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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11] (*Heading of Division 3 added by Stats. 1939, Ch. 30.)*

CHAPTER 1. Accountants [5000 - 5158] (*Chapter 1 repealed and added by Stats. 1945, Ch. 1353.)*

ARTICLE 6. Disciplinary Proceedings [5100 - 5115] (*Article 6 heading repealed and added by Stats. 1959, Ch. 310.)*

5100. After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- (a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.
- (b) A violation of Section 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a certificate as a certified public accountant, in obtaining registration under this chapter, or in obtaining a permit to practice public accountancy under this chapter.
- (c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.
- (d) Cancellation, revocation, or suspension of a certificate or other authority to practice as a certified public accountant or a public accountant, refusal to renew the certificate or other authority to practice as a certified public accountant or a public accountant, or any other discipline by any other state or foreign country.
- (e) Violation of Section 5097.
- (f) Violation of Section 5120.
- (g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.
- (h) Suspension or revocation of the right to practice before any governmental body or agency.
- (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.
- (j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.
- (k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.
- (l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.
- (m) Unlawfully engaging in the practice of public accountancy in another state.

(Amended by Stats. 2004, Ch. 921, Sec. 12. Effective January 1, 2005.)

5100.1. Notwithstanding any other law, in causes for discipline against a licensee under subdivisions (d), (h), or (l) of Section 5100, the board shall rely on the findings or events stated in a certified or true and correct copy of the disciplinary or other action as conclusive evidence for the purpose of determining discipline.

(Amended by Stats. 2019, Ch. 359, Sec. 13. (AB 1521) Effective January 1, 2020.)

5100.2. (a) In addition to the grounds for the denial of a license pursuant to Section 480, the board may deny an applicant for a license if either of the following conditions are met:

(1) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the qualifications, functions, or duties of a certified public accountant, pursuant to regulations adopted by the board. The seven-year limitation as described in paragraph (1) of subdivision (a) of Section 480 shall not apply.

(2) The applicant, within the preceding seven years from the date of application, was subjected to a disciplinary action taken by an agency of the federal government, the Public Company Accounting Oversight Board, or another country for any act substantially related to the functions, qualifications, or duties of a certified public accountant.

(b) Notwithstanding any other law, in causes for denial of an application for licensure pursuant to paragraph (2) of subdivision (a) of this section, the board shall rely on the findings or events stated in a certified or true and correct copy of the disciplinary or other action as conclusive evidence for purposes of determining whether to deny the application.

(c) This section shall become operative on July 1, 2020.

(Added by Stats. 2019, Ch. 359, Sec. 14. (AB 1521) Effective January 1, 2020. Section operative July 1, 2020, by its own provisions.)

5100.5. (a) After notice and hearing the board may, for unprofessional conduct, permanently restrict or limit the practice of a licensee or impose a probationary term or condition on a license, which prohibits the licensee from performing or engaging in any of the acts or services described in Section 5051.

(b) A licensee may petition the board pursuant to Section 5115 for reduction of penalty or reinstatement of the privilege to engage in the service or act restricted or limited by the board.

(c) The authority or sanctions provided by this section are in addition to any other civil, criminal, or administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other disciplinary authority, penalties, or sanctions.

(d) Failure to comply with any restriction or limitation imposed by the board pursuant to this section is grounds for revocation of the license.

(e) For purposes of this section, both of the following shall apply:

(1) "Unprofessional conduct" includes, but is not limited to, those grounds for discipline or denial listed in Section 5100.

(2) "Permanently restrict or limit the practice of" includes, but is not limited to, the prohibition on engaging in or performing any attestation engagement, audits, or compilations.

(Added by Stats. 2015, Ch. 656, Sec. 5. (SB 467) Effective January 1, 2016.)

5101. After notice and hearing the board shall revoke the registration and permit to practice of a partnership if at any time it does not have all the qualifications prescribed by the section of this chapter under which it qualified for registration. After notice and hearing the board may revoke, suspend or refuse to renew the permit to practice of a partnership or may censure the holder of such permit for any of the causes enumerated in Section 5100 and for the following additional causes:

(a) The revocation or suspension of the certificate or registration or the revocation or suspension of or refusal to renew the permit to practice of any partner.

(b) The cancellation, revocation or suspension of certificate or other authority to practice or refusal to renew the certificate or other authority of the partnership of any partner thereof to practice public accountancy in any other state.

(Amended by Stats. 1947, Ch. 502.)

5102. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(Amended by Stats. 1959, Ch. 310.)

5103. (a) Notwithstanding any other provision of law, the board may inquire into any alleged violation of this chapter or any other state or federal law, regulation, or rule relevant to the practice of accountancy.

(b) The board, or its executive officer pursuant to a delegation of authority from the board, is authorized to perform the following functions:

(1) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving the conduct of licensees, as directed by the board, or as directed by the executive officer pursuant to a delegation of authority from the board.

(2) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving any violation or alleged violation of this chapter by licensees, as directed by the board, or as directed by the executive officer pursuant to a delegation of authority from the board.

(Added by Stats. 2002, Ch. 231, Sec. 14. Effective January 1, 2003.)

5103.5. (a) The board shall post on its internet website, in an easily marked and identifiable location, notice of all formal accusations. The notice of any formal accusation shall contain a link to where a person may request and have sent to them a copy of the formal accusation, and the basis for the accusation and alleged violations filed by the board against a licensee.

(b) The link to where a person may request and have sent to them a copy of the formal accusation shall be clearly and conspicuously located on the same internet website page on which the notice is posted and shall authorize a person to request and receive the information described in subdivision (a) by regular mail or electronic mail.

(c) The board shall develop a statement that informs any person requesting a copy of a formal accusation and any person receiving a copy of a formal accusation that any allegations contained in the accusation are not a final determination of wrongdoing and are subject to adjudication and final review by the board pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This statement shall be provided to a person requesting and receiving a copy of a formal accusation in a manner to be determined by the board.

(Amended by Stats. 2023, Ch. 510, Sec. 82. (SB 887) Effective January 1, 2024.)

5104. Any certified public accountant or public accountant whose certificate, registration, or permit has been revoked or suspended shall, upon request of the board, relinquish their certificate or permit. However, upon the expiration of the period of suspension, the board shall immediately return any suspended certificate or permit that has been relinquished.

(Amended by Stats. 2023, Ch. 510, Sec. 83. (SB 887) Effective January 1, 2024.)

5105. Any certified public accountant or public accountant who is delinquent in the payment of his renewal fee shall upon request of the board relinquish his certificate and permit; provided, however, the board shall reissue any certificate and permit which has been relinquished for nonpayment of renewal fees if the permit is renewed as provided in Section 5070.6.

(Amended by Stats. 1961, Ch. 1254.)

5106. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The record of the conviction shall be conclusive evidence thereof. The board may order the certificate or permit suspended or revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made, suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information or indictment.

(Added by renumbering Section 5107 by Stats. 1959, Ch. 310.)

5107. (a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees. The board shall not recover costs incurred at the administrative hearing.

(b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

(c) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested to do so by the executive officer pursuant to subdivision (a). Costs are payable 120 days after the board's decision is final, unless otherwise provided for by the administrative law judge or if the time for payment is extended by the board.

(d) The finding of the administrative law judge with regard to cost shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested by the executive officer pursuant to subdivision (a).

(e) The administrative law judge may make a further finding that the amount of reasonable costs awarded shall be reduced or eliminated upon a finding that respondent has demonstrated that they cannot pay all or a portion of the costs or that payment of the costs would cause an unreasonable financial hardship that cannot be remedied through a payment plan.

(f) When an administrative law judge makes a finding that costs be waived or reduced, they shall set forth the factual basis for their finding in the proposed decision.

(g) Where an order for recovery of costs is made and timely payment is not made as directed by the board's decision, the board may enforce the order for payment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any holder of a permit or certificate directed to pay costs.

(h) In a judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms of payment.

(i) All costs recovered under this section shall be deposited in the Accountancy Fund.

(j) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit or certificate of a holder who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1) or paragraph (2) of subdivision (g) of Section 125.3, the board may, in its discretion, conditionally renew or reinstate for a maximum of three years the permit or certificate of a holder who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that three-year period for those unpaid costs.

(k) Nothing in this section shall preclude the board from seeking recovery of costs in an order or decision made pursuant to an agreement entered into between the board and the holder of a permit or certificate.

(l) (1) Costs may not be recovered under this section as a result of a citation issued pursuant to Section 125.9 and its implementing language if the licensee complies with the citation.

(2) The Legislature hereby finds and declares that this subdivision is declaratory of existing law.

(Amended by Stats. 2023, Ch. 510, Sec. 84. (SB 887) Effective January 1, 2024.)

5108. In connection with any investigation or action authorized by this chapter, the board may issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to its inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

(Amended (as added by Stats. 2002, Ch. 231) by Stats. 2002, Ch. 1150, Sec. 42. Effective January 1, 2003.)

5109. The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

(Amended by Stats. 2011, Ch. 395, Sec. 3. (AB 431) Effective January 1, 2012.)

5110. (a) After notice and an opportunity for a hearing, the board may deny an application to take the licensing examination, deny admission to current and future licensing examinations, void examination grades, and deny an application for a license or registration to any individual who has committed any of the following acts:

(1) Made any false, fraudulent, or materially misleading statement or a material omission in any application for a license, examination, or registration.

(2) Cheated or subverted or attempted to subvert any licensing examination.

(3) Aided, abetted, or conspired with any other person to violate paragraph (1) or (2).

(4) Any act that if committed by an applicant for licensure would be grounds for denial of a license or registration under Section 480 or if committed by a licensee or a registrant would be grounds for discipline under Section 5100.

(5) Any act committed outside of this state that would be a violation of this article if committed within this state.

(b) Neither the withdrawal of an application for examination, licensure, or registration, nor the expulsion or voluntary departure from an examination shall deprive the board of its authority to deny an application for, or admittance to, current or future licensing examinations, or to commence or continue a proceeding based on a violation of this article.

(c) Nothing in this article shall be construed to limit the authority of the board to refuse admittance to or to remove from the licensing examination, any person suspected of cheating or failing to comply with examination procedures or requirements.

(d) The term "licensing examination" includes the Uniform Certified Public Accountant examination, ethics examination, and any other professional or vocational licensing examination offered or administered by, or through, the board or other agencies within or outside of this state, for professional or vocational licensing purposes.

(e) The board may take any of the actions described in subdivision (a) based upon any determination, decision, ruling, or finding made by any state or other governmental entity, foreign or domestic, that any individual has committed any of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The provisions of this section are in addition to any other remedies that may be available under other provisions of law including, but not limited to, those set forth in Sections 123, 480, and 496.

(Added by Stats. 2000, Ch. 1054, Sec. 5. Effective January 1, 2001.)

5111. Cheating on, or subverting or attempting to subvert any licensing examination includes, but is not limited to, engaging in, soliciting, or procuring any of the following:

(a) Any communication between one or more examinees and any person, other than a proctor or examination official, while the examination is in progress.

(b) Any communication between one or more examinees and any other person at any time concerning the content of the examination including, but not limited to, any examination question or answer, unless the examination has been publicly released by the examining authority or jurisdiction.

(c) The taking of all or a part of the examination by a person other than the applicant.

(d) Possession or use at any time during the examination or while the examinee is on the examination premises of any device, material, or document that is not expressly authorized for use by examinees during the examination including, but not limited to, notes, crib sheets, textbooks, and electronic devices.

(e) Failure to follow any examination instruction or rule related to examination security.

(f) Providing false, fraudulent, or materially misleading information concerning education, experience, or other qualifications as part of, or in support of, any application for admission to any professional or vocational examination.

(Amended by Stats. 2001, Ch. 159, Sec. 19. Effective January 1, 2002.)

5112. (a) The board may deny an application to take the licensing examination, deny admittance to current and future licensing examinations, and void examination grades on the grounds set forth in Section 5110 using either of the following procedures:

(1) Notifying the individual in writing of all of the following:

(A) The action the board has taken.

(B) The reasons the action was taken.

(C) The earliest date on which the individual may reapply for admittance to the licensing examination.

(D) The individual's right to a hearing under the provisions of Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code if a written request for a hearing is made within 60 days from the date of the board's notice. If the individual does not request a hearing, the board's action shall become final at the expiration of this 60-day period.

(2) Filing and serving a statement of issues in accordance with Section 11504 of the Government Code.

(b) The board shall issue the notice of action under paragraph (1) of subdivision (a) or file and serve the statement of issues under paragraph (2) of subdivision (a) within five years of the last day of the examination with respect to which the alleged prohibited act was committed or within three years of the discovery of the commission of the alleged prohibited act, whichever occurs later.

(Added by Stats. 2000, Ch. 1054, Sec. 7. Effective January 1, 2001.)

5113. An individual who has been denied admission to the licensing examination under Section 5110 may petition the board for admission to the Certified Public Accountant examination not less than one year after the effective date of the decision issued by the board following a hearing held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code or, if there was no hearing, may petition the board not less than one year after the decision or action pursuant to the notice of action issued by the board becomes final as provided in subparagraph (D) of paragraph (1) of subdivision (a) of Section 5112, unless the decision or notice of action issued by the board specifies a different timeframe within which this petition may be filed. However, in no event shall the timeframe specified by the board be more than three years from the effective date of the board's decision or from the date that the board's action pursuant to the notice of action becomes final.

(Added by Stats. 2000, Ch. 1054, Sec. 8. Effective January 1, 2001.)

5115. (a) A person whose license has been revoked or surrendered may petition the board for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition, unless a longer period, not to exceed three years, is specified by the board in any decision revoking the license, accepting the surrender of the license, or denying reinstatement of the license.

(b) A person whose license has not been revoked or surrendered but who has been disciplined by imposition of a suspension or otherwise disciplined may petition the board for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision.

(c) The board shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the board itself. The board itself shall rule on the petition, and the decision shall include the reasons therefor and any terms and conditions that the board reasonably deems appropriate to impose as a condition of reinstatement or reduction of penalty, including, but not limited to, restrictions on the petitioner's scope of professional practice.

(Added by Stats. 2003, Ch. 807, Sec. 13. Effective January 1, 2004.)