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From: **Susan Speirs** <[ss@uacpa.org](mailto:ss@uacpa.org)>  
Date: Mon, Jul 27, 2015 at 3:16 PM  
Subject: Proposed ethics rule change  
To: "[DOPLWeb@utah.gov](mailto:DOPLWeb@utah.gov)" <[DOPLWeb@utah.gov](mailto:DOPLWeb@utah.gov)>

**Good Afternoon Dan:**

**Below is proposed ethics rules changes for CPAs in the State of Utah. Our membership has voted in favor of it; we've also made sure that it doesn't interfere with any of the mobility issues across the states and territories.**

**R156-26a-303a.**

**(d) Ethics Requirement. A licensee shall complete four of the 80 hours of continuing education required pursuant to Section 58-26a-303 in professional ethics. One hour shall consist of a review of the Utah Certified Public Accountant Licensing Act Rules and the remaining hours shall cover one or more of the following areas: the AICPA Code of Professional Conduct; case-based instruction focusing on real-life situational learning; ethical dilemmas facing accounting professionals; and business ethics.**

**(e) A non-resident licensee seeking renewal of a license shall have satisfied the CPE requirement by meeting the CPE requirements for renewal of a license in the state in which the licensee's principal place of business is located. If a non-resident licensee's principal place of business state does not require CPE for renewal of a license, the non-resident licensee must comply with the CPE requirements for renewal of a license in this state.**

Susan A. Speirs, CPA, CGMA  
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Salt Lake City, UT 84106  
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Dan S. Jones <dansjones@utah.gov>

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## Enforcement Guideline Questions

4 messages

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**John Johnson** <jjohnson@nasba.org>  
To: "Dan S. Jones" <dansjones@utah.gov>  
Cc: Stacey Grooms <sgrooms@nasba.org>

Tue, Aug 25, 2015 at 9:06 AM

Dan:

As you may be aware, NASBA's Enforcement Resources Committee has created and approved a set of "Guiding Principles of Enforcement" to help improve enforcement practices at Boards of Accountancy. This project goes hand-in-hand with the current mobility environment, as demonstrated by California's legislative requirement to verify that the enforcement practices of other states are comparable to or exceed the NASBA standards before allowing CPAs from another jurisdiction to exercise practice privileges in California. The basic idea is to assure the California board that the accountancy board of the CPA's home jurisdiction is capable and willing to pursue enforcement action against their licensees.

Now that the Guiding Principles are finalized, we are reaching out to boards to gather additional information to help us analyze each board's enforcement process in light of those guidelines.

I would like to set up a conference call to talk through the attached questions with you and other appropriate Board representatives (e.g. board member, complaint coordinator, board attorney, investigator, etc.). What I would ask is that, prior to our call, you and the other appropriate participants review the questions. Of course, there are situations where a completely separate complaint/investigation entity handles the enforcement process rather than the Board staff. In those situations, we would also want to include those people in the call.

The goal is to conduct these calls before September 10th. If you have any questions, please contact me at your earliest convenience.

Your assistance is greatly appreciated.

Sincerely, John



Dan S. Jones <dansjones@utah.gov>

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To: "Dan S. Jones" <dansjones@utah.gov>  
Cc: Stacey Grooms <sgrooms@nasba.org>

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Sincerely, John

John W. Johnson

Director, Legislative & Governmental Affairs

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National Association of State Boards of Accountancy

150 Fourth Ave North, Suite 700

Nashville, TN 37219

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Phone/Fax: 615-880-4232

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Email: [jjohnson@nasba.org](mailto:jjohnson@nasba.org)

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**Board Survey Update August 2015.docx**

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**John Johnson** <[jjohnson@nasba.org](mailto:jjohnson@nasba.org)>  
To: "Dan S. Jones" <[dansjones@utah.gov](mailto:dansjones@utah.gov)>  
Cc: "wade@cpaandmore.com" <[wade@cpaandmore.com](mailto:wade@cpaandmore.com)>

Tue, Aug 25, 2015 at 9:10 AM

Dan:

My apologies for sending twice as forgot to include Chairman Watkins on my earlier e-mail.

Thanks, John

John W. Johnson

Director, Legislative & Governmental Affairs

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National Association of State Boards of Accountancy

150 Fourth Ave North, Suite 700

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**From:** John Johnson  
**Sent:** Tuesday, August 25, 2015 10:07 AM  
**To:** 'Dan S. Jones' <[dansjones@utah.gov](mailto:dansjones@utah.gov)>  
**Cc:** Stacey Grooms <[sgrooms@nasba.org](mailto:sgrooms@nasba.org)>  
**Subject:** Enforcement Guideline Questions

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 **Board Survey Update August 2015.docx**  
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**Dan S. Jones** <[dansjones@utah.gov](mailto:dansjones@utah.gov)> Fri, Aug 28, 2015 at 8:21 AM  
To: John Johnson <[jjohnson@nasba.org](mailto:jjohnson@nasba.org)>, "Wade K. Watkins" <[wade@cpaandmore.com](mailto:wade@cpaandmore.com)>

Mr. Johnson,

I am not able to respond in the timeline or in the manner you are requesting for a couple of reason.

First, your request has not been reviewed by our board. This item will be placed on the agenda at the next meeting.

Secondly, we are very busy regulating many professions, not solely CPAs, and do not have hours to dedicate to the information you seek.

If you desire to find the information without waiting for our response, I have a few ideas and suggestions below.

1. As an umbrella agency we regulate over 200,000 licenses. CPA represent 4,000 to 5,000 of that number. However, the same resources that are available to any of the multiple professions is readily available for CPA enforcement actions. If you compare our enforcement systems and resources to many state boards that are stand alone agencies, I believe you will find our systems and resources are superior to many. We have a staff

of attorneys from the Attorney General Office who regularly handle licensee enforcement actions. This staff is assigned to specific cases as needed. Whether it be disciplinary action by the SEC, PCAOB or criminal actions or other acts of unlawful or unprofessional conduct by CPAs or any other type of licensees, these attorneys are well acquainted with relevant licensing issues.

2. Review of these systems and results are both readily available on our web-site. For example you asked about aggravating or mitigating circumstances. We have had these provisions in our Utah Administrative Code R156-1 for years (look under DOPL statutes and rules on our web-site). -Well before any input from NASBA or other states.

3. Although I do not have statistics on CPAs broken out, our history of disciplinary action is available on line by quarter since 1999. Each quarter a newsletter is published with disciplinary actions for all professions.

4. Finally, regarding the competency of CPAs coming out of Utah. If you will look at the last several years of statistics on performance on CPA exams you will find that Utah has consistently been well above average with most reports showing Utah is the first or second highest pass rate in the country. Utah was one of the first states to adopt the 150 hour education requirement. Our commitment to the highest standards are readily reflected in the quality of our education system as verified by the CPA exam taken by these recent graduates.

Dan S. Jones

Bureau Manager

Phone Number (801) 530-6720

E-mail [dansjones@utah.gov](mailto:dansjones@utah.gov)

Dopl internet site [www.dopl.utah.gov](http://www.dopl.utah.gov)

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**Wade K. Watkins** <[wade@cpaandmore.com](mailto:wade@cpaandmore.com)>  
To: "Dan S. Jones" <[dansjones@utah.gov](mailto:dansjones@utah.gov)>

Fri, Aug 28, 2015 at 9:34 AM

Thanks Dan!

**From:** Dan S. Jones [<mailto:dansjones@utah.gov>]  
**Sent:** Friday, August 28, 2015 8:22 AM  
**To:** John Johnson; Wade K. Watkins  
**Subject:** Re: Enforcement Guideline Questions

[Quoted text hidden]

**Name of State Board:**

**Date:**

**Time frame for enforcement process**

Closing Complaints without merit or primary nexus (Target – 7 days)

Assignment of Investigator (Target – 10 days from decision to initiate investigation)

Completion of Investigation (Target – 180 days or less from initiation of investigation)

Formal Discipline at administrative level – final disposition (Target – 540 days or less from initiation of complaint)

Appointment of probation monitor

Does your board maintain a tracking system with assigned personnel to monitor compliance?

Does your board have assigned personnel to contact probationer within 5 days of beginning probation?

What actions are taken by your Board or required of the licensee in order to ensure compliance with terms of probation?

Initiation of action (re-open complaint) following probation violation (Target – 15 days from notice of violation)

If the answers to any of these questions are no, please explain what circumstances in your particular state make the target unreasonable?

**Enforcement Resources to Adequately Staff Investigations**

Does your Board identify core tasks to complete investigations and ensure that staff is adequate to meet the current and projected case load?

Would an increase in the number of practice complaints or complaints against large firms require an increase in staffing at your Board? If so, would your Board be able to adjust the staffing as needed?

Do you have investigators specifically assigned to your board?

If not, how are investigations staffed (from a pool, from your board members, etc.)?

How many open investigations does your board typically have on-going at any given time?

What is your typical number of administrative complaints (i.e. CPE, failure to timely renew, etc) opened annually?

What is your typical number of practice complaints (i.e. standards violations, fraud or dishonesty, code of conduct violations, etc) opened annually?

Generally speaking, what is the ratio of complaints involving a big firm practice vs smaller firm practice?

## **Qualification and Training of Investigators or People Serving as Investigators**

Is specific investigator training required?

Are your investigators encouraged to participating in training, including but not limited to CLEAR investigator training and the NASBA Investigative Training Series?

Do you use experts for complex investigations (including board members)?

Does the board have enough reserve (funding) to bring a big case against a big firm in their state?

## **Prioritization of Cases**

How does your board identify those cases with greatest potential for harm?

Once identified, how does your board prioritize action on that complaint?

What process do you use to manage complex cases?

## **Case Management**

How does your Board handle an administrative complaint involving violations such as failure to timely renew, failure to obtain CPE, improper firm names, other administrative matters and certain first time misdemeanor offenses which generally pose a lesser threat to the public?

Could these files be closed on voluntary compliance by the licensee?

Could an informal conference be used to assist in reaching a settlement or resolution?

How does your Board handle practice complaints generally involving matters of incompetence, dishonesty, ethics or conduct violations, failure to communicate, criminal convictions, breach of fiduciary duty or disclosure of confidential information which pose a greater threat to the public?

Who would review the investigative results?

Could further investigation be requested if needed?

Could an informal conference be scheduled to aid settlement?

Upon determination of a violation, would either corrective (remedial) action or disciplinary action be taken (either by consent agreement or formal hearing) upon approval of the Board?

Does your board review discipline from other agencies, such as the DOL, SEC, PCAOB, AICPA, etc., either directly from those agencies or through the NASBA Quarterly Enforcement Report?

Does your board actively track probationary compliance, either by having board personnel routinely follow up with probationers or by requiring routine submissions/check-in by the licensee (such as phone calls or correspondence with licensee, requiring licensee to appear at interviews/meetings to report on compliance, requiring licensee to submit written quarterly compliance reports, or requiring licensee to allow a practice investigation upon request of the Board) during the probationary term?

## Disciplinary Guidelines

Do written disciplinary guidelines already exist for your board?

If yes, by policy, rule, or what other format?

Does the written guideline identify specific offenses and appropriate penalties (monetary or otherwise)?

How does your board determine discipline and ensure consistency in the application of discipline for similar violations?

If you have disciplinary guidelines, is the board authorized to deviate from them? Under what circumstances? How often does the board do so?

With the understanding that accompanying facts may cause a violation to be more or less egregious in a specific case and therefore move into a different disciplinary category, would you agree that the following categories of violations are **generally appropriate** for the specific penalties listed below? If not, please explain.

- a. Grounds for Revocation
  - a. Revocation of a license/permit by another agency or board
  - b. Failure to inform the Board of a failed peer review
  - c. Fraud or deceit in obtaining a license
  - d. Conviction of any crime substantially related to the qualifications, functions, or duties of a CPA (involving dishonesty or fraud)
  - e. Dishonesty, fraud, or gross negligence in the practice of public accounting
  - f. Commission of a felony
- b. Grounds for Suspension/Probation
  - a. Failure to comply with board order
  - b. Failure to meet firm ownership requirements
  - c. Failure of a peer review
- c. Grounds for Monetary Fine/Penalty
  - a. Unlicensed conduct
  - b. Failure to comply with professional standards or code of conduct
  - c. Failure to renew
  - d. Failure to timely complete CPE or peer review
- d. Grounds for Remediation
  - a. Failure to comply with professional standards
  - b. Issues regarding client records/ownership of work papers
  - c. Issues regarding confidential disclosures
  - d. Unlicensed conduct due to inadvertence (i.e. mobility, multiple designations, foreign accountants, etc.)
  - e. Misleading name, title or designation

Does the following list of factors for board consideration substantially reflect the considerations made by your board during the disciplinary process?

- a. Factors to consider in assessing penalties
  - a. Has the individual or firm already been sanctioned for the action by another State, PCAOB, SEC or others?
  - b. Are the sanctions imposed consistent with sanctions that the Board would impose under the circumstances?

- c. Permissible sanctions available to the Board
- d. Mitigating or aggravating factors
- e. Past disciplinary history or "trends" in licensee's behavior
- f. Likelihood of repeating the behavior
- g. Potential for future public harm
- h. Potential for licensee's rehabilitation
- i. Extent of damages or injury due to licensee's behavior
- j. How to best serve and protect the public while implementing corrective action
- k. Board sanctions with similar misconduct in other cases
- l. Other enforcement actions or legal actions against licensee involving the conduct which is the subject of the current case (and impact of those actions/sanctions upon licensee)
- m. Licensee's financial standing regarding ability to pay a penalty
- n. Whether action was a clear violation or was an area of law/rule subject to interpretation
- o. Whether the licensee profited or benefitted from the misconduct
- b. Mitigating Factors
  - a. Cooperation of the licensee in the investigative/disciplinary process
  - b. Passage of time without evidence or other professional misconduct
  - c. Convincing proof of rehabilitation
  - d. Violation was without monetary loss to consumers and/or restitution was made
  - e. If multiple licensees are involved in the violation, the relative degree of culpability of the subject licensee should be considered
- c. Aggravating Factors
  - a. Failure to cooperate with Board in investigation of complaint and/or disciplinary process (providing requested documentation, timely responses, participating in informal conference)
  - b. Violation is willful, knowingly committed and/or premeditated
  - c. Case involved numerous violations of Board's statutes and rules, as well as federal or other state statutes
  - d. History of prior discipline, particularly where prior discipline is for same or similar conduct
  - e. Violation results in substantial harm to client, employer and/or public
  - f. Evidence that licensee took advantage of his client for personal gain, especially if advantage was due to ignorance, age or lack of sophistication of the client

Are there other factors not listed above that are taken into consideration? If so, what are they?

### **Internet Disclosure**

Does your board participate in the ALD and/or CPAVerify databases? If not, why not?

A new tool is being created for ALD that will allow a Board to enter discipline issued against a CPA who is practicing in their jurisdiction through mobility and is not a licensee of that particular Board. When this tool is available, would your Board be willing to participate in sharing "discipline under mobility" in ALD?

Does your board publish final disciplinary action, either on your web site or otherwise? If not, why not?

If discipline is available on your web site, how is it made available to the public? (i.e. within board meeting minutes, in newsletters, searchable through a licensee database, etc)

How does the public find out details about final disciplinary action in your state?

### **Referral Statistics**

In the past five years, how many enforcement notifications or referrals did your board receive from other state boards of accountancy, either directly or through ALD?

Of those notifications or referrals, how many resulted in enforcement actions?

Of those notifications or referrals, how many remain under investigation?

In the past five years, how many matters has your board notified or referred to other state boards of accountancy, either directly or through ALD?

**IMPORTANT CLOSING QUESTION**

Is there any resource that you need for your enforcement process that NASBA and the Enforcement Resources Committee can provide?