CALIFORNIA BOARD OF ACCOUNTANCY

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> *Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*
>
> — Business and Professions Code § 5000.1

The California Board of Accountancy (CBA) licenses, regulates, and disciplines certified public accountants (CPAs) and public accounting firms and corporations. CBA currently regulates over 97,000 individuals, corporations, and partnerships. It establishes and maintains standards of qualification and conduct within the accounting profession, primarily through its power to license. CBA's enabling act, the Accountancy Act, is found at Business and Professions Code section 5000 *et seq*.; its regulations appear in Division 1, Title 16 of the California Code of Regulations (CCR).

CBA is a consumer protection agency located within the Department of Consumer Affairs (DCA). The Board consists of fifteen members: seven CBA licensees and eight public members. Each Board member serves a four-year term.

The Board's staff administers and processes the nationally standardized Uniform CPA Examination, currently a four-part computerized exam encompassing the subjects of auditing and attestation; business law and professional responsibilities; regulation (including taxation, managerial accounting, and accounting for governmental and not-for-profit organizations); and financial accounting and reporting (business enterprises). In order to be licensed, an applicant must complete 150 hours of college-level education

(including substantial units in accounting and business-related subjects and ethics), complete twelve months of general accounting experience, and successfully pass all parts of the Uniform CPA Exam.

The operations of the Board are conducted through various advisory committees and, for specific projects, task forces which sunset at project completion. The Board's major advisory committees include the following:

- The Qualifications Committee (QC), authorized in Business and Professions Code section 5023, consists of non-Board member CPAs who review applicants' experience to determine whether their experience complies with the requirements in Business and Professions Code section 5093 and section 12, Title 16 of the CCR.
- The Enforcement Advisory Committee (EAC), authorized in Business and Professions Code section 5020, consists of up to 13 non-Board member CPAs who provide technical assistance to the Board's enforcement program by conducting investigations or hearings against licensees, and making recommendations to the enforcement program and the Executive Officer.
- The Peer Review Oversight Committee (PROC), created in Business and Professions Code section 5076.1, consists of up to seven CPAs appointed by the Board and oversees the Board's peer review requirement that is mandatory for licensees who perform attest engagements; the PROC is responsible for ensuring that peer review providers administer peer reviews in accordance with the standards set forth in section 48, Title 16 of the CCR.

- The Mobility Stakeholder Group (MSG), created in Business and Professions Code section 5096.21, is charged with considering whether the current "no notice, no fee" practice privilege (under which CPAs not licensed in California may offer public accounting services here without providing notice and/or paying a fee to CBA) is consistent with the Board's duty to protect the public, and whether the provisions of the practice privilege law satisfy the objectives of stakeholders of the accounting profession, including consumers.

Other advisory committees consist solely of Board members. The Legislative Committee reviews legislation and recommends a position to the Board, reviews proposed statutory and regulatory language developed by other committees before it is presented to the Board, and serves as an arena for various accountant trade associations to air their concerns on issues. The Committee on Professional Conduct (CPC) considers all issues related to the professional and ethical conduct of CPAs and PAs. The Enforcement Program Oversight Committee (EPOC) was created in 1996 to establish policy and procedures for the Board's complex enforcement program.

On August 11, 2017, Governor Edmund G. Brown, Jr. appointed CPA Carola A. Nicholson to CBA. Nicholson is currently a founding partner at Nicholson & Schwartz, where she specializes in tax consulting and preparation for individuals, nonprofits, and corporations, with an emphasis on small business financial management.

On September 11, 2017, Assembly Speaker Anthony Rendon appointed Dan Jacobson, Esq., to CBA. Jacobson has practiced civil litigation in California since 1988

and is an adjunct professor at Pacific West College of Law. Jacobson also works as an expert witness-consultant in the field of property/casualty insurance.

On October 11, 2017, Governor Brown appointed Luz Molina Lopez as a public member on CBA. Molina Lopez has been a technical proposal writer at Ajinomoto Althea Inc. since 2011, where she was a manufacturing associate from 2004 to 2010.

MAJOR PROJECTS

Use of Management Accounting Titles by Non-CPAs

At its July 20, 2017 meeting, CBA considered whether to provide a comment letter to the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) regarding proposed changes to section 14 of the seventh edition of the Uniform Accountancy Act (UAA) regarding the use of management accounting titles by non-CPAs.

The UAA is a model licensing law designed to provide a uniform approach to the regulation of CPAs by state legislatures and boards of accountancy. Although the UAA was originally drafted by AICPA, NASBA is now permitted input into the document, which is non-binding on CBA. In April 2017, AICPA and NASBA approved proposed changes to the UAA that would allow qualified non-CPAs to assume or use management accounting designations with certain caveats and requirements (including specified examinations, certifications, and experience requirements). Thereafter, AICPA and NASBA released these proposed changes to state boards and state CPA societies for comment.

Specifically, AICPA and NASBA propose to add new subsection (q) to section 14 of the UAA; subsection (q) would allow a non-CPA to use an accounting designation that includes the word "management," if that designation is conferred by a bona fide nationally recognized accounting organization such as AICPA, the Chartered Institute of Management Accountants (CIMA), or the Institute of Management Accountants (IMA), provided that the designation does not purport to confer the right to perform audit, attest, or compilation services. However, new subsection (q) would also permit such non-CPA management accountants to perform audit, attest, compilation, and tax services under the supervision of a licensed CPA. An example of a management accounting designation is AICPA's Chartered Global Management Accountant (CGMA) designation, a professional management accounting designation established in 2012 through a joint venture between AICPA and CIMA. When the CGMA designation was first established, only licensed CPAs could qualify to use it; in 2015, however, the AICPA Council voted to open up the CGMA designation to certain other qualified non-CPAs. Currently, the CIMA pathway to obtain the CGMA designation for non-CPAs requires individuals to pass the required CIMA examinations (including the CIMA certificate in business accounting), have three years of management accounting experience, and be a CIMA member.

CBA staff analyzed California laws and regulations that would likely prohibit the use of management accounting designations by non-CPAs in California because they are likely to confuse the public. For example, Business and Professions Code sections 5058 and 5058.1 prohibit the use by non-CPAs of several enumerated terms (such as "certified accountant" or "licensed accountant") likely to be confused with the terms "certified public accountant" or "public accountant." In section 2, Title 16 of the CCR, CBA has identified

the unmodified terms "accountant" and "accounting" as titles or designations that are likely to be confused with "certified public accountant" or "public accountant," such that non-CPAs may not use the terms "accountant" or "auditor." When non-CPA accountant Bonnie Moore challenged the constitutionality of that regulation in the early 1990s, a 4–3 majority of the California Supreme Court held in *Bonnie Moore v. California Board of Accountancy*, 2 Cal. 4th 999 (1992), that non-CPAs are entitled to use the unmodified terms "accountant" and "accounting" so long as those terms are used "in conjunction with a modifier or modifiers that serve to dispel any possibility of confusion—for example, an express disclaimer stating that the 'accounting' services being offered do not require a state license…." Staff concluded that the AICPA's proposed changes

> may provide challenges to compliance with the CBA's current laws, which, as identified, prohibit the use of these designations without an explanatory disclaimer. Further, some of the services that individuals with a management accountant designation could perform are services that would require licensure by the CBA such as audits and reviews.

Finally, staff noted that the proposed changes to the UAA may conflict with CBA's current practice privilege provisions in Business and Professions Code section 5096. While the revised UAA would permit a non-CPA with a management accountant designation to perform audit, attest, or compilation services for the public under the supervision of a licensed CPA, CBA's practice privilege statutes limit these services to a qualified out-of-state CPA performing them for an entity headquartered in California.

Staff recommended that CBA prepare a letter regarding its concerns about the proposed changes to the UAA, including substantial consumer confusion, possible conflicts with existing CBA laws regarding use of titles, and possible conflict with CBA's current practice privilege program. DCA legal counsel Kristy Schieldge opined that any

incorporation of the revised UAA in California would require fundamental change to the scope of the CPA license, especially inasmuch as the UAA would allow non-CPAs to perform audit and attest engagements whereas California law specifically states that only CPAs may perform those engagements.

At CBA's September 14, 2017 meeting, staff noted that—since the July 2017 meeting—seven state boards of accountancy had expressed outright opposition to the proposed changes or noted they could not be approved without substantial change to existing law. CBA reviewed a draft comment letter prepared by staff on the proposed changes to the UAA. The draft letter states that, under Business and Professions Code section 5000.1, CBA's primary mission is consumer protection, and that CBA's approach to the use of titles has been to prohibit the use of titles by non-CPAs that could cause consumer confusion. "The proposed addition of section 14(q) would . . . be in conflict with California's statutes and regulations, insomuch as creating a title that would presumably lead consumers to believe that an individual using a 'management accountant' designation or abbreviation CGMA is licensed, or in some way regulated by the CBA." CBA approved the draft comment letter to AICPA and NASBA regarding the proposed changes.

Attest Experience Gained at an Accountancy Firm with a Substandard Peer Review Rating

At CBA's May 18, 2017 meeting, staff reported to the Board the steps it is taking to evaluate and ensure the quality of attest experience gained at an accounting firm with a substandard peer review rating.

Business and Professions Code section 5095 requires an individual seeking the authority to sign reports on attest engagements to complete 500 hours of experience in

attest services under the supervision of a CPA who has the authority to sign attest engagements. To ensure that a registered CPA firm has an appropriate understanding and practical application of professional standards, California law requires that accounting firms that perform accounting and auditing services undergo peer review once every three years as a condition of firm registration renewal. If a firm receives a rating of substandard, licensees who are gaining attest experience at that firm risk not receiving proper training. Under section 69, Title 16 of the CCR, CBA's Qualifications Committee (QC) may inspect documents that reflect the hours of attest experience and request the applicant or the firm to appear before it to ensure that the work is performed in accordance with professional standards. The Committee may consider additional factors regarding the supervisor and accountancy firm's ratings on recent peer reviews in order to evaluate the adequacy of the 500 hours of attest experience.

Staff reported that it will be implementing additional internal procedures when reviewing the Certificate of Attest Experience submitted by an applicant and signed by his/her supervisor. If the attest experience is gained at a CPA firm with a substandard peer review rating, staff and the QC will obtain additional information concerning whether there was more than one substandard peer review rating, the timeframe between receiving the substandard ratings (if applicable), the timeframe in which the applicant gained his/her experience, the history of the accounting firm, additional experience obtained with other employers, and any other circumstances that may arise as the applications are being reviewed. Staff also noted that it will work with the QC to ensure there are adequate resources to accommodate the request and receipt of this information and the additional appearances before the QC that analysis of this information may require.

Mobility Stakeholder Group Activity

On May 18, July 20, and September 14, 2017, MSG met to continue its discussion of the "mobility" concept and whether California's "no notice, no fee" practice privilege protects California consumers from out-of-state CPAs who practice public accountancy in California under Business and Professions Code section 5096, as amended by SB 1405 (de León) (Chapter 411, Statutes of 2012).

Prior to the passage of SB 1405, California law required an out-of-state CPA wishing to practice public accountancy in California to either obtain a California license or to secure a practice privilege that required notice to the Board, a declaration that the applicant has no disqualifying conditions, and the payment of a $100 fee for the privilege of practicing accountancy in California for one year.

Prompted by the large accounting firms and AICPA, SB 1405 converted the former practice privilege program to a "no notice, no fee" program effective January 1, 2013 until January 1, 2019. If CBA complies with all of the requirements of SB 1405, the legislature may extend the January 1, 2019 sunset date; to that end, SB 795 (Galgiani) is pending in the legislature (see LEGISLATION). If not, the "no notice, no fee" program statutes will automatically expire and California will revert to the prior practice privilege program requiring notice and a fee.

Specifically, SB 1405 amended section 5096 to provide that an out-of-state CPA who meets the requirements specified in that section may practice public accountancy in California without notifying the Board and without paying a fee to the Board. Subsection 5096(d) specifies that an individual who qualifies for a practice privilege may engage in the following services only through a firm of CPAs that has obtained a registration from

the Board: (1) an audit or review of a financial statement for an entity headquartered in California, (2) a compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence for an entity headquartered in California; and (3) an examination of prospective financial information for an entity headquartered in California. As under current law, an out-of-state CPA practicing public accountancy in California consents to the jurisdiction of the Board and California courts; further, under section 5096(e)(6)-(9), the individual shall cease practicing in California upon the occurrence of several specified events and, under section 5096(f), the individual who is required to cease practicing must notify the Board within 15 days, on a form prescribed by the Board, and may not resume practicing public accountancy in California until he/she has received from the Board written permission to do so.

SB 1405 also imposed some affirmative obligations on CBA related to the practice privilege program and the "mobility" concept that the program is intended to promote. New section 5096.20 required the Board, prior to July 1, 2013 and "to ensure that Californians are protected from out-of-state licensees with disqualifying conditions who may unlawfully attempt to practice in this state under a practice privilege," to add an out-of-state licensee feature to the "licensee look-up feature" of its Internet website that allows consumers to obtain information about an individual whose principal place of business is not in California, "that is at least equal to the information that was available to consumers through its home page prior to January 1, 2013." At minimum, these features must include all of the following: (1) the ability of the consumer to search by name and state of licensure; (2) the disclosure of information in the possession of the Board, which the Board is otherwise

authorized to publicly disclose, about an individual exercising a practice privilege in California, including but not limited to whether the board has taken action of any form against that individual and, if so, what the action was or is; (3) a disclaimer that the consumer must click through prior to being referred to any other Internet website, which in plain language explains that the consumer is being referred to an Internet website that is maintained by a regulatory agency or other entity that is not affiliated with the Board; the disclaimer must include a link to the sections of SB 1405 that set forth disqualifying conditions; (4) a statement in plain language that notifies consumers that they are permitted to file complaints against such individuals with the Board; (5) a link to the Internet website or sites that the Board determines, in its discretion, provides the consumer the most complete and reliable information available about the individual's status as a licenseholder, permitholder, or certificate holder; (6) if the board of another state does not maintain an Internet website that allows a consumer to obtain information about its licensees including, but not limited to, disciplinary history, and that information is not available through a link to an Internet website maintained by another entity, a link to contact information for that board, which contains a disclaimer in plain language that explains that the consumer is being referred to a board that does not permit the consumer to obtain information, including but not limited to disciplinary history about individuals through the Internet website, and that the out-of-state board is not affiliated with the Board. CBA revamped its website and complied with the requirements of section 5096.20 by July 1, 2013. Additionally, subsection 5096.20(b) requires CBA to biennially survey the Internet websites and disclosure policies of other state accountancy boards to ensure that its disclaimers are accurate.

On and after January 1, 2016, new section 5096.21(a) requires CBA to make determinations as to whether allowing licensees of a particular state to practice in California under a "no notice, no fee" practice privilege violates its duty to protect the public under Business and Professions Code section 5000.1. If this determination shows that the public is at risk, the licensees of those particular states would, following a rulemaking by CBA, be required to use the prior practice privilege program with its notice and fee provisions. In making this determination, CBA must, at minimum, consider the following factors: (1) whether the state timely and adequately addresses enforcement referrals made by the Board to the accountancy board in that state, or otherwise fails to respond to requests the Board deems necessary to meet its obligations under this article; (2) whether the state makes the disciplinary history of its licensees publicly available through the Internet in a manner that allows the Board to adequately link consumers to an Internet website to obtain information that was previously made available to consumers about individuals from the state prior to January 1, 2013, through the notification form; and (3) whether the state imposes discipline against licensees that is appropriate in light of the nature of the alleged misconduct.

Alternatively, a state may be allowed to remain under the "no notice, no fee" practice privilege program under section 5096.21(c) if the following four statutory conditions are met: (1) NASBA adopts "best practices" enforcement guidelines; (2) CBA issues a finding that those practices meet or exceed CBA's own enforcement practices, (3) the other state has in place, and is operating pursuant to, enforcement practices substantially equivalent to NASBA's best practices guidelines; and (4) the disciplinary history of that state's licensees is publicly available through the Internet in a manner that allows CBA to

link consumers to a website to obtain information at least equal to the information that was previously available to consumers through the practice privilege form filed by out-of-state licensees pursuant to the Board's prior practice privilege program.

To this end, NASBA published its *Guiding Principles of Enforcement* on May 28, 2015. The Guiding Principles include measurable objectives in the areas of (1) timeframes for processing a complaint from intake to final disposition, (2) enforcement resources to adequately staff investigations, (3) case management protocols, (4) disciplinary guidelines to ensure consistency of decisionmaking, and (5) Internet disclosures regarding discipline. Also on May 28, 2015, CBA issued a finding that the NASBA *Guiding Principles* are consistent with CBA's enforcement practices. At its July 2015 meeting, CBA decided to allow NASBA to conduct the research necessary to establish whether other states' enforcement programs are substantially equivalent to the NASBA best practices on enforcement. NASBA agreed to provide CBA staff with the ability to audit the basis of the substantial equivalency determinations by meeting with NASBA to collectively review states as identified by CBA.

CBA created the MSG pursuant to another provision of SB 1405, which required the Board—on or before July 1, 2014—to convene a stakeholder group consisting of members of the Board, Board enforcement staff, and representatives of the accounting profession and consumer groups to consider whether the "no notice, no fee" practice provisions are consistent with the Board's duty to protect the public under section 5000.1, and whether the practice privilege provisions satisfy the objectives of stakeholders of the accounting profession in this state, including consumers.

Since its creation, MSG has been working closely with NASBA to ensure CBA compliance with every provision of section 5096.21. To ensure that Board staff agrees with NASBA's analysis, staff met with NASBA officials on April 6, 2016 to engage in a detailed review of the enforcement programs of Arizona and Washington at which NASBA presented an overview of its substantial equivalency analysis process, including the specific questions sent via survey to each state board of accountancy and the follow-up communications requiring a timely response. Following a detailed review of NASBA's process, staff was satisfied with NASBA's overall analysis process and that NASBA's identification of Arizona and Washington as substantially equivalent was correct.

As of MSG's May 2017 meeting, NASBA had analyzed the enforcement programs and Internet website capabilities of all 55 jurisdictions; it has identified 44 jurisdictions with enforcement programs that are "substantially equivalent" to its *Guiding Principles*, plus 11 additional jurisdictions with substantially equivalent enforcement programs but which lack the necessary Internet enforcement flag protocols. By MSG's July 2017 meeting, NASBA reported that all 55 jurisdictions now have enforcement programs that are substantially equivalent to its *Guiding Principles*.

Also during its 2017 meetings, MSG discussed the final report that is due to the legislature on January 1, 2018, the future of the MSG, and any necessary amendments to Business and Professions Code section 5096 to extend the "no notice, no fee" program. The final report will contain data and details that span the entire length of the group's activities since its formation in 2014; further, Business and Professions Code section 5096.21(f) requires the report to address three key issues: (1) how CBA has implemented the program and whether implementation is complete; (2) whether the "no notice, no fee"

program is more, less, or equivalent in the protection that it affords the public than the predecessor program; and (3) the extent to which other state boards of accountancy have addressed enforcement referrals to those boards from CBA, the timeframe in which those referrals were addressed, and the outcome of investigations conducted by those boards. Staff and the Executive Officer will continue to update all relevant statistics and appropriate contents of the final report through the end of the calendar year.

On September 14, 2017, the MSG discussed its future role following the full implementation of the practice privilege program analysis and completion of the final report. MSG determined that it is best to continue the responsibilities of the group, but to allow CBA to choose those responsibilities and the MSG's framework in the future.

CBA to Seek Amendment to Business and Professions Code section 5100

On September 14, 2017, CBA voted 9–1 to seek an amendment to Business and Professions Code section 5100, concerning disciplinary actions taken by other state or federal agencies as grounds for CBA disciplinary action. Specifically, CBA will ask the legislature to amend section 5100 to provide that, in CBA disciplinary actions based upon (1) any disciplinary action against a CPA licensee "by any other state or foreign country" (section 5100(d)); (2) suspension or revocation of the right to practice before any governmental body or agency (section 5100(h)); or (3) the imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person by the Public Company Accounting Oversight Board or the U.S. Securities and Exchange Commission (SEC) (section 5100(l)), CBA may rely on a certified copy of the record of

the disciplinary or other action taken against the licensee as "conclusive evidence" of the events related therein for purposes of determining discipline.

This issue was prompted by an SEC disciplinary action taken against California CPA Jerome S. Kaiser in which the SEC issued an order finding that Kaiser committed multiple willful violations of the Securities Act and federal regulations. Without admitting or denying the SEC's findings, Kaiser consented to the entry of the SEC's order, which barred him from practicing before the Commission as an accountant for 10 years and from acting as an officer or director of any issuer of federal securities for 10 years.

Based on the SEC's order, the California Attorney General's Office (AG) filed an accusation against Kaiser on behalf of the CBA executive officer. The accusation alleged two causes for discipline: (1) Kaiser had subjected his license to disciplinary action under Business and Professions Code section 141 (which allows DCA boards to take disciplinary action against a licensee based on a disciplinary action taken by another state, the federal government, or another country "for any act substantially related to the practice regulated by the California license...," in which case the California board may use a certified copy of the other disciplinary action as "conclusive evidence" of the events related therein); and (2) he had subjected his license to disciplinary action under sections 5100(h) and 5100(l).

An administrative law judge (ALJ) held an evidentiary hearing on CBA's accusation, at which hearing the ALJ permitted Kaiser to present evidence and argument to show that the SEC was wrong to determine that he committed securities fraud; further, the ALJ found Kaiser's testimony to be credible. The ALJ subsequently issued a proposed decision revoking Kaiser's license, staying the revocation, and putting it on probation for three years. On May 16, 2017, CBA adopted that proposed decision.

In an unusual move, CBA staff subsequently filed a petition for reconsideration, asking Board members to correct what staff believes is an error of law in the Board's May 16 decision, in that the findings of the SEC in its order were not treated as "conclusive evidence" in the CBA disciplinary matter. Instead, Kaiser was permitted to contest the SEC's findings and the AG was forced to relitigate the matter rather than being able to rely on the "conclusive evidence" language in Business and Professions Code section 141. Kaiser's attorney objected to the petition for reconsideration, and CBA declined to grant it.

Thus, at the September meeting, staff proposed that the Board seek legislation to amend section 5100 to clarify that, in CBA disciplinary matters brought under subsections 5100(d), 5100(h), and 5100(l), the other jurisdiction's disciplinary order is conclusive evidence of the events related therein. CBA agreed and directed staff to work with legal counsel and prepare draft legislative language for discussion at its November 2017 meeting.

CE Exemption for Licensees Who Serve as "Elected Officials"

At CBA's July 20, 2017 meeting, Senator John Moorlach from California's 37th Senate District and U.S. Representative Brad Sherman from the 30th Congressional District of California—both licensed CPAs in inactive status—renewed their request for an exemption from the Board's continuing education (CE) requirements necessary for active license renewal.

Under Business and Professions Code section 5028, CPAs who wish to remain in active status must complete 80 hours of CE during each two-year license renewal period.

A CPA who does not wish to complete the required CE may convert his/her license to inactive status, but such a CPA may not practice public accountancy or use the "CPA" designation without also indicating their license is inactive.

The officials' presentation followed Senator Moorlach's appearance at CBA's July 2016 meeting, when he requested that CBA amend its regulations to exempt state legislators and U.S. representatives from the CE requirement. At that time, staff and legal counsel opined that they could not create such an exemption by way of rulemaking; legislation is required. This time, Senator Moorlach asked CBA to amend its License Renewal Handbook to recognize legislative experience and participation in legislative hearings as qualifying toward the 80-hour CE requirement. In the alternative, Representative Sherman suggested that participation in congressional hearings qualifies toward CBA's CE requirement as a "live presentation." They also encouraged CBA to look to the California State Bar, which exempts from its CE requirement full-time legislators.

Although Board members and staff were sympathetic to the officials' plight, they reiterated that CBA cannot simply amend its handbook; either legislation or rulemaking is required.

At their September 2017 meetings, the CPC and CBA again discussed this issue. Staff indicated that they had reached out to seven other state boards of accountancy and only one state, Oregon, allows a limited number of CE hours to be satisfied by participation in specific kinds of legislative hearings. Staff also re-examined CBA regulations and determined that none of them permit CBA to create an exemption from the CE requirements for elected officials. CPC recommended that CBA not approve the proposals

made by Senator Moorlach and Representative Sherman; at its September 14, 2017 meeting, CBA unanimously agreed.

CBA Rulemaking

The following is a description of rulemaking proceedings recently undertaken or discussed by CBA:

♦ ***CE for Licensees Performing Preparation Engagements***. On June 22, 2017, the Office of Administrative Law approved the Board's amendments to sections 80.1, 80.2, 87, and 87.1, Title 16 of the CCR. These amendments modify CBA's continuing education (CE) requirements for licensees who, as their highest level of service, perform "preparation engagements" (defined as an engagement to prepare financial statements prior to audit or review by another accountant or for statements not intended for use by a third party, or that are otherwise for management use only). Under the amendments, such CPAs must complete eight hours of accounting and auditing CE and four hours of CE specifically related to the prevention, detection, and/or reporting of fraud affecting financial statements. These CE standards apply when the accountant in public practice is engaged to prepare financial statements but is not engaged to perform an audit, review, or a compilation on those financial statements. The amendments became effective on October 1, 2017.

♦ ***Preparation Engagements Do Not Qualify as Attest Experience***. On July 20, 2017, the CPC met to discuss possible action to initiate rulemaking to amend section 12.5, Title 16 of the CCR, and the two CBA Certificate of Attest Experience (CAE) forms incorporated by reference into that section, to clarify the attest experience reporting requirements for CPA supervisors who sign the CAE form for an individual attempting to complete 500 hours of attest experience. The clarifying language would specifically

exclude preparation engagements (see above) from qualifying toward the 500 hours of attest experience required in order to sign certified financial audits.

In October 2014, the AICPA issued Statements on Standards for Auditing and Review Services 21 (SSARS 21), which created a new level of service for preparation engagements; SSARS 21 identifies preparation engagements as a non-attest function. In November 2016, CBA directed the QC to review the CAE forms and suggest changes necessary to convey to supervisors that preparation engagements do not qualify toward the 500-hour attest experience requirement. On April 26, 2017, the QC identified sections five and six of the CAE forms as sections that could benefit from clarifying language that specifically excludes preparation engagements from qualifying as attest experience. The forms themselves must be revised, and section 12.5 must be amended to refer and incorporate the new revised version of the forms. At its July meeting, CBA unanimously approved the CPC's recommendation of the proposed regulatory changes to the CAE forms and to section 12.5, and directed staff to submit the text to the DCA Director and the Business, Consumer Services, and Housing Agency for review. If no adverse comments are received, CBA authorized the Executive Officer to initiate rulemaking and set the matter for hearing.

♦ ***CBA to Amend or Repeal Outdated Regulations***. On May 18, 2017, the CPC recommended that CBA initiate rulemaking to amend sections 7.1(c), 70, and 75.5, and repeal sections 8, 87.6, and 89.1, Title 16 of the CCR, because they are obsolete or outdated.

Specifically, CPC proposed that CBA amend section 7.1(c), regarding the "Credit Status for the Computerized Uniform CPA Examination." Section 7.1(c) includes a

timeframe that was initially included to assist with the transition of the Uniform CPA Examination from a paper exam to a computer-based exam. Since the transition to a computer-based exam has been completed, this provision is no longer needed and can be deleted. Section 70 concerns fees for testing and licensing. CBA lowered fees temporarily for a two-year period, ending June 30, 2016. This proposed amendment deletes those old, obsolete sections and renumbers the remaining sections accordingly. Finally, CPC proposed that section 75.5(b), regarding "Application; Review of Refusal to Approve," be amended to delete reference to sections therein that no longer exist, and replace them with sections that are relevant.

CPC also recommended repeal of section 8, concerning the "Examination Final Filing Dates," which relates to the old, paper format of the Uniform CPA Exam that has since been replaced with a computer-based testing format. Therefore, this section is obsolete and should be repealed. Also, sections 87.6 and 89.1, relating to the Report Quality Monitoring Committee, should be repealed because the Committee no longer exists.

On May 18, 2017, CPC recommended that CBA approve the regulatory text as discussed above, and direct staff to submit the text to DCA and the Business, Consumer Services, and Housing Agency for review. Then, if no adverse comments are received, CPC recommended that the Board authorize the Executive Officer to take any steps necessary to initiate the rulemaking process, make any non-substantive changes to the package, and set the matter for hearing.

At its May 18, 2017 meeting, CBA unanimously approved CPC's recommendation. At this writing, the proposed changes are under review by DCA; they have not yet been published for public comment.

LEGISLATION

SB 547 (Hill), as amended September 11, 2017, amends Business and Professions Code section 5063.3(a)(4) regarding a licensee's duty to protect confidential client information during the sale or merger of an accounting firm, and section 5096.9 authorizing an extension of the CBA's practice privilege regulations. The amendment to section 5063.3(a)(4) permits a licensee to disclose confidential client information to another licensee or person in connection with the sale or merger of the licensee's professional practice, provided that the parties enter into a written nondisclosure agreement with regard to all client information shared between the parties. The amendment is meant to bring California law in line with AICPA's recent changes to its professional ethics interpretations, and fulfills CBA's mission of protecting consumers by requiring licensees, successor licensees, and others involved in a proposed sale or merger, to take this precaution when handling confidential client information. SB 547 also amends section 5096.9 to allow CBA to initiate emergency rulemaking pursuant to section 100, Title 1 of the CCR, to enable CBA to quickly extend or remove the inoperative dates of its practice privilege regulations as CBA approaches the December 31, 2018 sunset date of its current "no fee, no notice" practice privilege program (see MAJOR PROJECTS). Governor Brown signed SB 547 on October 2, 2017 (Chapter 429, Statutes of 2017).

SB 795 (Galgiani), as introduced February 17, 2017, would repeal the January 1, 2019 sunset date on the statutes creating CBA's "no notice, no fee" practice privilege that permits qualified CPAs licensed in other states to practice public accountancy in California without a California license, thereby extending the program indefinitely. Because CBA's

final report on the program is not due until January 1, 2018, this bill was held in committee. *[S. BP&ED]*

SB 800 (Committee on Business, Professions and Economic Development), as amended on September 8, 2017, amends Business and Professions Code section 5094, which requires CBA to adopt regulations specifying the criteria and procedures for approval of credential evaluation services. These entities evaluate the education completed by licensure candidates who attended or graduated from foreign schools; all credential evaluation services must be approved by the Board. SB 800 amends section 5094(d) to specify that an approved credential evaluation service must be a member of the American Association of Collegiate Registrars and Admissions Officers; NAFSA: Association of International Educators; or the National Association of Credential Evaluation Services. Governor Brown signed SB 800 on October 7, 2017 (Chapter 573, Statutes of 2017).

AB 1190 (Obernolte), as amended on June 13, 2017, would have added section 210.5 to the Business and Professions Code to require DCA to submit an annual report to the legislature outlining its plans for implementing the BreEZe system at specified regulatory agencies (including CBA) in the third phase of the BreEZe implementation project. BreEZe is DCA's licensing and enforcement online database that provides applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. On October 7, 2017, Governor Brown vetoed AB 1190, stating that the Department of Technology posts updates on its website for all information technology projects, including BreEZe. "In addition, I signed SB 547 which requires the Department of Consumer Affairs to report to the Legislature the progress it is making in

transitioning its licensing programs to a new information technology system. Therefore, this bill is unnecessary and duplicative of those efforts."

LITIGATION

On September 15, 2017, CBA heard oral argument on the Sacramento County Superior Court's remand in the matter of a citation that it issued against Ned Leiba, CPA.

On March 10, 2017 in ***Leiba v. California Board of Accountancy***, No. 34-2016-80002453, Sacramento County Superior Court, Judge Shelleyanne Chang ruled that CBA abused its discretion in issuing a citation and a $500 fine to a CPA and ordered the Board to rescind both. Leiba was originally licensed by the Board in 1976; at that time, he submitted paper fingerprint cards to the Board for purposes of an internal background check. He has been continuously licensed without any disciplinary action since then. At some point in the 1980s, the Board decided to destroy all copies of its licensees' fingerprints because it was concerned with the security risks associated with storing licensees' fingerprint cards; it destroyed all fingerprint cards in its possession without telling its licensees.

Since then, most DCA boards have required their licensees to submit electronic "Livescan" fingerprints which are submitted to the state Department of Justice (DOJ), which maintains a repository of collected fingerprints, performs a criminal background check of the licensee, and reports back to the agency.

In 2012, the Board adopted section 37.5, Title 16 of the CCR, which requires any licensee applying for a biennial renewal license "who has not previously submitted fingerprints as a condition of licensure or for whom an electronic record of the licensee's

fingerprints does not exist in the Department of Justice's criminal offender record identification database" (CORI) to submit Livescan fingerprints as a condition of license renewal. Leiba's license was subject to renewal in September 2014; he submitted a renewal application including a new set of paper fingerprints. Leiba maintained that he had already submitted fingerprints to CBA in 1976 and thus had satisfied the requirements of section 37.5. The Board disagreed and issued Leiba a citation and a $500 fine for violation of section 37.5. Leiba challenged the citation and fine, and an ALJ held an evidentiary hearing on the matter. The ALJ issued a proposed decision dismissing the citation and finding that Leiba did not violate section 37.5 and that the Board was estopped from citing Leiba as it had destroyed Leiba's fingerprints. CBA rejected the ALJ's proposed decision and issued an order remanding the matter to the ALJ to hold a new hearing and take additional evidence on this issue whether Leiba is an individual "for whom an electronic record of the licensee's fingerprints does not exist" in DOJ's CORI. Subsequently, a different ALJ held another hearing; she issued a proposed decision upholding the citation and giving Leiba 30-days in which to submit Livescan fingerprints to the Board. The Board adopted this proposed decision, and Leiba filed a petition for writ of mandate challenging the Board's order in superior court.

Judge Chang ruled that the Board abused its discretion in finding that Leiba violated section 37.5, because "[i]t is undisputed that [Leiba] previously submitted his fingerprints to the Board 'as a condition of licensure.'" She also ruled that the Board failed to prove that Leiba is a person "for whom an electronic record of the licensee's fingerprints does not exist" in DOJ's database ("the Board has not been forthcoming with information about when the cards of older licensees were destroyed, and what information it provided to the

DOJ"). Finally, the court noted that Leiba submitted a new set of paper fingerprints with his renewal application; "[t]he Board accepts 'hard copies' from out-of-state licensees, and can provide these fingerprints to the DOJ. Consequently, [Leiba] will not be able to evade a criminal background check." Judge Chang ordered CBA to rescind the citation and fine.

CBA scheduled the September 15 oral argument because it has new Board members who were not familiar with the case. Following the argument, and noting that Leiba had submitted new fingerprints with his renewal application, CBA set aside the citation and the fine.

RECENT MEETINGS

On July 20, 2017, CBA voted to move the date of its January 2018 meeting because of a major event occurring in Sacramento which prevented staff from securing lodging within the state rate of $95 per night. CBA unanimously approved moving the meeting date to January 18, 2018. The Board also toured the new CBA office in Sacramento, located at 2450 Venture Oaks Way, Suite 300, Sacramento, CA 95833.

CBA held its September 14–15, 2017 meeting on the campus of California State University at Fullerton. CBA used this opportunity to hold two outreach events for CSUF students, including "Perspectives of a CPA," which was held during the CBA meeting, and "Pathways to Licensure," which was held during the evening following the Board's adjournment on September 14, 2017.