

Minutes
Department of Business and Professional Regulation
Board of Accountancy
May 13, 2010

Tampa Airport Marriott
Tampa International Airport
Tampa Florida 33607

The meeting was called to Order at 1:15 p.m. by Ms. Caldwell, Vice Chair.

Board Members present were: Maria Caldwell, John Quinlan, Teresa Borcheck, Cynthia Borders-Byrd and Eric Robinson. Excused Board Members were: David Tipton, Steve Riggs, Bill Durkin, and Rick Carroll. Others present were: John Johnson of the FICPA, Ned Campbell, and Kathy Anderson of the FICPA, Ron Santi, Member of the FICPA, Dan Hevia, Consultant to the Board, Mary Ellen Clark, Eric Hurst, Veloria Kelly, and June Carroll.

Ms. Caldwell turned the meeting over to Ms. Borders-Byrd as the Chair of the Rules Committee.

1. Approve minutes from December 10, 2009 meeting.

Motion was made by Mr. Quinlan, seconded by Ms. Borcheck, to approve the minutes from the December 10, 2009 meeting. Upon vote, the motion passed unanimously.

2. 61H1-20.0098 Standards for Business Valuations

It was determined that Mr. Johnson, would invite Mr. Crain, to a meeting to discuss the issue of AICPA Statement on Standards for Valuation Services.

3. 61 H 1-29.002 Temporary Licenses

Motion was made by Mr. Quinlan, seconded by Ms. Borcheck, to notice rule without text. Upon vote, the motion passed unanimously.

4. 61H1-23.002 Records Disposition Responsibility

Motion was made by Mr. Quinlan, seconded by Ms. Caldwell, to notice for rule development. Upon vote, the motion passed unanimously.

5. 61H1-33.003 Continuing Professional Education

This item was pulled.

6. 61H1-36.004 Disciplinary Guidelines: Range of Penalties; Aggravating and Mitigating Circumstances

(1)(a) The Board sets forth below a range of disciplinary guidelines from which disciplinary penalties will be imposed upon practitioners guilty of violating Chapter 473, F.S. The purpose of the disciplinary guidelines is to give notice to licensees of the range of penalties which will normally be imposed upon violations of particular provisions of Chapter 473, F.S. The disciplinary guidelines are based upon a single count violation of each provision listed. The brief description of each violation is provided for quick reference and is not meant to convey all elements of any given statutory provision; the full language of each statutory provision cited must be consulted in order to determine the conduct involved. All penalties at the upper range of the sanctions set forth in the guidelines, i.e., suspension, revocation, etc., include lesser penalties, i.e., fine, probation or reprimand which may be included in the final penalty at the board’s discretion.

(b) Standard probationary terms will include, as applicable, a review of the licensee’s practice, including analysis of selected financial statements (including working papers), restriction of the scope of the licensee’s practice and review of internal controls put in place by the licensee in order to eliminate the violation. All of the above will usually include the use of a CPA consultant employed by the Department of Business and Professional Regulation or approved by the Board and will usually require the licensee to assume the cost of the consultant’s activities. Additional continuing education may also be required of a licensee where deficiencies in a particular practice area are noted. In all cases of probation or suspension a report showing compliance with the terms of the final order must be received and accepted by the Board prior to the termination of the probation or suspension. Other specific terms of probation or suspension may be imposed, as necessary, by the Board.

(2) The following disciplinary guidelines shall be followed by the Board in imposing disciplinary penalties upon licensees for violation of the below mentioned statutes and rules:

VIOLATION	PENALTY RANGE	
	MINIMUM	MAXIMUM
(a) Attempting to procure license by bribery or fraudulent misrepresentation (Sections 455.227(1)(h), 473.323(1)(b), F.S.)	Revocation and \$5,000 fine if licensed (denial of license and refer to State Attorney if not licensed)	
(b) CPA License disciplined by another jurisdiction (Sections 455.227(1)(f), 473.323(1)(c), F.S.)	Same penalty as imposed in other jurisdiction or imposition of same range of penalties as those set forth in those rules for the same type of violation.	
(c) Criminal conviction relating to accountancy (Sections 455.227(1)(c), 473.323(1)(d), F.S.)	Misdemeanor: Reprimand	Reprimand and \$5,000 fine one (1) year suspension and two (2) year probation

	Felony: One (1) year suspension; two (2) year probation \$5,000 fine	Revocation and \$5,000 fine
(d) Knowingly making or filing false report (Sections 455.227(1)(g), (1)(l), 473.323(1)(e), F.S.)	Reprimand one (1) year probation	Revocation and \$5,000 fine
(e) Fraudulent, false, deceptive or misleading advertising (Section 473.323(1)(f), F.S., Rule 61H1-24.001, F.A.C.)	\$250 fine Letter of Guidance	Reprimand, one (1) year probation and \$5,000 fine
(f) Incompetence (mental or physical impairment) (Section 473.323(1)(g), F.S.) (Rule 61H1-36.001(3), F.A.C.)	Suspension until ability to practice proved, followed by probation	
(g) Fraud, deceit or misleading (Sections 455.227(1)(a), (m), 473.323(1)(g), (k), F.S.)	Reprimand, one (1) year two (2) years probation and \$5,000 fine	suspension; \$5,000 fine and revocation
(h) Negligence or misconduct	\$250 fine Letter of Guidance	Reprimand and one (1) year probation (continuing education and review of practice at licensee's expense and limited area of practice)
1. Technical standards and professional competence (Sections 455.227(1)(o), 473.315, F.S.; Rule 61H1-21.006 and Chapter 61H1-22, F.A.C.)		
2. Lack of independence (Sections 473.315, 473.319, 473.3205, F.S.; Rule 61H1-21.001, F.A.C.)	Reprimand, one (1) year probation with review of practice and continuing education	Reprimand, one (1) year suspension, two (2) years probation and review of practice and continuing education
3. Commissions and contingent fees (Rules 61H1-21.001, 61H1-21.003, 61H1-21.005, F.A.C.)	Reprimand	One (1) year suspension, two (2) years probation \$5,000 fine
4. Client records disposition (Rule 61H1-23.002, F.A.C.)	\$250 fine Letter of Guidance	Suspension until records are returned
(i) Practicing on suspended or revoked license (Section 473.323(1)(i), F.S.)	Revoke if previously suspended; refer to State Attorney if previously revoked	
(j) Practicing on inactive or delinquent license (Sections 455.271, 473.323(1)(i), F.S.)	Reprimand and fine based on length of time in practice while inactive; \$100/month or \$5,000 maximum (penalty will require licensure or cease practice)	
(k) Licensees practicing	Reprimand and \$100 per	

in an unlicensed firm (including sole proprietors) or otherwise in violation of Sections 473.309, 473.3101, and 473.323(1)(g), F.S.; Rule 61H1-26.001, F.A.C.	month fine to maximum of \$5,000 and suspension of right to practice until corrected	
(l) Suspension of right to practice in front of any state or federal agency (Sections 455.227(1)(f), 473.323(1)(j), F.S.)	Same penalty as imposed by agency or imposition of same range of penalties as those set forth in those rules for the same type of violation	
(m) Lack of Good Moral Character (Section 473.323(1)(l), F.S.)	Reprimand; and one year probation	Revocation
(n) Failure to pay fines or administrative costs imposed by final order or citations set forth in Rule 61H1-36.005, F.A.C.	\$100 per month late fee for every month the licensee is late to a maximum of \$5,000	Revocation
(o) Violation of CE requirements (Section 473.323(1)(a) by 473.312 or 473.323(1)(h), 455.227(1)(q), F.S., by Rule 61H1-33.003 and/or 61H1-33.0035, F.A.C.)	Reprimand, probation, make up missed CEs and penalty CEs	Suspension and \$1,000 fine
(p) Violation of client confidentiality (Section 473.323(1)(a) or 455.227(1)(q), F.S., by Rule 61H1-23.001, F.A.C.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(q) Misleading or deceptive name (Section 473.323(1)(a) by 473.321, F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(r) Violation of Section 473.323(1)(a) by 473.322, F.S.:		
1. Present license of another as one's own (Section 473.322(1)(d), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
2. Give false or forged evidence to Board or member thereof (Section 473.322(1)(e), F.S.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
3. Use or attempt to use license that has been suspended, revoked, or placed on inactive or delinquent status (Section 473.322(1)(f), F.S.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
4. Employ unlicensed persons to practice public accounting; aiding or assisting unlicensed practice public accounting (Section 473.322(1)(g), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine

5. Conceal information relative to violations of Chapter 473, F.S. (Section 473.322(1)(h), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(s) Failure to provide legally-required written disclosure to client or public (violation of Section 473.323(1)(m), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(t) Violation of Section 473.323(1)(a) by 455.227(1), F.S.:		
1. Improper influence on client (Section 455.227(1)(n), F.S.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
2. Improper delegation of professional responsibilities (Section 455.227(1)(p), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
3. Improper interference with investigation or disciplinary proceeding (Section 455.227(1)(r), F.S.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
4. Failure to perform statutory/ legal obligations (Section 455.227(1)(k), F.S.)	Reprimand, probation and \$1,000 fine	Suspension and \$1,000 fine
(u) Failure to maintain current address (violation of Sections 455.275, 455.227(1)(q), and 473.323(1)(h), F.S., by violating Rule 61H1-26.005, F.A.C.)	Reprimand and \$500 fine	Suspension and \$1,000 fine
(v) Standards for assembly of financial statements (violation of Sections 455.227(1)(q) and 473.323(1)(h), F.S., by Rule 61H1-20.0053, F.A.C.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(w) Violation of Sections 473.323(1)(h) and 455.227(1)(q), F.S., by Rule 61H1-25.001, F.A.C. Same as (t)2. supra	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(x) Minimum capital (violation of and Sections 455.227(1)(q) and 473.323(1)(h), F.S., by Rule 61H1-26.002, F.A.C.)	Reprimand, probation, \$1,000 fine and corrective action. Must document required capital	Suspension and \$5,000 fine
(y) Licensure of firm names and changes (violation of Sections 455.227(1)(q) and 473.323(1)(h), F.S., by Rules 61H1-26.003 and 61H1-26.004, F.A.C.)	Reprimand, probation, \$100/ month fine and corrective action. Must document licensure	Suspension and \$5,000 fine
(z) Failure to report discipline violation (Section 455.227(1)(i), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
<u>(aa) Failure to timely report being convicted or found guilty of, or</u>	<u>Reprimand</u>	<u>Suspension and \$5,000 fine</u>

entering a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction (more than 30 days late) (455.227(1)(t))

(3) The Board shall be entitled to deviate from the above-mentioned guidelines upon a showing of aggravating or mitigating circumstances by clear and convincing evidence presented to the Board prior to the imposition of a final penalty.

(a) Aggravating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the enhancement of a penalty beyond the maximum level of discipline in the guidelines shall include but not be limited to the following:

1. History of previous violations of the practice act and the rules promulgated thereto.
2. In the case of negligence; of the magnitude and scope of the engagement and the damage inflicted upon the general public by the licensee's misfeasance.
3. Evidence of violation of professional practice acts in other jurisdictions wherein the licensee has been disciplined by the appropriate regulatory authority.
4. Violation of the provision of the practice act wherein a letter of guidance as provided in Section 455.225(3), F.S., has previously been issued to the licensee.
5. Multiple convictions of violations of the same provision of Chapter 473, F.S., or the rules promulgated thereto contained in the same administrative complaint.

(b) Mitigating circumstances; circumstances which may justify deviating from the above set forth disciplinary guidelines and cause the lessening of a penalty beyond the minimum level of discipline in the guidelines shall include but not be limited to the following:

1. In cases of negligence, the minor nature of the engagement in question and lack of danger to the public health, safety and welfare resulting from the licensee's misfeasance.
2. Lack of previous disciplinary history in this or any other jurisdiction wherein the licensee practices his profession.
3. Restitution of any damages suffered by the licensee's client.
4. The licensee's professional standing among his peers including continuing education.
5. Steps taken by the licensee or his firm to insure the non-occurrence of similar violations in the future.
6. The degree of financial hardship incurred by a licensee as a result of the imposition of fines or the suspension of his practice.
7. Cooperation with the Department of Business and Professional Regulation and the Board including understanding and admission of the violation by the Respondent.

Rulemaking Specific Authority 455.2273 FS. Law Implemented 455.2273, 473.323(1)(m) FS. History—New 1-7-87, Amended 9-16-87, 8-25-88, 6-18-91, 12-30-91, Formerly 21A-36.004, Amended 12-7-93, 5-23-94, 8-16-99, 1-31-05, _____

Motion was made by Mr. Quinlan, seconded by Ms. Borcheck, to notice the proposed

language, and that there would not be an impact to small business. Upon vote, the motion passed unanimously.

7. 61H1-36.005 Citations

(1) Pursuant to Section 455.224, F.S. (~~1991~~), the Board sets forth in subsection (3) of this rule those violations for which there is no substantial threat to the public health, safety and welfare; or, if there is a substantial threat to the public health, safety and welfare, such potential for harm has been removed prior to the issuance of the citation. Next to each violation is the fine to be imposed.

(2) Prior to issuance of the citation, the Department must confirm that the violation has been corrected or is in the process of being corrected. If the violation is a substantial threat to the public health, safety and welfare, such potential for harm must be removed prior to issuance of the citation.

(3) The following violations with accompanying fines may be disposed of by citation:

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|--|---|
| (a) Practicing on an inactive or delinquent license (Section 473.323(1)(i), F.S.) | Reprimand and fine based on length of time in practice while inactive; \$100/month or \$5,000 maximum (penalty will require licensure or cease practice). |
| (b) Licensees practicing in an unlicensed firm (including sole proprietors) or otherwise in violation of Sections 473.309, 473.3101, and 473.323(1)(g), F.S. | Reprimand and \$100 per month fine to maximum of \$5,000 and suspension of right to practice until corrected. |
| (c) Licensees who complete continuing professional education requirements timely but who are found to be deficient after December 1st of their renewal year (subsection 61H1-33.003(5), F.A.C.) | Submit documentation that deficient hours have been completed and pay \$50 fine within 60 days. |
| (d) Licensees who fail to timely submit complete documentation for a CE audit | Fined \$100 per month. |
| (e) Retention of client records when records are returned more than three months after the date requested and there is no evidence that the failure to return the records was due to any fees not being paid. (Rule 61H1-23.002, F.A.C.) | \$500 fine. |
| (f) <u>Failure to timely report being convicted or found guilty of, or entering a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction (up to 30 days late) (455.227(1)(t))</u> | \$250 fine. |

(4) Once the citation becomes a final order, the citation and complaint become a public record pursuant to Chapter 119, F.S., unless otherwise exempt from the provisions thereof. The citation and complaint may be considered as aggravating circumstances in future disciplinary actions pursuant to paragraph 61H1-36.004(3)(a), F.A.C.

(5) The procedures described herein apply only for an initial offense of the alleged violation. Subsequent violation(s) of the same rule or statute shall require the procedures of Section 455.225, F.S., to be applied. In addition, should an initial offense for which a citation could be issued occur in conjunction with violations not described herein, then the procedures of Section 455.225, F.S., shall apply.

Rulemaking Specific Authority 455.224, 455.225, 473.304 FS. Law Implemented 455.224 FS. History—New 12-30-91, Formerly 21A-36.005, Amended 12-7-93, 5-23-94, 8-16-99, 5-11-03, 7-23-06, _____.

Motion was made by Ms. Caldwell, seconded by Ms. Borcheck, to notice the proposed

language, and that there would not be an impact to small business. Upon vote, the motion passed unanimously.

8. 61H1-36.0055 Minor Violation, Notice of Non Compliance

(1) Pursuant to Section 455.225(3), F.S., the Department may issue a notice of non-compliance to a certified public accountant licensee for an initial offense of a minor violation. Failure of the person to whom a notice of non-compliance is issued to take corrective action which is set forth in the notice of violation within 15 days of the receipt of the notice may result in further disciplinary action.

(2) The following violations are minor violations for which the Department may issue a notice of non-compliance:

(a) Retention of client records when records are returned within three months of the date requested and there is no evidence that the initial failure to return the records was due to any fees not being paid.

(b) Use of “& Associates” in a firm name when the firm does not have a licensee that qualifies as the “associate”.

(c) Licensees practicing in a firm which was not licensed within three months of the date the firm began doing business. Any late fees shall still apply.

(d) Practicing on a delinquent license for up to three months.

(e) Failure to timely complete required CPE if failure is due to erroneous belief that completed CPE satisfied requirements and deficiency has been completed.

(f) Failure to notify the Board in writing within 30 days of the occurrence of any of the following:

1. Admission or addition of a co-partner, shareholder or member in the Florida office;
2. Retirement or death of a co-partner, shareholder, or member in a Florida office;
3. Termination of the partnership, professional service corporation or limited liability company of any Florida office.

(g) Failure to provide the Board with a list of all co-partners, shareholders or members in the U.S. pursuant to subsection 61H1-26.004(2), F.A.C.

(h) Employment by a CPA firm of any person with a delinquent or inactive license; or, working for a CPA firm with an inactive or delinquent license for one year or less.

(i) Issuance of a check to the Board or Department that is subsequently dishonored.

(3) The Department shall not issue a notice of non-compliance for any subsequent violations of the same provision of the law or rules to the same licensee, registrant or certificate holder, within a three-year period following the initial notice of non-compliance for violation of that provision.

Rulemaking Specific Authority 455.225(3), 473.304 FS. Law Implemented 455.225, 473.3101 FS. History–New 10-15-97, Amended 7-16-98, 8-16-99, 7-23-06,

Motion was made by Mr. Quinlan, seconded by Ms. Caldwell, to notice the proposed language, and that there would not be an impact to small business. Upon vote, the motion passed unanimously.

9. Mobility

Ms. Kelly asked that board members look over the application for mobility and give her their questions or concerns by May 31st.

10. Other Business

Mr. Hevia, consultant to the board was present for this item. Mr. Hevia appeared to ask the board for guidance on what the board is looking for in the AICPA's Statements on Standards for Rules 61H1-20.003 thru 61H1-20.016.

11. Adjourn

There being no further business the meeting was adjourned at 2:38.

Cynthia Borders-Byrd, Chair