

Board of Accountancy
Rules Committee
Conference Call

Wednesday, March 7, 2018

The meeting was called to order at 10:00 a.m. The roll was called by Veloria Kelly, Executive Director, and reflected the following persons present:

Committee Members:

Tracy Keegan, Chair	Present
David Dennis	Present
M.G. Fennema	Present
Mindy Rankin	Excused Absence
H. Steven Vogel	Absent

Staff:

Veloria Kelly	Present
Denise Graves	Present

Mary Ellen Clark, Senior Assistant Attorney General and Board Counsel; Megan Kachur, Chief Attorney, Department of Business and Professional Regulation, were present. Also present was Paul Brown, Florida Institute of Certified Public Accountants (FICPA); Justin Thames, FICPA; Jennifer Green, FICPA and Tammy Vasquez.

1. Review disciplinary guidelines to ensure appropriate ranges have been established.

a) 61H1-36.004 Disciplinary Guidelines; Ranges of Penalties; Aggravating & Mitigating Circumstances

The Rules Committee discussed and recommended the following changes to Rule 61H1-36.004 Disciplinary Guidelines; Ranges of Penalties; aggravating & Mitigating Circumstances.

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 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)(l), 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)(f), F.S.) (Rule 61H1-24.001, F.A.C.)	\$250 fine	<u>\$1,000 fine</u>
(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 suspension; two (2) years probation and \$5,000 fine	\$5,000 fine and revocation
(h) Negligence or misconduct (Section 473.323(1)(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 <u>\$5,000 fine</u>
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.)	<u>Reprimand, probation, and \$500 fine</u>	<u>Suspension and \$5,000 fine</u>
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	<u>Revocation and \$5,000 fine</u> 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 and <u>\$2,500</u> \$5,000 fine

4. Client records disposition (Rule 61H1-23.002, F.A.C.)	\$250 fine	Suspension until records are returned and <u>\$1,000 fine</u>
(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 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.)	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 455.227(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 cost imposed by final order or citations set for 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	<u>Revocation</u> Suspension and \$5,000 fine
(q) Misleading or deceptive name (Section 473.323(1)(a) by Section 473.321, F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and <u>\$1,000</u> 5,000 fine
(r) Violation of Section 473.323(1)(a) by Section 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	<u>Revocation</u> 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	Revocation 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 Section 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
(v)(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 subparagraph (t)2.	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(w)(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 <u>\$1,000</u> 5,000 fine
(x)(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 <u>\$1,000</u> 5,000 fine
(y)(z) Failure to report discipline violation (Section 455.227(1)(i), F.S.)	Reprimand, probation, and \$1,000 fine	Suspension and \$5,000 fine
(z)(aa) 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)(bb) Failure to obtain continuing professional education hours (Section 473.312, F.S., Rule 61H1-33.003, F.A.C.)		

First Offense		
NUMBER OF HOURS LACKING		
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		
1 to 16 hours	\$1,000 500 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, suspension until all hours are completed, must submit proof of compliance for next two renewal periods	\$2,000 4,000 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, 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 2,500 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)(cc) 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 2,000.00 fine

(cc)(dd) 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)(ee) Performing work described in Section 473.302(8)(a), F.S., (e.g. – audits, reviews or compilations) 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 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 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 21A-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.

- The Committee recommended changes be made to Rule 61H1-23.001 Confidential Client Information.

A certified public accountant shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client. This rule shall not be construed to contravene or contradict any of the provisions of Chapter 473, F.S., or the rules promulgated thereto, or to relieve a certified public accountant of his or her obligation provided in these laws and rules, under Rules 61H1-20.008 and 61H1-20.007, F.A.C., or to contravene or contradict any of the provisions of Chapter 473, F.S. Furthermore, this rule shall not prohibit either a confidential review of a certified public accountant’s professional practice as a part of a peer quality review program or compliance with a lawful court or Board order.

Rulemaking Authority 473.304, 473.315, 473.316 FS. Law Implemented 473.315, 473.316 FS. History–New 12-4-79, Formerly 21A-23.01, 21A-23.001, Amended 1-17-11,_____.

- The Committee recommended Rule 61H1-23.002 Records Disposition Responsibility to be amended based on further clarification of meaning of confidential records.

61H1-23.002 Records Disposition Responsibility.

(1) A certified public accountant shall furnish to a client or former client upon request and reasonable notice:

(a) Any accounting or other records belonging to, or obtained from or on behalf of, the client that were provided to the certified public accountant; the certified public accountant may make and retain copies of such documents of the client when they form the basis for work done by the certified public accountant.

(b) Any accounting or other records that the certified public accountant was not specifically engaged to prepare that are related to an issued work product of the certified public accountant and that are not in the client's books and records or are otherwise not available to the client, with the result that the client's financial information is complete.

(c) A copy of any deliverable as set forth in the terms of the engagement that has been issued by the certified public accountant.

(2) This rule shall not preclude a certified public accountant from making reasonable charges for costs incurred. Once the certified public accountant has complied with the requirements in subsection (1) above, the certified public accountant is under no obligation to comply with subsequent requests from the client to again provide such records or work products. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or act of war, the certified public accountant shall comply with an additional request to provide such records or work products.

(3) Provisions of this rule apply to Licensed Firms and to all certified public accountants practicing public accounting.

Rulemaking Authority 473.304 FS. Law Implemented 473.318 FS. History—New 12-4-79, Amended 12-11-83, Formerly 21A-23.02, Amended 9-1-87, Formerly 21A-23.002, Amended 10-28-98, 10-26-09, 12-2-14, 12-21-15

2. Other Business

None at this time.

3. Adjourn

Ms. Keegan adjourned the meeting at 11:09 a.m.



Tracy Keegan, Chair