




Washington State Board of Accountancy

Policy Number: 2004-1

Title: Sanction and Penalty Guidelines

Revised: April 25, 2011*

Approved:



Donald F. Aubrey, CPA, Chair

*This policy rescinds and supersedes any previous Board policy.

Background Information:

The Executive Director directs the Board's complaint processes, investigative activities and, case resolution negotiations.

Upon receiving a complaint or otherwise becoming aware of a situation or condition that might constitute a violation of the Public Accountancy Act (Act) or Board rules, the Executive Director or designee will make a preliminary assessment.

If the Executive Director or designee determines:

- The situation or condition is not within the Board's authority, the Executive Director may dismiss the matter, but a record of the event will be documented and maintained in the Board office. A summary of dismissals will be reported regularly to the Board.
- The situation or condition requires further evaluation, the Executive Director or designee may assign the case to an investigator.

Details of the additional evidence gathered and the resulting conclusion by the Executive Director or designee will be documented. If the Executive Director or designee determines that:

- Sufficient evidence does not exist to merit Board action, the Executive Director may dismiss the case after obtaining concurrence from a Consulting Board Member
- Sufficient evidence exists to merit Board action and it is the first time an individual or firm is notified of a violation of the Public Accountancy Act or Board rule, the Executive Director may impose administrative sanctions approved by the Board for a first-time offense after obtaining concurrence from a Consulting Board Member
- Sufficient evidence exists to merit Board consideration but the situation or condition, if proven, is not eligible for administrative sanctions, the Executive Director or designee will discuss a resolution strategy and settlement parameters with a Consulting Board Member. Once the Executive Director or designee and Consulting

Board Member agree on those matters, the Executive Director or designee will initiate a discussion for resolution with the respondent consistent with that agreed upon strategy and those settlement parameters.

The objective of this process is to administer the enforcement process in a fair and equitable manner and, when appropriate, seek settlement in lieu of a formal Board hearing. The Executive Director or designee may request guidance from a Consulting Board Member and/or the assistance of the prosecuting Assistant Attorney General at any time during the investigative and/or negotiation processes.

If the respondent is amenable to the suggested terms of a settlement proposal, the Executive Director will forward the proposal to the respondent for written acceptance. If accepted by the respondent, the proposal will be forwarded to the Board for approval.

Upon receiving and considering the formal settlement proposal, the respondent may offer a counterproposal. The Executive Director or designee will discuss the counterproposal with a Consulting Board Member. The Executive Director or designee and Consulting Board Member may agree to the counterproposal, offer a counter to the counterproposal, or reject the counterproposal.

If the Executive Director and Consulting Board Member reject the counterproposal or are unable to negotiate what they consider to be an acceptable alternative proposal with the respondent, the Executive Director will execute a Statement of Charges and refer the case to the prosecuting Assistant Attorney General with the request that an administrative hearing be scheduled and the case prosecuted.

At the same time that the prosecuting Assistant Attorney General is preparing the case for prosecution, the prosecuting Assistant Attorney General (working with the Executive Director and Consulting Board Member) will continue to seek to a negotiated settlement proposal in lieu of a Board hearing. If the case goes to hearing before the Board, the prosecuting Assistant Attorney General, with the concurrence of the Executive Director and Consulting Board Member, will present the team's recommended sanction to the Board.

Through this process, the Consulting Board Member, the Executive Director and, when appropriate, the prosecuting Assistant Attorney General must individually and jointly act objectively and cooperatively to:

- Draw conclusions as to the allegations based solely on the evidence,
- Develop and present to the respondent a suggested settlement proposal that they believe the Board will accept because the proposal is fair and equitable and provides public protection, and
- If the case goes to a hearing before the Board, recommend an appropriate sanction or sanctions to the Board

No settlement proposal is forwarded to the Board unless the respondent, the Executive Director, Consulting Board Member and, when appropriate, the prosecuting Assistant Attorney General concur that the proposal is an acceptable resolution to the matter.

If the negotiation participants concur with the settlement proposal, the proposed settlement is signed by the respondent (and signed by the prosecuting Assistant Attorney General if the settlement was negotiated by the prosecuting Assistant Attorney General) and forwarded to the Board members (along with the Executive Director's, Consulting Board Member's and, when appropriate, prosecuting Assistant Attorney General's recommendation to accept the proposal) for consideration.

The Board is not bound by this recommendation.

All proposed settlements must be approved by a majority vote of the Board. A vote of five "no's" means the proposed settlement has been rejected by the Board. In such circumstances the case will return to the Executive Director, Consulting Board Member and prosecuting Assistant Attorney General who will determine whether the situation merits additional attempts to negotiate a settlement or to immediately schedule the matter for an administrative hearing before the Board.

The Board has found negotiations utilizing this process to be quite successful. The key benefits to this process are:

- The respondent participates in the development of the corrective action plan and sanction which enhances compliance and more timely public protection
- Cases resolved through the negotiated settlement process reduce costs for the benefit of both the general public and the respondent

The Board recognizes that administrative hearings:

- Delay the corrective action and thereby delay public protection
- Are not the most effective mechanism to generate a positive resolution to Board cases
- Are costly in terms of staff and other resources
- Require significant use of the Board's limited attorney general resources

Policy:

The Board embraces the respondent's involvement in determining the settlement proposal. This provides the respondent the opportunity to participate in development of the corrective action plan and ultimately encourages compliance, public protection, and integrity of financial data.

To support the negotiation and settlement process, the Board provides the following guidance to the Executive Director or designee and Consulting Board Member in crafting a suggested settlement proposal for presentation to the respondent and for negotiating a settlement. This guidance is solely for the use of the Consulting Board Member and the Executive Director or designee. It is not applicable to the prosecuting Assistant Attorney General.

I. Legal and Investigative Costs

RCW 18.04 authorizes the Board to recover legal and investigative costs. The Board considers the following to be reasonable legal and investigative costs:

- A. Investigative staff salaries and benefits (based on actual salary and benefit rates) for state staff conducting the investigation, including reporting, review, and follow-up costs
- B. Investigator travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
- C. Contract investigator, specialist, and expert witness expenses including travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
- D. Salaries and benefits (based on actual salary and benefit rates) for state staff preparing and reviewing the Board's order and associated communications with the respondent
- E. Prosecuting Assistant Attorney General charges associated with the case including travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
- F. Expenses for an administrative law judge including travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
- G. Administrative hearing costs including, but not limited to:
 - Attorney General charges (both for the Board's legal counsel and the prosecuting Assistant Attorney General) associated with the case including travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
 - Salaries and benefits (based on actual salary and benefit rates) for state staff preparing and reviewing the Board's order and associated communications with the respondent
 - Salaries and benefits (based on actual salary and benefit rates) for state staff called as a witness by either party to the administrative hearing
 - Witness expenses including travel and per diem expenses based on the state travel regulations as established by the Office of Financial Management
 - Court reporter charges
 - Administrative hearing room costs and set-up charges

II. Publication of Board Orders

1. A general public notice will be posted on the Board's public web site that information on Board orders and other sanctioning agreements is available under the Public Disclosure Act by contacting the Board's office.
2. The Board will post notice of Board orders for suspension, stayed suspension, revocation, and practice restriction on the Board's web site for approximately three years following the year of the Board order. In addition, for license and certificate suspension (including stayed suspension) and revocation:
 - Notice will be posted in the Daily Journal of Commerce
 - Notice will be provided to the AICPA and WSCPA
 - Notice will be posted to NASBA's Enforcement Information Exchange (EIX)
 - Representative(s)/Senator(s) for the respondent's location(s) will be notified
 - Other jurisdictions that have licensed the individual will be notified
 - The complainant(s) will be notified
 - Notice will be sent to the newspaper(s) in the respondent's location
3. In cases of non-compliance not resulting in administrative sanction, suspension, stayed suspension, revocation, or a Board ordered practice restriction, the Executive Director, with a majority vote of the Board, may direct that a notation be made referencing each of the Board's sanctioning actions on the Board's web site licensee search database for up to three years following the year the sanction was imposed.
4. In cases of administrative sanction, the Board will not publish the individual's or firm's name; however, the Board will:
 - Post statistics related to these sanctions on the Board's web site
 - Comply with the Public Records Act

III. The Board provides the following suggested considerations for the Executive Director or designee and Consulting Board Member when developing a suggested settlement; however, the Board does not intend that other factors, as deemed appropriate by the Executive Director or designee and Consulting Board Member, to be excluded:

- A. What are the enforcement goals of the particular case
- B. What are the permissible sanctions that the Board could impose
- C. What are the aggravating or mitigating factors relevant to the allegations
- D. What is the individual's past disciplinary or criminal history (if any)
- E. Are there identifiable trends, if any, in the individual's behavior
- F. What is the likelihood of the individual repeating the behavior
- G. What is the potential for future public harm
- H. What is the individual's potential for rehabilitation
- I. What is the extent of damages or injury
- J. What is the extent of public harm
- K. What is the extent of harm to the profession and the public's trust in the profession

- L. How can the public best be served and protected while implementing corrective action
- M. What steps are necessary to ensure the integrity of financial information
- N. What were the Board's sanctions with similar misconduct (if any exist) and has there been a trend in the Board's actions and/or changes in state law impacting the history of the Board's sanctions
- O. Has the individual been sanctioned by other enforcement agencies or through civil findings:
 - Fine
 - Cost recovery
 - Disgorgement
 - Practice or license restriction
 - Publication
 - Jail
- P. What was the magnitude of the sanctions by other enforcement agencies/civil findings
- Q. What impact did these other sanctions have on:
 - The individual's behavior
 - The individual's taking responsibility for her/his actions
 - The individual's ability to earn a livelihood
 - The public's awareness of the individual's misconduct
- R. Would a suspended license seriously impact the individual's livelihood and, if so, does the misconduct merit such an impact
- S. Did the individual lose their job/employment/livelihood due to the misconduct
- T. What is the individual's personal financial position
- U. Did the individual recently go through bankruptcy
- V. What is the individual's ability to pay cost recovery
- W. What is the individual's ability to pay a fine
- X. Has the individual already taken self-imposed corrective action (such as CPE, field review)
- Y. What is the length of time that has elapsed since the misconduct, the sanction, or the civil action
- Z. What is the public's exposure to the individual
- AA. Is the misconduct singular or repeated
- BB. Is the misconduct a clear violation or does it involve a statute, rule or standard which is subject to different interpretations
- CC. Was the misconduct intentional or unintentional
- DD. Did the misconduct involve dealing with unsophisticated or vulnerable parties
- EE. Did the CPA/individual profit or benefit from the misconduct
- FF. Did the CPA/individual make an effort to limit the harm or solve problems arising out of the misconduct
- GG. Did the misconduct take place after warnings from the agency
- HH. What was the Board's sanctioning authority at the time the misconduct occurred

IV. The Board suggests the following considerations when considering a counterproposal negotiating a settlement:

- A. All of the items in Section III above
- B. What is the value to have the individual participate in the development of the corrective action
- C. How many outstanding Board cases have been referred to the prosecuting Assistant Attorney General and remain to be resolved
- D. What is the effect of a delay in resolution of this particular case and/or the effect of a delay in prosecution of other cases
- E. What is the severity of the particular case under negotiation as compared to the number of, and severity of, the cases with the prosecuting Assistant Attorney General
- F. What are the key objectives and goals of the enforcement action and what sanctions are absolutely necessary to ensure those goals are achieved
- G. Is there value to the public, the agency, and Attorney General's Office that can be obtained by having the agreement settled without going to an administrative hearing
- H. Consider the sanctioning guidelines in Section V

V. The Board acknowledges the following general sanctioning guidelines for the Executive Director or designee's and the Consulting Board Member's consideration as part of their process to develop a suggested settlement. The Board does not intend these guidelines to be a prescription or binding; nor does the Board wish to exclude or limit other sanctions or considerations that the Executive Director or designee and Consulting Board Member consider appropriate.

General Categories of Misconduct	Examples of Sanctionable Acts:
<p>ADMINISTRATIVE NON COMPLIANCE</p> <p>Use of title or holding out in public practice with a lapsed license/certificate</p> <p>Use of the CPA title by a CPA-Inactive certificateholder</p>	<ul style="list-style-type: none"> • License/certificate lapsed because the individual failed to file a license/certificate renewal • License/certificate lapsed because the individual failed to notify the Board of a change of address, failed to receive their renewal application, and failed to file a license/certificate renewal • The individual disregarded the lapsed license and continued to knowingly hold out with a lapsed license • The individual discovered that their license/certificate lapsed and signed the reinstatement application stating that they did not use the title when the evidence demonstrates that they used the title • CPA-Inactive who is a corporate CFO uses the CPA title in filing corporate documents with the SEC • CPA-Inactive uses the CPA title to obtain a job in private industry

General Categories of Misconduct	Examples of Sanctionable Acts:
<p>CONSUMER/EMPLOYER HARM</p> <p>Embezzlement, fraud, dishonesty, or negligence</p> <p>Fiduciary malfeasance or breach of fiduciary duties</p> <p>Noncompliance with code of conduct including conflict of interest and confidentiality</p> <p>Failure to comply with a Board order</p> <p>Failure to respond to Board inquiry</p> <p>IRS/SEC sanction/denial of practice privilege</p>	<ul style="list-style-type: none"> • CPA-Inactive who is also an attorney uses the CPA title when offering legal services to the public • Theft from employer • Felony obstruction of justice • Theft of trust funds where the CPA was the trustee • Manipulated a client's trust for the benefit of the CPA's child • Manipulated a mentally impaired client for self enrichment • Failed to file personal tax returns and pay personal FIT • Failed to transmit FICA and FIT withheld from employee's salary • Failed to pay employer's portion of FICA • Provided services to both the seller and the buyer during a business transaction • Provided services to both parties during a divorce • Failed to make restitution to injured parties as required by Board order • Repeated non compliance with stipulated Board Orders • Suspended from practice before the IRS due to substandard tax work • SEC practice restriction and/or sanction due to fraudulent SEC filing • SEC practice restriction and/or sanction due to substandard accounting practices
<p>CONSUMER/EMPLOYER HARM</p> <p>Noncompliance with technical standards</p>	<ul style="list-style-type: none"> • Attest work is graded as Unacceptable by the Board's QAR program • CPA is referred to the Board by the SEC due to an audit failure as a result of the CPA performing substandard audit procedures • CPA is referred to the Board by HUD due to failure to comply with <i>Yellow Book</i> standards • Substandard tax work resulted in penalty to a tax client
<p>CONSUMER/EMPLOYER HARM</p> <p>Failure to provide client records upon reasonable notice and request</p>	<ul style="list-style-type: none"> • Refused to return client records until the client paid the CPA's fees • Did not return multiple clients' records due to procrastination • Did not return client records because the client terminated the relationship and obtained a new CPA

<p>ADMINISTRATIVE NON COMPLIANCE</p> <p>Acts and omissions in filing an application for reinstatement or renewal of a license, certificate, or registration</p> <p>Failure to comply with a Board approved CPE waiver request</p>	<ul style="list-style-type: none"> • Represented on the CPE audit form that CPE courses were obtained when evidence discloses that no or only a portion of the required CPE courses were taken • Signed the reinstatement or renewal form under the penalty of perjury that the CPE requirements were met and the individual obtained only a portion of the required hours • Signed the reinstatement or renewal form under the penalty of perjury that the CPE ethics requirements were met and the individual did not take the required ethics CPE
<p>CONSUMER/EMPLOYER HARM</p> <p>Failed good character determination for initial licensure</p> <p>Cheating on CPA Exam</p>	<ul style="list-style-type: none"> • The good character review was at the request of the applicant who was found guilty of a felony 3 years ago • The good character review as a result of the applicant's disclosure that 7 years prior they failed to file an income tax return and pay their tax obligation • The good character review was the result of the prosecutor alerting the Board to the applicant's being charged with a felony • Cheating observed by the exam proctor
<p>CONSUMER/EMPLOYER HARM</p> <p>Use of title or holding out in public practice by a nonCPA</p>	<ul style="list-style-type: none"> • Used title after passing the exam but without a license • Used title to intentionally defraud investors

Effective: October 29, 2004

*Revised: October 17, 2008; April 28, 2006; January 28, 2005