

Board of Accountancy
Rules Committee Agenda
January 22, 2020 2:30 p.m.
Phone Conference number 888-585-9008
Pass Code: 683213166

Meeting Minutes

The meeting was timely called to order by Roger Scarborough, Executive Director, Florida Board of Accountancy.

Board Members: Steve Platau (Committee Chair) Jesus Socorro (Board Chair), Dave Dennis, Bud Fennema, Mindy Rankin

Staff: Rachelle Munson, Assistant Attorney General & Board Counsel, Roger Scarborough, Karan Lee, June Carroll

Guests: Jennifer Green, Liberty Partners; Justin Thames, Florida Institute of CPAs

Agenda Items:

1. Consideration of Statute requirement to adopt rules
2. Stakeholder input on pathway to appropriate rules approach
3. Committee Member input on path forward
4. Identification of additional input necessary
5. Drafting of Rules and other assignments

Discussion of Independence Rule:

Mr. Dennis noted that various bodies set independence rules. CPAs in Florida must adhere to the rules applicable to the report the CPA is engaged to deliver. CPAs in Florida may adhere to independence standards promulgated by the AICPA, IESBA, PCAOB, SEC, GAO, DOL and other standard setters. There is some variation in independence standards between these different standard setters.

Mr. Dennis suggested that an appropriate rule to be promulgated by the Board might provide guidance to Florida licensees by requiring that licensees complied with the independence standard applicable to and cited in the report the CPA rendered. All of the members of the committee and guests provided comments and the committee chair was directed to provide a suggested draft of language for the stakeholders to consider in advance of the next meeting of this committee.

61H1-21.001 Proposed Rule on Independence: "Licensees providing attest services shall be independent pursuant to the standards applicable to the report issued."

Additional Committee Topics Discussed for Potential Rulemaking:

A. The Null and Void Issue

Mr. Thames and Mr. Scarborough brought to the attention of the Committee an issue that should be addressed: The status of null and void licenses is challenging under the current framework.

Florida Statutes address this issue in §473.313 (5) The statute (.313) addresses two distinct situations. Inactive status and Null and Void status.

An Inactive CPA either requests to become Inactive or is placed in that category for failure to complete continuing education. The statute in §473.313(2) places a 120 hour cap on the number of hours an Inactive CPA may be required to complete to re-activate an Inactive license.

A "Null and Void" designation is attached to a license that has not been classified as Inactive. Null and Void status attaches when a licensee has done nothing to renew a license (for example, has not filed/paid an Inactive application or fee) §473.313(5) refers to §473.313(2) which sets forth the same 120 hours of continuing education as every other licensee would be required to complete. It is possible to read the statute as requiring the same 120 hours to convert to active whether the licensee had filed/paid to be Inactive or had become Null and Void. The Null and Void classification however ends a licensee's license and would require re-taking the CPA exam.

A proposal was advanced by Mr. Thames to allow a "Null and Void" former) licensee to return to active status without re-taking the CPA exam. Under Mr. Thames' proposal a "Null and Void" licensee would be required to complete not less than 200 hours of continuing professional education (of which not less than 40 hours would be in Accounting and Auditing, not less than 10 hours would be in Florida ethics and no more than 30 hours would be in Behavioral classified CPE.

Ms. Rankin did not express support for the particular proposal but did endorse a pathway to licensure, one way would be to do away with the "Null and Void" status which would classify CPAs as either active or inactive. A big concern is the duration of time that a licensee has gone without keeping current and the ability to resume practice by simply taking some CPE.

Mr. Socorro echoed Ms. Rankin's comments in some measure noting (generally) acceptance of a 200 hour requirement however wanting to assure that the public would be protected perhaps by some sort of evaluation of the candidate.

Both Mr. Dennis and Dr. Fennema expressed support for Mr. Thames' proposal.

More consideration of this issue and perhaps a statute change will be required.

B. The Licensees with Overall 80 Hours of CPE but Deficient in Specific Area(s) Issue

Licensees with no hour deficiency in CPE hours (80 for two year cycle) however the licensee is deficient with the ethics or A&A hours requirements having not completed their Florida CPE requirements by completing the minimum number of hours in A&A and Ethics specific courses. Proposed language to attempt to address this issue by citation would require an amendment of Rule 61H1-36.004 (aa). Draft language is attached to these minutes for consideration.

C. The International Accreditation Organization EQUIS Issue

EQUIS Accreditation was briefly discussed as a potential additional accrediting agency that could be considered as an alternative to AACSB when evaluating applicants with education outside the US. The question was deferred to the Education Committee.

Proposed Change to Address 80 Hour Compliance with Improper Mix of Hours (aa)

61HI-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)(1), 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(J)(c), 473.323(1)(d), F.S.)	Misdemeanor: Reprimand Felony: One (1) year suspension; two (2) year probation \$5,000 fine	Reprimand and \$5,000 fine and two (2) year probation one (1) year suspension Revocation and \$5,000 fine
(d) Knowingly making or filing false report (Sections 455.227(1)(g), (1)(1), 473.323(1)(e), F.S.)	Reprimand one (1) year probation	Revocation and \$5,000 fine Reprimand, one (1) year probation and \$5,000 fine
(e) Fraudulent, false, deceptive or misleading advertising (section 473.323(1)(1), F.S.) (rule 61HJ-24.00I, F.A.C.)	\$250 fine	\$1,000 fine
(f) Incompetence (mental or physical impairment) (section 473.323(1)(g), F.S.)	Suspension until ability to practice proved, followed by probation	
(g) Fraud, deceit or misleading	Reprimand, one (1) year suspension;	\$5,000 fine and revocation

(sections 455.227(l)(a), (m), 473.323(l)(g), (k), F.S.)	two (2) years probation and \$5,000 fine	
(h) Negligence or misconduct (section 473.323(l)(g), F.S.)	\$250 fine	Reprimand and one (1) year probation (continuing Education and review of practice at licensee's expense and limited area of practice) and \$5,000 fine
1. Technical standards and professional competence (sections 455.227(l)(0), 473.315, F.S.) (rule 61HI-21.006 and chapter 61HI-22, F.A.C.)	Reprimand, probation, and \$500 fine	Suspension and \$5,000 fine
2. Lack of independence (sections 473.315, 473.3205, F.S.) (rule 61HI-21.001, F.A.C.)	Reprimand, one (1) year probation with review of practice and continuing education	Revocation and \$5,000 fine
3. Commissions and contingent fees (rules 61HI-21.003, 61HI-21.005, F.A.C.)	Reprimand	One (1) year suspension, two (2) years probation and \$2,500 fine
4. Client records disposition (rule 61HI-23.002, F.A.C.)	\$250 fine	Suspension until records are returned and \$1,000 fine
(i) Practicing on suspended or revoked license (section 473.323(l)(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(l)(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 in an unlicensed firm (including sole proprietors) or otherwise in violation of (sections 473.309, 473.3101, and 473.323(l)(g), F.S.) (rule 61HI-26.001, F.A.C.)	Reprimand and \$100 per maximum of \$5,000 and suspension of right to practice, until corrected	
(l) Suspension or revocation of right to practice in front of any state or federal agency, including the Public Company Accounting Oversight Board. (sections 455.2270 (l), 473.323(l)(l), 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(l)(l), F.S.)	Reprimand; and one year probation	Revocation
(n) Failure to pay fines or administrative cost imposed by final order or citations set for in rule 61HI-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(l)(a) by 473.312 or 473.323(l)(h), 455.227(l)(q), F.S., by rule 61HI-33.003 and/or 61HI-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 455.227(l)(q), F.S., by rule 61HI-23.001, F.A.C.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
(q) Misleading or deceptive name (section 473.321, F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$1,000 fine

(r) Violation of Section 473.323(l)(a) by section 473.322, F.S.:		
1. Present license of another as one's own (section 473.322(l)(d), F.S.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
2. Give false or forged evidence to Board or member thereof (section 473.322(l)(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(l)(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(l)(v), 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(l)(h), F.S.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
(s) Failure to provide legally-required written disclosure to client or public (violation of section 473.323(l)(m), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(t) Violation of section 473.323(j)(a), F.S., by section 455.227(l), F.S.:		
1. Improper influence on client (section 455.227(l)(n), F.S.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
2. Improper delegation of professional responsibilities (section 455.227(l)(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(l)(r), F.S.)	Reprimand, probation, and \$1,000 fine	Revocation and \$5,000 fine
4. Failure to perform statutory/legal obligations (section 455.227(l)(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(j)(q), and 473.323(l)(h), F.S., by violating rule 61H1-26.005, F.A.C.)	Reprimand and \$500 fine	Suspension and \$1,000 fine
(v) Violation of sections 473.323(l)(h) and 455.227(l)(q), F.S., by rule 61H1-25.001, F.A.C. Same as subparagraph (t)2.	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(w) Minimum capital (violation of and sections 455.227(l)(q) and 473.323(l)(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 \$1,000 fine
(x) Licensure of firm names and changes (violation of sections 455.227(l)(q) and 473.323(l)(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 \$1,000 fine
(y) Failure to report discipline violation (section 455.227(l)(i), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine

(z) 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 (more than 30 days late) (section 455.227(1)(t), F.S.)	Reprimand	Suspension and \$5,000 fine
(aa) Failure to obtain continuing professional education hours (section 473.312, F.S., rule 61HJ-33.003, F.A.C.)		
First Offense		
NUMBER OF HOURS LACKING		
0 however A&A and/or Ethics hours deficient	Citation and order to make-up hours in the same category as those missed within 90 days of final order, must submit proof of compliance for next two renewal periods	\$500 fine, and order to make-up hours plus 10 additional penalty hours in same category as those missed within 90 days of final order, must submit proof of compliance for next two renewal periods
1 to 16 hours	\$500 fine, makeup missing hours plus 20 additional penalty hours, in same category as those missed, if missing hours are ethics, penalty hours would consist of accounting/auditing, within 90 days of final order, must submit proof of compliance for next two renewal periods	\$1,000 fine, makeup missing hours plus 20 additional penalty hours, in same category as those missed, if missing hours are ethics, penalty hours would consist of accounting/auditing, within 90 days of final order, must submit proof of compliance for next two renewal periods
17 to 80 hours	\$1,000 fine, makeup missing hours plus additional penalty hours equal to the number of those missed, within same category as those missed, suspension until all hours are completed, must submit proof of compliance for next two renewal periods	Suspension, \$2,000 fine, makeup missing hours plus additional penalty hours equal to the number of those missed, within same category as those missed, must submit proof of compliance for next two renewal periods
Second Offense		
NUMBER OF HOURS LACKING		
0 however A&A and/or Ethics hours deficient	\$500 fine, makeup missing hours plus 20 additional penalty hours, in same category as those missed, if missing hours are ethics, penalty hours would consist of accounting/auditing, within 90 days of final order, must submit proof of compliance for next two renewal periods	\$1,000 fine, makeup missing hours plus 20 additional penalty hours, in same category as those missed, if missing hours are ethics, penalty hours would consist of accounting/auditing, within 90 days of final order, must submit proof of compliance for next two renewal periods
1 to 16 hours	\$1,000 fine, makeup missing hours plus 20 additional penalty hours, in same category as those missed, if missing hours are ethics, penalty	\$2,000 fine, makeup missing hours plus 20 additional penalty hours, in same category as those missed, if

	hours would consist of accounting/auditing, suspension until all hours are completed, must submit proof of compliance for next two renewal periods	missing hours are ethics, penalty hours would consist of accounting/auditing, suspension until all hours are completed, must submit proof of compliance for next two renewal periods
17 to 80 hours	\$2,000 fine, makeup missing hours plus additional penalty hours equal to the number of those missed, within same category as those missed, suspension until all hours are completed, must submit proof of compliance for next two renewal periods	Suspension, \$5,000 fine, makeup missing hours plus additional penalty hours equal to the number of those missed, within same category as those missed, must submit proof of compliance for next two renewal periods
(bb) Failure to enroll in peer review program when required (sections 473.323(1)(a) and 473.3125(4), F.S.)	Suspension until enrollment and a reprimand	Revocation and \$5,000 fine
(cc) Utilizing CPA designation without an active license (section 473.323(1)(a), F.S., through a violation of section 473.322(1)(b), F.S.)	Reprimand, completion of four penalty hours of Board-approved ethics continuing professional education hours	Suspension and \$500 fine
(dd) Performing work described in sections 473.302(8)(a), (d), F.S., (e.g. – audits, reviews, compilations, or attestation engagements) without an active individual and/or firm license (section 473.323(1)(a), F.S., through a violation of section 473.322(1)(c), F.S.)	Reprimand, \$500 fine, completion of four penalty hours of Board-approved ethics and eight penalty hours of Accounting and Auditing continuing professional education hours	Suspension and \$1,000 fine, completion of eight penalty hours of Accounting and Auditing continuing professional education hours

(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 nonoccurrence 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 Authority 455.2273, 473.304 FS. Law Implemented 455.277, 455.2273, 473.323 FS. History-New 1-7-87, Amended 9-16-87, 8-25-88, 6-18-91, 12-30-91, Formerly 2/A-36.004, Amended 12-7-93, 5-23-94, 8-16-99, 1-31-05, 7-28-10, 5-6-15, 9-30-15, 2-6-17, 1-31-18, 6-18-18, 10-24-19.


Steve Platau, Chair

As of Jan 22 2020
Date