the process of ending its Quality Enhancement Program (QEP) and requiring peer review for CPA firms conducting attest and compilation services. Staff telephones firms listed who failed to determine their status and is reported to the QEP Committee of the Board for appropriate follow-up including pre-issuance review, CPE, or other requirements. It is anticipated monitoring of these firms will increase when Peer Review is required.

Nevada - The Nevada Board requires individuals/firms to report peer review findings. Based on receipt of a fail or pass with deficiencies report the Board will monitor to assure that all follow-up has been complied with. The Board also makes additional inquiries of the practitioner and in some cases disciplinary action is taken to assure the issues have been resolved.

New Hampshire – This has not been an issue.

New Jersey – The New Jersey Board has a Peer Review Oversight Committee (PROC) that meets regularly to address this issue. Any firm that receives two successive Pass with Deficiencies or Fail reports is subject to an accelerated 18-month Peer Review.

New Mexico – We have experienced a 30-day delay in the actions of the RAB being posted to the FSBA website. We have disagreed with the remedial action recommended in one case last year. We do not believe there is any transparency in the peer review process and that the Society at the direction of the AICPA does not disclose sufficient information to the Board to effectively regulate deficient firms.

New York – The Quality Review Oversight Committee holds five meetings per year and it reviews all firms that have a peer review report that is a “pass with deficiencies” or “failed.” In advance of every meeting, a report from the Facilitated State Board Access (FSBA) website is run. This listing is then provided to NYS Sponsoring Organization (NYS Society of CPAs) and their peer review staff updates the status of the firms with information from Peer Review Information System Manager (PRISM). The QROC monitors the firms’ compliance until the final acceptance by the Report Acceptance Body. The QROC has not reviewed its effectiveness in improving the firms’ practice.

North Dakota – Our access is quite good. We are able to obtain relevant documents from the FSBA or the firms. However, awareness of problem situations could be more timely. As a first step, we will be examining a status report next meeting.

Ohio- The Ohio Board requires a copy of the firms peer review with their renewal. If the peer review is a “subject to” or failed review the Board’s Firm secretary tracks the firms until the firm receives a pass. If the firm fails to meet compliance requirements within the time allotted by the PEER review administrator, the firm is placed in an expired status and the investigative process proceeds to determine compliance.

Oklahoma – Board staff is made aware of failed and pass with deficiencies reports immediately upon posting to the Facilitated State Board Access website. Each report is then evaluated by the Board’s Peer Review Oversight Committee which meets on a quarterly basis. Reports with severe deficiencies or consecutive failed or pass with deficiencies reports are submitted to the Board’s Enforcement Committee immediately following the PROC meeting.

Oregon – These policy issues are under active discussion in Oregon, currently at the level of its Peer Review Oversight Committee. Unless any policy changes are put in place as a result of that process at the PROC and Board level in the future, Oregon will remain a jurisdiction that is complaint driven where sanctions against firms are driven by complaints.

At the level of the PROC, focus at this time is on oversight of the peer review process, and what follow-up should occur by policy at the PROC level to Peer Review data and ensuring that firms are following up to Peer Review feedback / are engaged in Peer Review. PROC thus views its role as being the agent of the Board to deal with these issues, but does not view itself - and does not want to be viewed - as an extension of the disciplinary operations of the Board. Should a matter come to PROC’s attention that PROC would view as so problematic to warrant an investigation that could lead to discipline, it would refer the matter over to the compliance operations of the Oregon Board.

Pennsylvania – Our Board requires that licensees including firms indicate whether they have met the peer review requirements at the time they renew their biennial license. Any firms that do not meet the peer review requirement are referred to the Prosecution Division for potential charges to be brought based on the merits of the particular case. There is currently no process for monitoring the status of ongoing peer review matters including any remediation that is required by a peer monitoring organization such as the state society or the AICPA. If a firm failed to remediate and thus does not complete its peer review, then they would be obligated to make this disclosure at the time of license renewal. Absent that disclosure, it is unlikely that peer review deficiencies would come to the attention of the Board.

Rhode Island – Notified at the time of three-year renewal. If substandard report, then the Board requests a clean report before renewal.

South Dakota – In accordance with Administrative Rule 20:75, firms are required to submit their peer review documents within 30 days of the acceptance letter from the AICPA. The Board then reviews the document at the next scheduled meeting. If additional remediation is requested by the AICPA, our Board also requests that material for review. The Board monitors the remediation measures and at times has requested further documentation beyond the requirements of the AICPA. The Board is very effective in this practice.

Texas – This Board immediately implements remediation procedures after two consecutive deficient peer reviews. This can include an accelerated review, but also could include pre-issuance review of all attest work by a Board approved reviewer, or even limiting the practice of the CPA so that some or all attest services cannot be performed by the firm.

Vermont – In cases where firms that had issues with either peer review or a specific complaint we would not know until it was self-reported at renewal, included on the peer review report or when a specific complaint was lodged and subsequently investigated. As such, it could be a significant length of time before any action could be taken to remove a “substandard” firm. We have not noted many substandard reports for Vermont firms during our July 2015 renewal. In such situations we would work with the firm through an investigative process to try to determine the cause of the deficiency. Such investigations into deficiencies have been limited to date.

Virginia - This is obviously a hot topic within the peer review process, at NASBA (last two PROC Summits) and the AICPA, and with state boards. The Virginia Board has been looking at this for quite some time. With access to the FSBA, we have the ability to monitor peer review results. The AICPA’s recent reporting changes will assist in monitoring firms that have consecutive pass with deficiency or failed peer reviews. To date we do not have a formal process in place for monitoring remediation; however, the Board is looking at adopting a policy soon that will address this issue.

Washington – Effective September 5, 2014 the Board modified Board Rule, WAC 4-30-130, to provide that a firm must notify the board within 30 days of the date the peer reviewer or a team captain advises the firm that a grade of pass with deficiencies or fail will be recommended. The notification must include the details of any required corrective action plan being recommended by the peer reviewer or team captain, and the planned date (or time period within which) the firm would intend to complete such remedial action or actions if the proposed corrective action plan is approved by the appropriate peer review acceptance committee.

Notwithstanding any extensions of time by the peer review program administrator, failure by the firm to meet its planned schedule for completing its specific corrective action plan required by the peer review program and/or timely pay for the peer review services can result in board action.

The Board’s support staff do monitor corrective action plans and the effectiveness of the remedial actions.

Wyoming – The Board office becomes aware of peer review ratings that are less than pass either at the time the firm provides documentation to the Board office or when the Board staff accesses the materials from the AICPA FSBA. Depending upon the situation, the Board may monitor

remediation measures prescribed; however, there has not been a need so far that the Board or its staff are aware of.

4. What is happening in your jurisdiction that is important for other State Boards and NASBA to know about?

Alabama – The Alabama Board staff has become more aggressive in following up on licensees whose certificates have been revoked. The Executive Director made several site visits recently and confiscated CPA wall certificates that had been revoked by the Board. Those individuals who had continued to practice were admonished and informed that criminal charges could be filed against them if they continued to practice.

Alaska – Continue to have issues with funding that may impact Board participation at out-of-state meetings in 2016. Substantial fee increases for licensees are coming in October.

Arkansas – The Board is going through rule making right now to comply with two laws passed in the 2015 session. One law required us to make rules that make it easier for certain former licensees to reinstate their licenses. The other law requires us to issue temporary licenses to certain military members / spouses and create CPE exemptions for certain military deployments.

California – The California Board of Accountancy has released its survey on the 500-hour attest experience requirement. The results of the survey will aid the CBA in its discussion on whether to maintain, modify, or eliminate the requirement. The CBA will be reaching out to other State Boards via a survey for their input.

The CBA has selected the National Association of State Boards of Accountancy (NASBA) to conduct the comparison of State Boards of Accountancy's enforcement practices to the NASBA's Guiding Principles of Enforcement (NASBA Enforcement Guidelines). This comparison will aid the CBA in determining what jurisdictions can remain in the present no notice practice privilege. The CBA will begin making these determinations on and after January 2016.

Colorado – Not everyone is high☺. Given the changes in the law that occurred on June 30, 2015, which repealed paths for licensure, the Board now has four additional hearing requests based on the Board's denial of the applications.

Connecticut – The Connecticut State Board of Accountancy has been making many strides. The Board is currently reviewing the application process in hopes of streamlining the process. We are revising our statutes and regulations regarding commission and contingency fees in order to create more uniformity with the Code of Conduct. In the 2015 legislative session, the Board revised our definition of "attest." The board has voted to accept the IQEX Exam for initial candidate. The Board is partnering with the Center for the Public Trust to establish a Connecticut chapter.

Florida – As a result of legislation passed in the 2015 session the board has begun rulemaking process to amend rules relating to firm licensure. Florida is also amending rules regarding peer review and has appointed members to the Peer Review Oversight Committee.

Georgia – We are currently going through our first individual CPA license renewal as a stand-alone licensing board.

Guam – We have submitted a draft bill covering mobility and other updates to our law and rules, which we expect to be passed in the October/November legislative sessions.

Illinois BOE – The Illinois Board of Examiners is in the process of updating and revising our Administrative Rules and will be submitted to the Joint Committee on Administrative Rules for promulgation very soon.

Illinois DFPR – The Department has proposed updated administrative rules for the Illinois Public Accounting Act which will be published for a first notice period on October 9, 2015.

Kansas – Regulation amendments.

Mississippi – In November 2015, several modules of the new online Licensing and Reporting System (LARS) will be activated. These include exam candidate applications, original license applications, reciprocal license applications, reinstatement applications, and firm permit applications. The current freestanding online CPE reporting application will be made a part of the LARS database in time for the June 30, 2016, CPE compliance period.

The Board is also proposing changes to the Accountancy Law. The primary change in the area of the requirements to sit for the CPA Examination is where the Board is proposing a law to allow a student with a bachelor's degree to sit for the Exam. The candidate would also have a time limit on earning the 150 hours college credit required to obtain a license.

Nebraska – The Board has prepared a 2015 Rule Package after review of several chapters and the creation of a new chapter for the new Peer Review requirement. The Board has proposed the UAA definition for the "Attest" definition and several other minor changes in several chapters being proposed for change after a public hearing and submission for approval to the AGO and Governors Policy Research Office.

New Jersey – Recent changes to Board regulations has finally resolved the issue we had regarding credits required to sit for the CPA Examination.

New Mexico – We are increasing compliance with peer review sections of the law. We are implementing a survey to see if firms are not reporting accurately to the RAB.

New York – New York is looking to update the Rules of the Board of Regents – Unprofessional Conduct, Special Provisions for the profession of public accountancy – 29.10 and the Regulations of the Commissioner Section 70.

North Dakota – We have examined the practices/interpretations related to educational courses allowed in the concentration, and have revised the approach, making it simpler to understand and administer.

Ohio – The Ohio Board has been very aggressive in investigating and disciplining firms and individuals doing ERISA audits that are not registered to do attestation work. The Board has received eight referrals in 2015 from NASBA of firms/individuals that have done ERISA audits that are not properly registered. Four of the firms have already had disciplinary hearings that resulted in fines, CPE and the requirement of a PEER review. Of the four remaining referrals, one firm is not out of business, another firm is pending a disciplinary hearing, a third is now in compliance and the fourth is being referred to the local prosecutor for unlicensed practice.

Oklahoma – The Executive Order issued by the Governor and the letter from the Attorney General to the licensing boards is significant. Other states' Governors and Attorney Generals are probably aware of the actions taken in Oklahoma.

Oregon – We are in the final stages of implementation of a large, across the board set of fee increases. Cooperation and direct help by the association has been amazing and plentiful, with very few problems as a result during implementation.

Pennsylvania – Based on the last change to our CPA Law enacted in August, 2013, we have been attempting to enact companion regulations including changes to our CPE requirements. Due to delays in the legislative and review process in Pennsylvania, these regulations are still pending implementation. Thus the biennial renewal period that expires 2015 will not have regulations to complement the underlying Law which will impact licensee renewal. It is hoped the regulations can be approved and implemented in early 2016.

Substantial changes include moving from the current requirement of eight hours of tax courses and 16 hours of A&A courses to eliminating the tax course requirement but increasing the A&A course requirement to 24 hours for anyone performing the attest function. Additionally, with the change in the law that no longer requires candidates to possess attest experience to become licensed, the new regulation attempts to protect the public by requiring a minimum of 400 hours of attest experience before performing as a supervisor or responsible report signer on an attest engagement. This requirement is not applicable for a licensee working for a peer reviewed firm. The proposed regulations also assist licensees in identifying the types of experience that will qualify a candidate for licensure.

Rhode Island – Discussion of PA conversion to the CPA.

Texas – In the coming months the Board will be examining the peer review process in order to more quickly address deficient attest work. The Board may look into mandating immediate regulatory intervention upon the first failed peer review that contains an audit or review. The current timeline for such puts the public at risk when regulatory action takes place no earlier than six years after a firm begins providing attest services.

Washington -

- The Executive Director of the Washington State Board of Accountancy has announced to the Governor his intent to retire from state service and his position as the Executive Director of the Board as soon as the Governor selects a replacement but no later than February 1, 2016.
- The Washington State Board is comprised of nine (9) Board members appointed by the Governor. The Board has a risk of losing five (5) seasoned Board members in FY 2016. During FY 2016 three (3) Board members will term-out having served nine (9) consecutive full year terms. Two (2) additional Board members must reapply for reappointment in FY16. Two (2) new Board members were recently appointed by the Governor.
- The Executive Director is to transfer \$1,650,000 to the state treasury in a separate account in the Fiscal Year to end June 30, 2016 for further transfer to a CPA Scholarship Foundation to “increase the number of students pursuing the certified public accounting license in

(Washington) State, Substitute Senate Bill 5534. A like amount is required to be transferred within the Fiscal Year to end June 30, 2017.

- We have been reviewing statutes and rules for proposed legislative updates in 2017 that would provide greater uniformity with the UAA.
- We will be adopting a social media platform and working with NASBA to produce a video regarding the Washington Board of Accountancy.
- Due to the significant turnover on the Board in 2016, we have been working with the State Society to identify qualified individuals to submit their application for appointment to the Board.
- The Board has initiated a Board Member Task Force to evaluate Board rules on the 150 semester hours of College or University credits required of Washington State applicants for the CPA Examination and Licensure in this state. The Board's concern is the efficacy of current Board Rules given the changing educational landscape, i.e. Credits for work experience, nano learning, Certificate Programs, content for the 30 hours after receiving a 120-semester hour college or university degree. The Task Force will also be looking at the acceptability of foreign based educational institutions as well as the credibility of the college or university accrediting organizations in the U.S.

Wyoming – A complete review and possible revision of all of the Board's rules is taking place. The Wyoming Society has asked whether the Board would appoint a member to work with the Society with respect to possible revisions to the Board's practice act. The Board office staff is in the very early stages of a licensing management system conversion which we hope will be complete by June/July 2016.

5. Can NASBA be of any assistance to your Board at this time?

Alaska – As the Board considers statutory and/or regulatory updates for 2016, we may ask for feedback/support.

California – The California Board of Accountancy would appreciate any encouragement to other State Boards to complete California's attest study survey.

Colorado – Yes. The Board is anxious to participate in the CPE tracking tool once it is upgraded. The Board would like to utilize the communication services for newsletter and other media for conducting outreach on a regular and ongoing basis.

Connecticut – Yes, the Connecticut State Board of Accountancy welcomes NASBA's assistance with reviewing and comparing our regulations and statutes to the Code of Conduct. We would also like NASBA's assistance in strengthening our peer review oversight and the adoption of the Uniform Accountancy Act.

Georgia – We are currently utilizing NASBA's legal resources to update our Board policies.

Guam – Tell us when we should plan for the start of international testing in China and/or Korea, i.e., the demise of the Guam Computer Testing Center and the loss of funding for our Board?

Kentucky – We use NASBA for publication and distribution of our newsletter which is very helpful.

Mississippi – The Board may need NASBA's assistance with the proposed legislation in the event that consolidation legislation or other unfavorable language is also proposed by the legislature.

Nebraska – The Board is hopeful NASBA will continue to provide support and lead discussion on Board backend database and IT concerns and issues.

New Jersey – The New Jersey Board will be assisted by NASBA in our upcoming CPE Audit.

New Mexico – Of course. We are planning for an Act re-write in 2017. We will need your help then. We also need your continued help in promoting transparency in the peer review process by the AICPA.

New York – The NY board looks forward to finding solutions with NASBA to resolving the current matters regarding the electronic transfer of education records and the upload of information to the Accountancy License Database.

Ohio – NASBA has provided a lot of assistance in forwarding the referrals for DOL violations. In addition, the CPE Tracking program will be very helpful and help expedite our CPE audits. Continued support of these type of programs is very helpful to the State Boards.

Oklahoma – NASBA's assistance in analyzing and providing feedback to the Executive Order and the letter from the Attorney General is appreciated.

Pennsylvania – We are already utilizing NASBA services to assist us with ongoing projects as described in the questionnaire. Continued assistance is needed in identifying how we can more closely align with the AICPA COPC.

Oregon – It appears very likely at this time that the Board will engage in a very thorough assessment over the next 6-9 months as to whether or not it should propose achieving semi-independent state agency status during the 2017 Legislative Session. NASBA assistance during the process and especially should this become a 2017 session bill would be extremely helpful.

Vermont – We appreciate the assistance to date and find it invaluable especially to our Board with its limited resources.

Virginia – NASBA is currently working with the Virginia Board to develop additional training videos. Further assistance is not needed at this time.

Wyoming – The Board appreciated that Ben Steele, Pat Hartman and Dan Dustin visited during its September meeting. The discussion was productive and at this time, we do not feel we have any pressing needs which require assistance from NASBA. The review of the Board's practice act may prompt our reaching out for research assistance when that occurs. Thank you!

6. NASBA's Board of Directors would appreciate as much input on the above questions as possible. How were the responses shown above compiled? Please check all that apply.

- ☐ Input only from Board Chair:
- ☐ Input only from Executive Director: AR, AZ, GA, IA, KY, MN, NE, OH, OR, TX, WY
- ☐ Input only from Board Chair and Executive Director: AK, AL, IL BOE, LA, MI, ND, NM, NY, VA
- ☐ Input from all Board Members and Executive Director: CO, CT, ED, GU, NH, NV, OK, SD
- ☐ Input from some Board Members and Executive Director: CA, FL, KS, NJ, WA
- ☐ Input from all Board Members: IL DFPR, RI, VT
- ☐ Input from some Board Members: IN
- ☐ Other: IL DFPR General Counsel Martha Reggi
PA Board Chair and Vice Chair

10.13.15

COLORADO
APPENDIX A

CHAPTER 9 - RULES OF PROFESSIONAL CONDUCT-COLORADO

Authority

The Rules of Professional Conduct are promulgated under the authority granted under Section 12-2-104(1)(c), C.R.S. to establish and maintain high standards of competence and integrity in the public accounting profession. The Rules of Professional Conduct apply with equal force to all Licensees, except where the wording of a specific rule indicates otherwise. As specifically provided in Rules 9.13 and 9.14, these Rules incorporate by reference additional standards and rules from other entities. All Licensees must comply with the Board's Rules of Professional Conduct in addition to all standards and rules incorporated by reference. If a Rule of the State Board of Accountancy is more stringent than or inconsistent with an incorporated standard or rule, the Rule of the State Board of Accountancy governs.

Applicability

Title 12, Article 2 of the C.R.S., requires that all Licensees adhere to the Rules of Professional Conduct.

The Rules of Professional Conduct that follow apply to all services performed except (a) where the wording of the rule indicates otherwise and (b) that a Licensee who is practicing outside the United States will not be subject to discipline for departing from any of the rules stated herein as long as the Licensee's conduct is in accord with the rules of the organized accounting profession in the country in which the Licensee is practicing. However, where a Licensee's name is associated with Financial Statements under circumstances that would entitle the reader to assume that United States practices were followed, the Licensee must comply with the requirements of Rules 9.2, 9.5, and 9.6.

9.1 DEFINITIONS

A. Integrity

An element of character fundamental to professional recognition which requires a Licensee to: (1) be honest and candid within the constraints of client confidentiality; (2) observe both the form and the spirit of technical and ethical standards; and (3) keep service and the public trust above personal gain and advantage. It is the quality from which the public trust derives and the benchmark against which a Licensee must ultimately test all decisions. It can accommodate the inadvertent error and the honest difference of opinion. It cannot accommodate dishonesty, deceit, or subordination of principle.

B. Objectivity

Requires a Licensee to: (1) be impartial, intellectually honest, and free of conflicts of interest, except as otherwise provided under Rule 9.3.E; (2) protect the integrity of their work regardless of service or capacity; and (3) avoid any subordination of their judgment.

C. Independence

The absence of relationships that impair or appear to impair a Licensee's objectivity in performing an engagement in which the Licensee will issue an attestation report or opinion, unless the lack of independence is disclosed in the report or opinion.

D. Due Care

The discharge of responsibilities to clients, employers, and the public with diligence and competence which requires a Licensee to: (1) render services carefully and in a timely manner; (2) be thorough; (3) observe applicable technical and ethical standards; and (4) plan and supervise adequately any professional activity for which the Licensee is responsible.

E. Competence

The knowledge and ability to assure that the quality of the services rendered meets professional standards. It requires a Licensee to: (1) be responsible for assessing and evaluating whether the education, experience, and judgment of the Licensee and/or the personnel providing the services is adequate for the responsibility assumed; and (2) maintain a commitment to learning and professional improvement that continues throughout a Licensee's professional life.

F. Contingent Fee

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 these Rules, 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.

9.2 INDEPENDENCE

When a Licensee provides auditing or other attestation services, they shall be independent in fact and appearance and shall conform to the independence standards provided in the AICPA *Professional Standards* as of June 1, 2012, whether or not the individual CPA or Firm are members of the AICPA. When the Licensee performs services regulated by the SEC, PCAOB, or the GAO, they also shall conform to the independence standards established by those bodies for those services in effect and incorporated by reference in Rule 1.3.

9.3 INTEGRITY AND OBJECTIVITY

In the performance of any Professional Service, Licensees shall maintain objectivity and integrity, shall be free of conflicts of interest (except as otherwise provided in paragraph E of this Rule 9.3), and shall not knowingly misrepresent facts or subordinate their judgment to others.

A. A Licensee shall not engage in fraud, deceit, or any form of dishonesty in connection with or relating to offering or providing a Professional Service, including, but not limited to, knowingly obtaining or exercising control over anything of value without authorization, as a result of, in connection with, or otherwise relating to offering or providing a Professional Service.

B. A Licensee shall not engage in fraud, deceit, or any form of dishonesty in relation to the Board, including, but not limited to, any act or omission, any response,

representation, application, form, or communication with or to the Board whether oral or written.

C. A Licensee shall not knowingly misrepresent facts or subordinate their judgment to others.

1. Misrepresentations of fact or subordination of judgment include, but are not limited to:

- a. Knowingly making, or permitting or directing another to make, false or misleading entries in an entity's financial statements or records;
- b. Misrepresenting or failing to disclose material facts to an external or internal auditor, or accountant; and
- c. Taking a position in a tax return or advising a tax client to take a position that does not have a realistic possibility of being sustained on its merits in an administrative or judicial review unless the position is not frivolous and is adequately disclosed all as provided in the AICPA *Professional Standards*, Statements on Standards for Tax Services.

D. Subordination of judgment or principle. When disagreements and disputes arise in the course of providing Professional Services by a Licensee related to the recording of transactions or preparing Financial Statements, a Licensee shall determine whether (a) the entry or the failure to record a transaction in the records, or (b) the financial statement presentation or the nature or omission of disclosure in the financial statements, as proposed, represents the use of an acceptable alternative and does not materially misrepresent the facts.

1. If, after appropriate research or consultation, the Licensee concludes that the matter has authoritative support or does not result in a material misrepresentation, the Licensee need do nothing further.
2. If the Licensee concludes that the matter results in a material misrepresentation or misstatement, the Licensee shall make any concerns known to the appropriate higher level(s) of management within the organization (for example, the supervisor's immediate superior, senior management, the audit committee or equivalent, the board of directors, or the company's owners). Licensees shall document their understanding of the facts, the accounting principles involved, the application of those principles to the facts, and the parties with whom these matters were discussed.
3. If, after discussing their concerns with the appropriate person(s) in the organization, the Licensee concludes that appropriate action was not taken, they must assess their continuing relationship with the Client or employer.
4. Licensees also must assess any responsibility that may exist to communicate to third parties, such as regulatory authorities or the Client or employer's (former employer's) external accountant.

E. Conflict of Interest. A conflict of interest may occur if a Licensee performs a Professional Service for a Client or employer and the Licensee has a relationship with another Person, product, or service that could, in the Licensee's professional judgment, be viewed by the Client, employer, or other appropriate party as impairing the Licensee's objectivity.

1. The Licensee may perform the Professional Service if:

- a. The Licensee reasonably believes that the Professional Service can be performed with objectivity;
- b. The relationship is comprehensively disclosed to the Client, employer, or other appropriate party; and
- c. The Licensee obtains the informed written consent of the Client, employer, or other appropriate party.

2. Certain professional engagements, including audits, reviews, and other attest services require Independence. Independence impairments cannot be eliminated by disclosure and consent.

9.4 COMMISSIONS, REFERRAL FEES, AND CONTINGENT FEES

A. Permitted Commissions and Contingent Fees. A Licensee who Holds Out and who is not otherwise prohibited by this Rule from receiving a commission or Contingent Fee shall disclose to the recipient of Professional Services or the buyer of a product, in writing, the nature, amount, and source of any Contingent Fee or commission prior to performing the Professional Services or making the sale that generates the commission or Contingent Fee.

B. Referral Fees. A Licensee who Holds Out and who accepts a referral fee for recommending or referring a service or product, or who pays a referral fee to obtain a Client, shall disclose to that Client, or the Client or other Person receiving the service or product, in writing, the nature, amount, and source of the referral fee. The written notification shall be provided to the Client or other Person prior to the time the Client or other Person engages the Licensee or other service provider or makes the purchase that generates the referral fee.

C. Contingent Fees in Tax Matters. A Licensee shall not prepare an original or amended tax return or claim for refund for a Contingent Fee. For purposes of this rule, fees are not regarded as contingent if fixed by courts or other public authorities, or if based on the results of judicial proceedings or the findings of governmental agencies. A fee is considered to be based on the findings of a governmental agency if, at the time of a fee arrangement, a Licensee can demonstrate a reasonable expectation of substantive consideration by an agency with respect to the Licensee's Client. In the case of the preparation of an original tax return, such expectation is not deemed reasonable.

D. Prohibited Commissions and Contingent Fees. A Licensee that performs: (1) an audit or review of a financial statement; (2) a compilation of a financial statement when the Licensee expects, or reasonably might expect, that a third party will use the financial

statement when the Licensee's compilation report does not disclose a lack of independence; or (3) an examination of prospective financial information, shall not:

1. Receive a commission or, for a commission, recommend or refer to that Client any product or service, or, for a commission, recommend or refer to any Person any product or service to be supplied by that Client; or
2. Receive a Contingent Fee for performing the services listed in paragraph D of this Rule 9.4, nor shall the Licensee perform for that Client any other Professional Service for a Contingent Fee.

This prohibition on commissions and Contingent Fees shall apply during the fee period in which the Licensee is or was engaged to perform any of the services listed in paragraph D of this Rule 9.4 and the period covered by any historical Financial Statements involved in such services.

9.5 PROFESSIONAL COMPETENCE AND COMPLIANCE WITH APPLICABLE TECHNICAL STANDARDS

A Licensee shall comply with the following:

A. General Standards.

1. Professional Competence – A Licensee shall undertake only those Professional Services that the Licensee can reasonably expect to complete with professional competence.
2. Due Care – A Licensee shall exercise due care in the performance of Professional Services.
3. Planning and Supervision – A Licensee shall adequately plan and supervise the performance of services.
4. Sufficient Relevant Data – A Licensee shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any Professional Service performed.

B. Auditing Standards.

A Licensee shall not permit the Licensee's name to be associated with Financial Statements in such a manner as to imply that the Licensee is acting as an independent Certified Public Accountant, unless the Licensee has complied with all applicable auditing standards. Applicable auditing standards shall include those defined as generally accepted auditing standards by the AICPA, such as Statements on Auditing Standards and Government Auditing Standards as promulgated by the United States General Accounting Office or standards of any successor organizations, including interpretations.

C. Accounting Principles.

If Financial Statements or other financial data contain any material departure from an accounting principle(s) promulgated by the Financial Accounting Standards Board

(FASB), the Government Accounting Standards Board (GASB), their predecessor entities and other entities having similar generally recognized authority or jurisdiction to establish such principle(s), a Licensee shall not:

1. Express an opinion or state affirmatively that the Financial Statements or other financial data of any entity are presented in conformity with generally accepted accounting principles; or
2. State that the Licensee is not aware of any material modifications that should be made to such statements or data for them to be in conformity with generally accepted accounting principles.

If, however, the statements or data contain such a departure and the Licensee can demonstrate that unusual circumstances would have caused the Financial Statements to be otherwise misleading, the Licensee can comply with this Rule by conspicuously disclosing and describing in the workpapers the departure, its approximate effects if practicable, and the reasons why compliance with the principle would result in a misleading statement.

D. Prospective Financial Information.

Licensees shall not permit their name to be used in conjunction with any prospective financial information in a manner that may lead to the belief that the Licensees vouch for the achievability of the prospective financial information. Licensees must comply with standards in this area promulgated by the AICPA or by other entities having similar generally recognized authority or jurisdiction over the service provided.

E. Other Attestation Standards.

Licensees shall not permit their name to be associated with assertions or conclusions about the reliability of a written representation of another party unless they have complied with the Statements on Standards for Attestation Engagements (SSAE) promulgated by the AICPA or by other entities having similar generally recognized authority or jurisdiction over the service provided.

9.6 OTHER PROFESSIONAL STANDARDS

In performing tax services, accounting, review and compilation services, attestation engagements, personal financial planning, business valuation, litigation support and expert witness services, and consulting services, a Licensee shall conform with Rule 9.5, any other professional standards applicable to such services as contained in the AICPA *Professional Standards*, and any other rules established or incorporated by reference by the Board.

9.7 ACTING THROUGH OTHERS

Licensees shall not knowingly permit others to carry out on their behalf, either with or without compensation, acts or omissions that, if carried out by the Licensees, would place them in violation of these Rules or the Act. Similarly, in supervising subordinates, a Licensee shall not accept or condone conduct in violation of these Rules or the Act.

9.8 CONFIDENTIAL CLIENT AND EMPLOYER INFORMATION

A. General Rule.

A Licensee shall not without the specific consent of their Client or employer disclose or use for their own benefit any personal or business related information pertaining to a Client or the employer of the Licensee, which information is obtained from any source or developed by the Licensee in the course of employment or performing Professional Services. Such information is deemed confidential. Information obtained as part of a proposed acquisition or in evaluating the acquisition or merger of an accounting practice shall not be disclosed or used to the Licensee's benefit.

B. Acceptable Disclosures. Rule 9.8.A shall not apply:

1. If information is disclosed with the specific consent of the Client or the employer of the Licensee.
2. If information is disclosed pursuant to a subpoena or summons issued with respect to the Licensee or an entity with which the Licensee is associated, where the subpoena or summons has been determined to be legally enforceable; or if information is disclosed to permit a Licensee's compliance with applicable laws and government rules and regulations.
3. If information is disclosed as part of the public record in a civil law suit (legal action) between the Licensee and the Client or employer.
4. If information is disclosed in the course of a Peer Review of a Licensee's Professional Services. Professional practice reviewers shall not disclose any confidential Client information which comes to their attention from Licensees in carrying out their responsibilities, except that they may furnish such information in response to a formal request from an investigative or disciplinary body of the kind referred to in paragraph 5 of this Rule 9.8.B.
5. If information is disclosed as part of the process of initiating a complaint with, or responding to an inquiry made by, the Board and the disclosure to the Board is in accordance with statutes regarding accountant-client privilege or the Client waives the privilege; or if information is disclosed as part of the process of initiating a complaint with or responding to an investigative or disciplinary body established by law or formally recognized by the Board. Members of the Board shall not disclose or use for their own benefit any confidential Client information that comes to their attention from Licensees in disciplinary proceedings or otherwise in carrying out their responsibilities.
6. If information is disclosed pursuant to a signed nondisclosure agreement as part of an acquisition or merger or proposed acquisition or merger of an accounting practice.

9.9 ISSUING COPIES OF REPORTS, TAX RETURNS, OR OTHER DOCUMENTS

- A. Unless otherwise prohibited by law, upon request and reasonable notice, a Licensee must furnish to a Client or former Client a copy of any report, tax return, or

other document issued by the Licensee to or for such Client during the preceding 5 years. The Licensee must furnish these copies in a timely manner. Unpaid fees for Professional Services do not constitute justification for withholding copies of these items.

B. The Licensee may charge for the reasonable cost of providing the copies and may withhold such copies until that cost is paid.

C. Client for the purposes of this Rule 9.9 includes Persons who are current Owners or who were Owners during the time period addressed by the report, tax return, or other document issued, unless otherwise restricted by contract or law.

9.10. CLIENT RECORDS

A. Client records are:

1. Accounting or other records belonging to the Client that are obtained from or on behalf of the Client, or that are otherwise within a Licensee's possession or control.
2. Licensee's workpapers or records that contain data that should properly be reflected in the Client's books and records, including, but not limited to:
 - a. adjusting, closing, combining, or consolidating journal entries; and
 - b. information normally contained in the books of original entry and general ledgers or subsidiary ledgers, such as accounts receivable, job cost, and equipment ledgers, or similar types of depreciation records.
3. Computer files that include Client information normally contained in the books of original entry and general ledgers or subsidiary ledgers.

B. Obligation to retain, return, and provide Client records.

1. A Licensee must retain copies of documentation of work performed, including any report, tax return, or other document issued by the Licensee, for a period of 5 years. If original Client records or copies of Client records are retained by the Licensee, they must also be retained for a period of 5 years.
2. A Licensee must return or make available Client records upon request and reasonable notice from a Client or former Client. If the records cannot be returned or made available to the Client, former Client, or his designee promptly, the Licensee must immediately notify the Client, former Client, or designee of the date the records will be returned or made available. The Licensee must return or make these records available in a timely manner.
3. A Licensee must not retain Client records in an attempt to force payment of any kind.

4. Upon completion of an engagement wherein the Client's records have been returned to the Client, any duplicate records requested by the Client or former Client must be furnished to the Client upon reasonable notice for a reasonable charge. Such charge must be set to reflect the reasonable cost of providing the copies. A Licensee may require that such charge be paid prior to the time duplicate records are provided to the Client.

5. Upon request, a Licensee must provide to the Client or former Client a copy of any computer files that constitute Client records, without password protection and with the name of the software used to manage the accounting information. The Licensee is under no obligation to provide the Client or former Client with a copy of any computer code, application program, or instructions for the software used to assemble the data.

C. Workpapers belonging to the Licensee.

1. A Licensee is not required to furnish to the Client any workpapers developed by the Licensee that do not result in changes to the Client's records or are not in themselves part of the records ordinarily maintained by a Client.

2. Licensee's workpapers are solely the property of the Licensee and are not the property of the Client even if developed with the assistance of the Client. For example, the Licensee may make extensive analyses of inventory or other accounts as part of the selective audit procedures. These analyses are a part of the Licensee's workpapers, even if Client personnel at the request of the Licensee have prepared the analyses. Only to the extent these analyses result in changes to the Client's records would the Licensee be required to furnish the details from the workpapers in support of the journal entries recording the changes. The Licensee is not required to furnish such details if the journal entries themselves contain all necessary details.

D. Termination of Engagement. If an engagement is terminated prior to the completion of work, and the Licensee's work product has neither been issued nor paid for by the Client, the work product is solely and exclusively the property of the Licensee.

E. Timely Manner. Unless otherwise provided, "timely manner" is presumed to be within 45 business days.

9.11 SAFEGUARDING CLIENT RECORDS AND PROPERTY

A. Every Certificate Holder has a duty to safeguard Client records, funds, and property in his possession or under his control in the event that he is incapacitated, disappears, or dies.

B. The Certificate Holder shall provide for continuing services to a Client or ensure that, in the event that he is incapacitated, disappears, or dies:

1. Clients are promptly notified;

2. Client records, property, and funds belonging to a Client are securely maintained; and
3. those Client records, property, and funds are promptly made available or returned to the respective Clients.

9.12 SOLICITATION

A Licensee shall not solicit an engagement to perform Professional Services by any communication or other means that:

- A. Is false, misleading, or deceptive;
- B. Would: (1) create false or unjustified expectations; (2) imply an ability to influence any court, tribunal, regulatory agency, or similar body or official; (3) contain a representation of unrealistic future fees; or (4) contain a representation likely to be misunderstood by a reasonable person;
- C. Creates or uses coercion, duress, compulsion, intimidation, threats, overreaching, vexatious, or harassing conduct; or
- D. Contains untruthful statements about the professional work product or competence of another Licensee.

9.13 INCORPORATION OF AICPA CODE OF PROFESSIONAL CONDUCT

- A. In addition to these Rules of Professional Conduct, the Board adopts and incorporates by reference the AICPA Code of Professional Conduct included in the *AICPA Professional Standards* effective June 1, 2012, as provided in Chapter 1. These Rules do not include amendments to or later additions of the AICPA Code of Professional Conduct included in the *AICPA Professional Standards*. All Licensees must comply with the Board's Rules of Professional Conduct and the AICPA Code of Professional Conduct in the performance of Professional Services.
- B. When the AICPA Code of Professional Conduct refers to "Member" it is understood that the references apply to all Licensees, regardless of whether the Licensee is a member of the AICPA. When the AICPA Code of Professional Conduct uses the terms "should," "obligated," or "required", those terms are deemed mandatory and mean "must" for the purposes of these Rules.
- C. In the event a Rule of Professional Conduct of the State Board of Accountancy is more stringent than or inconsistent with a corresponding rule in the AICPA Code of Professional Conduct, the Rule of the State Board of Accountancy governs.
- D. In applying these Rules to deliberations in disciplinary or other proceedings, the Board may disregard or may consider as persuasive, but not necessarily conclusive, applicable interpretations and rulings in the AICPA Code of Professional Conduct.

9.14 INCORPORATION OF STANDARDS

A. Licensees must also comply with the requirements of the U.S. GAAS, U.S. GAAP, SEC, PCAOB, IRS, U.S. Government Accountability Office (GAO), Financial Accounting Standards Board (FASB), the Governmental Accounting Standards Board (GASB), the Cost Accounting Standards Board (CASB), the Federal Accounting Standards Advisory Board (FASAB), and the Federal Office of Management and Budget (OMB) as described in the *AICPA Professional Standards* effective June 1, 2012, as applicable to the services provided.

B. Licensees must comply with the *AICPA Professional Standards* and the following standards if such standards are applicable to the Professional Services being performed:

1. Statements of Governmental Accounting and Financial Reporting Standards issued by GASB;
2. Statements of Financial Accounting Standards Codification;
3. Governmental Auditing Standards issued by the U.S. Governmental Accountability Office;
4. SEC Rules, Concept Releases, Interpretative Releases, and Policy Statements; and
5. IRS Circular 230.

This Rule does not include later amendments to or editions of the Standards listed herein. The standards referenced in this Rule 9.14 are incorporated herein by reference as provided in Chapter 1.

C. If the Professional Services are governed by standards not included in this Rule 9.14, Certificate Holders and Registrants, and all Licensees who offer or render Professional Services in this state or for Clients located in this state, must:

1. Maintain documentation of the justification for the departure from the standards listed in this Rule 9.14;
2. Determine and document what standards are applicable; and
3. Demonstrate compliance with the applicable standards.

WASHINGTON
APPENDIX B

Certain More Restrictive Board Rules
Prepared by the Executive Director

<u>Topic</u>	<u>RCW 18.04 WAC 4-30</u>	<u>AICPA Guidance</u>	<u>Variance</u>
Independence Board More Restrictive	4-30-010(24); 4-30-042	ET Interpretation 101-1 Fact & Appearance of "Covered Members" of the engagement team.	The Board rule requires all members of the engagement team to assess their personal objectivity/skepticism Irrespective of the AICPA Covered member guidance and remove his-self or herself or be removed by the firm from the engagement by the firm if individual objectivity/skepticism is impaired.
Conflicts of Interest Board More Restrictive	18.04.055(2); 4-30-040; 4-30-142(9)	ET 102 & Interpretations	Self-Dealing as a trustee or BORROWING FROM a client is (generally) PROHIBITED by Board Rule. <i>However, if the client is in the business of regularly lending money, the AICPA Rule would apply <u>for independence purposes.</u></i>
Engagement and Continuing Competency Board More Restrictive	<i>Various</i> RCW 18.04 4-30-046	ET 201 & Int. 201-1	Generally consistent with exception for CPE. Board Rule 4-30-134(3) requires 4 hours of Board approved Ethics & Regulation in WA State during (and completed by December 31 of) the year preceding the calendar year of renewal.
Confidential Client Information	18.04- 390/405 4-30-050	ET 301 & Interpretations	Generally consistent AICPA Rule 301 refers to <u>current and former clients</u>

Board More Restrictive			WAC 4-30-050 also includes <u>prospective clients</u> .
Acts Discreditable	4-30-051 18.04.295 18.04.380	Rule 501	Generally consistent EXCEPT that AICPA Interpretation 501-1, <i>Client Requests for Records</i> , permits withholding records for payment of fees; <u>WAC 4-30-051 does not permit withholding for unpaid fees.</u>
It's a DRAW	4-30-142		<i>However, AICPA further states a violation of Board requirements is a violation of the AICPA Code.</i>

2. Has your Board discussed the U.S. Supreme Court's 2015 decision in FTC v. North Carolina Dental Board? If so, on the basis of such discussion, has your Board determined it needs to change its policies in any way? Please explain.

Yes; The Board Chair evaluated the court case and presented his view the Board. The Chair concluded there are significant differences between the Washington Board of Accountancy structure and oversight and the fact pattern in the U.S. Supreme Court case such that the case presents no concern to the way the Washington Board of Accountancy is structured and operates.

VERMONT
APPENDIX C

Records Requests Questionnaire

We would appreciate it if you would take time to answer the following questions:

1. Name of State Board of Accountancy: Vermont Board of Accountancy
2. Name and Title of State Board of Accountancy Representative: Joshua Partlow, Chair and Peter Comart, Licensing Administrator
3. The AICPA Code of Professional Conduct (AICPA Code) has the following four categories of records held by CPAs.
 - a. **Client-provided records** are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.
 - b. **Member-prepared records** are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement (for example, an audit).
 - c. **Member's work products** are deliverables set forth in the terms of the engagement, such as tax returns.
 - d. **Working papers** are all other items prepared solely for purposes of the engagement and include items prepared by the (1) member, such as audit programs, analytical review schedules, and statistical sampling results and analyses, or (2) the client at the request of the member and reflecting testing or other work done by the member.

From your perspective, is the above categorization an appropriate way to categorize records held by CPAs?

Yes ☒ No ☐

If you answered no, please explain the categorization used for client records by your State Board and if and why you believe it to be a better categorization.

4. The AICPA Code states that with respect to ***client-provided records***, a member should return client-provided records in the member's custody or control to the client at the client's request. Client provided records cannot be withheld even if fees are due to the member.

Do you agree with the AICPA's rule for *client-provided records*? Yes _____ No X

If you answered no, please explain your State Board's requirement related to returning *client-provided records* and if and why you believe it to be a more appropriate requirement.

We believe the AICPA Code should distinguish between original client-provided records and reproductions. We would agree that original client-provided records should be returned, however, reproductions may represent a significant component of the Member's documentation. Vermont Title 26 Section 81, Ownership of Accountant's Working Papers, specifies that the Member must return "original copies" of client documents to the client upon request. Section 76, Unprofessional Conduct also addresses when such documents must be returned to the client and distinguishes between original client-provided records and copies of such documents.

5. The AICPA Code's rule regarding returning ***member-prepared records or a member's work product*** states as follows:

"Unless a member and the client have an agreement to the contrary, when a client makes a request for member-prepared records or a member's work products that are in the member's custody or control and that have not previously been provide to the client, the member should respond to the client's request as follows:

- a) The member should provide member-prepared records relating to a completed and issued work product to the client, except that such records may be withheld if fees are due to the member for that specific work product.
- b) Member's work products should be provided to the client, except that such work products may be withheld
 - i. if fees are due to the member for the specific work product;
 - ii. if the work product is incomplete;
 - iii. if for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
 - iv. if threatened or outstanding litigation exists concerning the engagement or member's work."

Do you agree with the AICPA's rule for *member-prepared records*?

Yes X No _____

If you answered no, please explain your State Board's requirement related to returning *member-prepared records* and if and why you believe it to be a more appropriate requirement. If your State Board takes the position that member-prepared records must be given to the client upon request

and cannot be withheld if fees are due to the licensee for the specific work product, please explain the rationale for this position.

VT Title 26, Section 76 (3) indicates: Failing to make available, upon request of a person using public accounting services, copies of documents in the possession or under the control of the accountant, when those documents have been prepared for and paid for by the user of services. – This would appear to be consistent with the AICPA Code and would allow for client requests to be withheld when fees are not paid. VT Accountancy Statute and Rules do not distinguish between member prepared records and member's work products.

Do you agree with the AICPA's rule for *member's work products*?

Yes ☒ No ☐

If you answered no, please explain your State Board's requirement related to returning *member's work products* and if and why you believe it to be a more appropriate requirement. If your State Board takes the position that the member's work product must be given to the client upon request and cannot be withheld if fees are due to the licensee for the specific work product, please explain the rationale for this position.

VT Title 26, Section 76 (3) indicates: Failing to make available, upon request of a person using public accounting services, copies of documents in the possession or under the control of the accountant, when those documents have been prepared for and paid for by the user of services. – This would appear to be consistent with the AICPA Code and would allow for client requests to be withheld when fees are not paid. VT Accountancy Statute and Rules do not distinguish between member prepared records and member's work products.

6. The AICPA Code's rule regarding the period allowed for returning records states as follows:

"A member who is required to return or provide records to the client should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made."

Do you agree with the AICPA's rule regarding the period allowed for returning records?

Yes ☒ No ☐

The Board generally feels the AICPA Code is reasonable, however, no specific period of time is specified in the VT Accountancy Statute and Rules. In absence of anything specific Vermont Rule 10.1 would appear to require licensees in Vermont to comply with the AICPA Code of Conduct.

If you answered no, please explain your State Board's requirement regarding the period allowed for returning records and if and why you believe it to be a more appropriate requirement.

7. The AICPA Code's rule regarding satisfying the requirements of the rule on record requests states as follows:

"Once a member has complied with these requirements, he or she is under no ethical obligation to

- a) comply with any subsequent requests to again provide records or copies of client provided records, member-prepared records, or a member's work product. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide such records.
- b) retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed. "

"A member who has provided records to an individual designated or held out as the client's representative, such as the general partner, majority shareholder, or spouse, is not obligated to provide such records to other individuals associated with the client."

Do you agree with the AICPA's rule regarding satisfying the requirements for record requests?

Yes ☒ No ☐

If you answered no, what is your State Board's requirement regarding the number of times a licensee must respond to a request for records before a licensee has satisfied his or her obligation to provide records and if and why you believe it to be a more appropriate requirement?

The Board generally feels the AICPA Code is reasonable, however, no specific requirements are specified in the VT Accountancy Statute and Rules regarding subsequent client requests. In absence of anything specific Vermont Rule 10.1 would appear to require licensees in Vermont to comply with the AICPA Code of Conduct.

8. The AICPA Code's rule regarding permissible actions related to fulfilling record requests states as follows:

"In fulfilling a request for client-provided records, member-prepared records, or a member's work products, the member may

- a) charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that the client pay the fee before the member provides the records to the client.
- b) provide the requested records in any format usable by the client. However, the member is not required to convert records that are not in electronic format to electronic format. If the client requests records in a specific format and the records are available in such format within the member's custody and control, the client's request should be honored. In addition, the member is not required to provide the client with formulas, unless the formulas support the client's

- underlying accounting or other records or the member was engaged to provide such formulas as part of a completed work product.
- c) make and retain copies of any records that the member returned or provided to the client."

Do you agree with the AICPA's rule regarding permissible actions related to fulfilling record requests?

Yes ☒ No ☐

If you answered no, please explain your State Board's requirement on permissible actions related to fulfilling record requests and if and why you believe it to be a more appropriate requirement.

The Board generally feels the AICPA Code is reasonable, however, no specific requirements are specified in the VT Accountancy Statute and Rules regarding fees charged for or format of records provide to clients. In absence of anything specific Vermont Rule 10.1 would appear to require licensees in Vermont to comply with the AICPA Code of Conduct.

9. The AICPA Code's rule states that with respect to **Working Papers**, "working papers are the member's property, and the member is not required to provide such information to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the member."

Do you agree with the AICPA's rule regarding *working papers*?

Yes ☒ No ☐

If you answered no, please explain your State Board's requirement related to a licensee's *working papers* and if and why you believe it to be a more appropriate requirement.

Vermont Title 26 Section 81, Ownership of Accountant's Working Papers, subsection (a) states, "All statements, records, schedules, working papers and memoranda made by a public accountant incident to or in the course of professional services to clients, except reports submitted by a public accountant to a client, are the property of the accountant. However, an express agreement between the accountant and the client to the contrary shall take precedence over this subsection." This subsection appears to be consistent with the AICPA Code of Conduct.

10. If you answered no to any questions above, please indicate whether or not your State Board would be open to reconsidering its current rule(s) in order to conform to the AICPA rule.

Yes ☐ No ☐ Maybe ☒

If you answered yes, please indicate which rule provisions your State Board would be willing to reconsider. If you answered no, please indicate the reason why.

VERMONT
APPENDIX C

Records Requests Questionnaire

We would appreciate it if you would take time to answer the following questions:

1. Name of State Board of Accountancy: Vermont Board of Accountancy

2. Name and Title of State Board of Accountancy Representative: Joshua Partlow, Chair and Peter Comart, Licensing Administrator

3. The AICPA Code of Professional Conduct (AICPA Code) has the following four categories of records held by CPAs.
 - a. **Client-provided records** are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.
 - b. **Member-prepared records** are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement (for example, an audit).
 - c. **Member's work products** are deliverables set forth in the terms of the engagement, such as tax returns.
 - d. **Working papers** are all other items prepared solely for purposes of the engagement and include items prepared by the (1) member, such as audit programs, analytical review schedules, and statistical sampling results and analyses, or (2) the client at the request of the member and reflecting testing or other work done by the member.

From your perspective, is the above categorization an appropriate way to categorize records held by CPAs?

Yes ☒ No ☐

If you answered no, please explain the categorization used for client records by your State Board and if and why you believe it to be a better categorization.

4. The AICPA Code states that with respect to ***client-provided records***, a member should return client-provided records in the member's custody or control to the client at the client's request. Client provided records cannot be withheld even if fees are due to the member.

Do you agree with the AICPA's rule for *client-provided records*? Yes _____ No X

If you answered no, please explain your State Board's requirement related to returning *client-provided records* and if and why you believe it to be a more appropriate requirement.

We believe the AICPA Code should distinguish between original client-provided records and reproductions. We would agree that original client-provided records should be returned, however, reproductions may represent a significant component of the Member's documentation. Vermont Title 26 Section 81, Ownership of Accountant's Working Papers, specifies that the Member must return "original copies" of client documents to the client upon request. Section 76, Unprofessional Conduct also addresses when such documents must be returned to the client and distinguishes between original client-provided records and copies of such documents.

5. The AICPA Code's rule regarding returning ***member-prepared records or a member's work product*** states as follows:

"Unless a member and the client have an agreement to the contrary, when a client makes a request for member-prepared records or a member's work products that are in the member's custody or control and that have not previously been provide to the client, the member should respond to the client's request as follows:

- a) The member should provide member-prepared records relating to a completed and issued work product to the client, except that such records may be withheld if fees are due to the member for that specific work product.
- b) Member's work products should be provided to the client, except that such work products may be withheld
 - i. if fees are due to the member for the specific work product;
 - ii. if the work product is incomplete;
 - iii. if for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
 - iv. if threatened or outstanding litigation exists concerning the engagement or member's work."

Do you agree with the AICPA's rule for *member-prepared records*?

Yes X No _____

If you answered no, please explain your State Board's requirement related to returning *member-prepared records* and if and why you believe it to be a more appropriate requirement. If your State Board takes the position that member-prepared records must be given to the client upon request

and cannot be withheld if fees are due to the licensee for the specific work product, please explain the rationale for this position.

VT Title 26, Section 76 (3) indicates: Failing to make available, upon request of a person using public accounting services, copies of documents in the possession or under the control of the accountant, when those documents have been prepared for and paid for by the user of services. – This would appear to be consistent with the AICPA Code and would allow for client requests to be withheld when fees are not paid. VT Accountancy Statute and Rules do not distinguish between member prepared records and member's work products.

Do you agree with the AICPA's rule for *member's work products*?

Yes ☒ No ☐

If you answered no, please explain your State Board's requirement related to returning *member's work products* and if and why you believe it to be a more appropriate requirement. If your State Board takes the position that the member's work product must be given to the client upon request and cannot be withheld if fees are due to the licensee for the specific work product, please explain the rationale for this position.

VT Title 26, Section 76 (3) indicates: Failing to make available, upon request of a person using public accounting services, copies of documents in the possession or under the control of the accountant, when those documents have been prepared for and paid for by the user of services. – This would appear to be consistent with the AICPA Code and would allow for client requests to be withheld when fees are not paid. VT Accountancy Statute and Rules do not distinguish between member prepared records and member's work products.

6. The AICPA Code's rule regarding the period allowed for returning records states as follows:

"A member who is required to return or provide records to the client should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made."

Do you agree with the AICPA's rule regarding the period allowed for returning records?

Yes ☒ No ☐

The Board generally feels the AICPA Code is reasonable, however, no specific period of time is specified in the VT Accountancy Statute and Rules. In absence of anything specific Vermont Rule 10.1 would appear to require licensees in Vermont to comply with the AICPA Code of Conduct.

If you answered no, please explain your State Board's requirement regarding the period allowed for returning records and if and why you believe it to be a more appropriate requirement.

7. The AICPA Code's rule regarding satisfying the requirements of the rule on record requests states as follows:

"Once a member has complied with these requirements, he or she is under no ethical obligation to

- a) comply with any subsequent requests to again provide records or copies of client provided records, member-prepared records, or a member's work product. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide such records.
- b) retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed."

"A member who has provided records to an individual designated or held out as the client's representative, such as the general partner, majority shareholder, or spouse, is not obligated to provide such records to other individuals associated with the client."

Do you agree with the AICPA's rule regarding satisfying the requirements for record requests?

Yes ☒ No ☐

If you answered no, what is your State Board's requirement regarding the number of times a licensee must respond to a request for records before a licensee has satisfied his or her obligation to provide records and if and why you believe it to be a more appropriate requirement?

The Board generally feels the AICPA Code is reasonable, however, no specific requirements are specified in the VT Accountancy Statute and Rules regarding subsequent client requests. In absence of anything specific Vermont Rule 10.1 would appear to require licensees in Vermont to comply with the AICPA Code of Conduct.

8. The AICPA Code's rule regarding permissible actions related to fulfilling record requests states as follows:

"In fulfilling a request for client-provided records, member-prepared records, or a member's work products, the member may

- a) charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that the client pay the fee before the member provides the records to the client.
- b) provide the requested records in any format usable by the client. However, the member is not required to convert records that are not in electronic format to electronic format. If the client requests records in a specific format and the records are available in such format within the member's custody and control, the client's request should be honored. In addition, the member is not required to provide the client with formulas, unless the formulas support the client's

underlying accounting or other records or the member was engaged to provide such formulas as part of a completed work product.

- c) make and retain copies of any records that the member returned or provided to the client."

Do you agree with the AICPA's rule regarding permissible actions related to fulfilling record requests?

Yes X No _____

If you answered no, please explain your State Board's requirement on permissible actions related to fulfilling record requests and if and why you believe it to be a more appropriate requirement.

The Board generally feels the AICPA Code is reasonable, however, no specific requirements are specified in the VT Accountancy Statute and Rules regarding fees charged for or format of records provide to clients. In absence of anything specific Vermont Rule 10.1 would appear to require licensees in Vermont to comply with the AICPA Code of Conduct.

9. The AICPA Code's rule states that with respect to *Working Papers*, "working papers are the member's property, and the member is not required to provide such information to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the member."

Do you agree with the AICPA's rule regarding *working papers*?

Yes X No _____

If you answered no, please explain your State Board's requirement related to a licensee's *working papers* and if and why you believe it to be a more appropriate requirement.

Vermont Title 26 Section 81, Ownership of Accountant's Working Papers, subsection (a) states, "All statements, records, schedules, working papers and memoranda made by a public accountant incident to or in the course of professional services to clients, except reports submitted by a public accountant to a client, are the property of the accountant. However, an express agreement between the accountant and the client to the contrary shall take precedence over this subsection." This subsection appears to be consistent with the AICPA Code of Conduct.

10. If you answered no to any questions above, please indicate whether or not your State Board would be open to reconsidering its current rule(s) in order to conform to the AICPA rule.

Yes _____ No _____ Maybe X

If you answered yes, please indicate which rule provisions your State Board would be willing to reconsider. If you answered no, please indicate the reason why.

REGIONAL DIRECTORS' FOCUS QUESTIONS

The input received from our focus questions is reviewed by all members of NASBA's Board of Directors, committee chairs and executive staff and used to guide their actions. We encourage you to place the following questions early on the agenda of your next Board meeting to allow for sufficient time for discussion. Please send your Board's responses to your Regional Director by **January 5, 2016**. Use additional sheets for your responses if needed.

JURISDICTION:

DATE:

NAME OF PERSON SUBMITTING FORM:

1. Has your Board considered the proposed changes to the Uniform Accountancy Act and Model Rules to create a "CPA-Retired" category? Do you foresee many retirees applying for this designation in your jurisdiction?

2. An addition to NASBA's updated Strategic Plan is increasing the volume of CPA candidates. What is your jurisdiction doing to assist that effort?

3. What is your Board doing to ensure the ethics continuing professional education courses you require are remaining relevant?

4. What is happening in your jurisdiction that is important for other State Boards and NASBA to know about?

5. Can NASBA be of any assistance to your Board at this time?

REGIONAL DIRECTORS' FOCUS QUESTIONS (continued)

6. NASBA's Board of Directors would appreciate as much input on the above questions as possible. How were the responses shown above compiled? Please check all that apply.

- ☐ Input only from Board Chair
- ☐ Input only from Executive Director
- ☐ Input only from Board Chair and Executive Director
- ☐ Input from all Board Members and Executive Director
- ☐ Input from some Board Members and Executive Director
- ☐ Input from all Board Members
- ☐ Input from some Board Members
- ☐ Other (please explain):