

**Connecticut State Board of Accountancy
Special Meeting Minutes
April 18, 2022**

The Special Meeting was called to order by Chairperson John H. Schuyler at 12:31 PM via ZOOM Webinar.

Board Members Present: John H. Schuyler, Chairperson, Public Member
Timothy F. Egan Certified Public Accountant
Karla H. Fox, Esq., Public Member
Marcia L. Marien, Public Member
Peter J. Niedermeyer, Certified Public Accountant

Board Members Absent: Dannell R. Lyne, Certified Public Accountant
Martha S. Triplett, Esq. Public Member None.

Board Vacancies: Two Public Members

DCP Staff Present: Robert M. Kuzmich, Architect Emeritus, License/Applications
Specialist
Julianne Avallone, Legal Director
Cat Arsenault, Staff Attorney
Stephanie Bartone, Staff Attorney
Ryan Burns, Staff Attorney

Public Present: None

Note: The administrative functions of the Boards, Commissions, and Councils are carried out by the Department of Consumer Protection, License Services Division.

Website: www.ct.gov/dcp

Licensing/Certification: dcp.licenseservices@ct.gov

Enforcement issues: dcp.accounting@ct.gov

1. REMOTE ADMINISTRATIVE HEARING TRAINING FOR BOARD MEMBERS

Ms. Avallone presented to the Board, via screen sharing through the ZOOM Meeting Platform, a Department document entitled "DCP Administrative Hearings Procedures and Hearing Script". She explained to the Board that since the pandemic, Department Hearings are now being administered virtually. Today's special meeting will review the

process and procedures set in place and the Hearing Script set up by the Department which is typically presented by the Board Chair. Ms. Avallone noted that the Department has a dedicated Staff person who acts as a technical coordinator and works in conjunction with the Staff Attorneys in handling the technical aspects of the meeting format such as presenting exhibits and the like. Hearings are normally presented through the TEAMS format. However, for the Accountancy Board, the ZOOM format will be used. Ms. Avallone noted that Hearings are governed by the Uniform Administrative Procedures Act. She addressed the fact that technical glitches may occur during the presentation and how they may be handled depending on their nature.

Exhibits were addressed by Ms. Avallone.

A. Although parties are asked to submit exhibits in advance, either party may still present new documents at the hearing.

B. Documents may be faxed or emailed during the hearing.

C. If not submitted during the hearing, the submitting party may submit the exhibits after the hearing by sending them electronically to the other party and to the Board Administrator.

D. The Board must set a time period on the record for when the documents must be submitted by.

E. If there is an objection to any document the Board will rule on the admissibility of the document prior to rendering a decision.

F. Documents submitted in advance are not considered entered into the record until one of the parties introduces the exhibit on the record during the hearing. The other party may object to the exhibit. After submission, the exhibit must be accepted by the Board before becoming part of the record.

G. Exhibits must not be reviewed or considered in advance of the hearing. Ms. Avallone in response to a question from Ms. Fox, explained that although exhibits are e-mailed to Board Members in advance, they are not allowed to open them and review the same despite the temptation to do so. It is an honor system.

Ms. Avallone noted that video cameras are to be kept on throughout the hearing. The script should be read by the presiding officer. The areas noted in grey are either notes for the presiding officer or areas that should only be read if certain conditions are met.

The Hearing Script was now addressed by Ms. Avallone. Notes for the Board are highlighted in grey. These are not to be read aloud without reviewing first to ensure they are applicable to the case.

1. Opening Statement by Board/Commission Chairperson:

The Opening Statement by Board/Commission Chairperson is scripted and notes that the matter is a contested case hearing being held by the Accountancy Board against the respondent and the Case Number is noted. The Chairperson states his/her name and states that he/she is a member of the Accountancy Board and has been designated as the presiding officer in this matter.

For the record, he/she will ask that Board Members who will participate in this matter to identify themselves. It is noted that it is alleged that the Respondent has violated the provisions of specifies Sections of the Connecticut General Statutes and of the Regulations of Connecticut State Agencies. Further, this Administrative Hearing is being held in accordance with the General Statutes and with the Regulations of Connecticut State Agencies. At this point, any Board Members who are present but have recused themselves from participating in this Hearing are noted.

It is noted that the hearing is convened with the date, time, and video conferencing platform noted. The purpose of today's hearing is to provide an opportunity to present evidence on the matters raised in the Complaint. The burden of proof is on the Department to prove their case by a preponderance of the evidence, which means more likely than not, that the Respondent violated the laws alleged by the Department. Evidence may be admitted either by oral testimony or by documents and the strict rules of evidence as applied in a court of law are not applicable here. There is greater latitude in what is allowed as evidence in an administrative hearing. However, testimony will be under oath and the rules of evidence, as set forth in the Uniform Administrative Procedures Act for administrative hearings will apply.

Ms. Avallone detailed the format the proceedings will follow.

Both parties will be permitted time to present a short opening statement, starting with counsel for the Department of Consumer Protection. After brief opening statements, the parties may call as a witness any person present here today who is competent to testify. The Board should focus on the facts they have in order to render a fair decision. There will be an opportunity at the end of the hearing for each side to present a closing argument on why it feels its position should be upheld according to the facts that have been presented.

All parties will have the opportunity to cross-examine each witness presented by any other party. If, after one party has presented its case, any other party feels it is necessary to call further witnesses, they may do so. This procedure is followed until all sides are satisfied that the facts presented by each are fully and fairly presented and that the factual record is complete.

Documents may be admitted into evidence either by agreement of the parties, subject to the Board's review as to relevancy and materiality, or through the testimony of a competent witness. Documents submitted in advance are not considered entered into

the record until one of the parties introduces the exhibit on the record during the hearing. The other party may object to the exhibit. After submission, the exhibit must be accepted by the Board before becoming part of the record. Exhibits have not been reviewed or considered by the Board in advance of this hearing.

Ms. Avallone reviewed the general protocols including specific instructions for the participants including the following:

1. Speak clearly and one at a time as this hearing is being recorded.
2. Keep your video cameras on throughout the hearing.
3. Participants should not participate in the hearing while driving.
4. Participants should keep their microphone on mute when they are not speaking and state their name when they begin to speak.
5. If a participant leaves their microphone on when someone else is speaking, we may place that participant on mute. Please do everything possible to reduce any background noise around you.
6. Please do not disclose confidential information during this hearing unless it is specifically requested or necessary to put on your case. This hearing is recorded and available for public viewing.
7. Members of the public will not have an opportunity to speak during this hearing. This is an administrative hearing, the public may attend, but must remain muted.
8. Exhibits that were sent in prior to the hearing will not be considered unless they are entered during the hearing. To enter an exhibit, the submitting party must reference the document and inform the Board that they are entering the exhibit into the record.
9. Technology issues during the hearing are addressed through the DCP Help Desk.

She advised the Board that the Hearing is being recorded and available to the Public through the Secretary of State's Office.

2. Confirm Participants:

Ms. Avallone reviewed the following:

1. Everyone present who is going to participate, everyone who is a party, an intervener, a witness or counsel, please state and spell out your legal name for the record, including what your position is in this hearing.
2. State your mailing address so that we may confirm your identity.

3. We will start with the respondent. - Is the respondent represented by counsel? If so, please introduce yourself. - Are there any witnesses present for the respondent? Respondent, please list the names of the witnesses present. Complaint counsel, please identify yourself. - Are there any witnesses present for the Department? Complaint counsel, please list the names of the witnesses present.

3. Swear in Parties/Witnesses:

The following language was reviewed by Ms. Avallone:

1. I now ask each party who will provide testimony today to raise your right hand, so I can administer the oath. After I have read the oath, each person testifying must affirm by stating "I do." "Do you solemnly swear that the evidence you are about to give, concerning the case now in question, shall be the truth, the whole truth and nothing but the truth, so help you God or upon penalty of perjury? I will now call on each person to affirm the oath.

Ms. Avalone noted that in this Hearing, the Department's Attorney will assume two roles both as Investigator and also swearing-in witnesses to testify.

4. Commence Hearing:

Ms. Avallone reviewed the statement below with the Board.

"I will now take evidence on the Complaints in questions. Do the parties wish to make opening statements? An opening statement is two or three sentences of what you intend to prove to me today."

Ms. Avallone stated that if the Respondent does not appear, this must be confirmed on record and noted that the Respondent is not present. The Department's Attorney will be asked to provide evidence of proper service of notice to the Respondent.

She further noted that evidence will now be taken on the Complaints in questions and the parties are asked if they wish to make opening statements? An opening statement is two or three sentences of what they intend to prove to the Board today. If the answer is yes, then complaint counsel makes their opening statement first, followed by the Respondent or Respondent's attorney. If the Respondent wants to make an opening statement, then the Respondent must first be sworn in. Then the Complaint counsel may now proceed. After complaint counsel finishes questioning each witness, the Respondent may cross-examine the witness.

5. Closing Arguments:

Ms. Avallone stated that after the Respondent's last witness, the parties may present closing arguments. *"Do the parties wish to make closing arguments?"* A closing argument is a short summary of the arguments presented today.

6. Board Deliberation:

Ms. Avallone explained that Board members should review each allegation outlined in the Complaint to determine whether the Department proved those facts by a preponderance of the evidence (for the Finding of Fact section in the Final Decision).

For example:

1. Respondent was licensed from June 1, 2019-May 31, 2020
2. Respondent entered into a contract with Smith on October 1, 2019

For the conclusions of law section of the Final Decision, the Board members should review each alleged violation of law outlined in the Complaint to determine whether the Department proved their case by a preponderance of the evidence. Specify how/why the Board reached their conclusion.

For example:

Respondent violated CT General Statutes Section 20-338a

Respondent violated the Regulations of CT State Agencies Section 20-338a

For the Orders section of the Final Decision, the Board members should review the prayer for relief in the Department's Complaint. The Board should determine the penalties applicable to each violation of law.

IMPORTANT NOTE: If there is more than one Respondent listed in the Complaint, make sure it is clear which Respondent has to pay which penalty and which Respondent may be subject to suspension or revocation.

Legal Questions for the Attorney General:

- If there is a question of law that the Board does not feel comfortable reviewing or making a determination on during the hearing, the Board may request a separate meeting with their attorney from the Office of the Attorney General.
- The Board may close the record, if no additional testimony or exhibits is needed for the Board to reach a decision, and then schedule the date for the executive session with your attorney from the Office of the Attorney General.
- If additional witnesses or exhibits may need to be presented to the Board, depending on the advice to be presented by the Office of the Attorney General, then the record should be left open.

- The meeting with the Office of the Attorney General will require public notice but may be held without the Department or the public present in an executive session format.]

Ms. Avallone noted that the Department's Attorney will be providing a Draft Final Decision for the Board to review and determine whether or not they agree with the decision as drafted. This document will be finalized after the Hearing has concluded and presented to the Board within a week of the conclusion of the Hearing. This is so the Board can meet again on the record to deliberate on how they will rule on the case and if they want any changes made to this document.

Ms. Avallone also noted the Board may deliberate on the details of the Final Decision immediately after the conclusion of the Hearing depending on the nature and details of the case.

7. Closing Statement:

Ms. Avallone further explained the below information.

[If Board is keeping the record open to allow for additional exhibits/evidence to be submitted:]

"This hearing will remain open pending the receipt of ____ [NAME OF SPECIFIC EXHIBITS] _____ exhibit(s) from _____ [PARTY SUBMITTING THE EXHIBIT] _____ within the next five (5) calendar days. The exhibits being submitted must be sent electronically to the Board Administrator and to the opposing party. The Board and the opposing party shall have ten (10) days to review the exhibit and make any objection in writing. If no objection to the exhibit(s) is received, the Board shall enter the exhibit into the record and the record will be deemed closed. If there is an objection to the exhibit(s), another hearing date will be scheduled for further discussion and presentation by the parties. From the date the record is closed, the Board will have 90 days to issue a written decision to each of the parties. If you are aggrieved by the Decision, you may exercise the appeal rights outlined in the letter that accompanies the decision. Today's hearing is hereby adjourned. I note the time is approximately _____. Thank you for coming." [If Board reaches a decision on the record:] "Based on the testimony and documents that have been presented at today's hearing, the Board has concluded that the Respondent violated the following laws:

The Board issues the following Orders [civil penalties/suspension/revocation] based on those findings of violations:

[IF A CIVIL PENALTY IS IMPOSED:] The civil penalty must be paid to the Department by ____ [DATE] _____. If the civil penalty is not paid by that date, then _____ [ADDITIONAL PENALTY? SUSPENSION? REVOCATION]

Ms. Avallone did note the difference in circumstances when the respondent is licensed relative to the imposition of the Civil Penalty. If their license/credential is suspended or revoked, their livelihood is, in effect, taken away also and therefore has a much more meaningful impact towards paying the penalty.

Ms. Avallone further explained the following:

The record on this case is now closed and no additional testimony or evidence will be accepted. The Board will issue a written decision to each of the parties within the next 90 days. If you are aggrieved by the Decision, you may exercise the appeal rights outlined in the letter that accompanies the decision. Today's hearing is hereby adjourned. I note the time is approximately_____. Thank you for coming." [If Board closes the record but needs additional time in order to consult with their attorney:] The Board needs to review certain outstanding legal issues with our attorneys. The record on this case is now closed and no additional testimony or evidence will be accepted. A public meeting will be scheduled at which the Board will meet in executive session with our attorneys. At the end of that executive session, the Board will resume the public meeting and announce our decision in this matter. The Board will issue a written decision to each of the parties within the next 90 days. If you are aggrieved by the Decision, you may exercise the appeal rights outlined in the letter that accompanies the decision. Today's hearing is hereby adjourned. I note the time is approximately_____. Thank you for coming."

Ms. Fox asked a question regarding the Board's deliberation process and whether this will be recorded and a matter of public record? Ms. Avallone stated that the process is recorded and open to the public. The only confidential part would be specific questions they may pose to the Board's Attorney General for advice on a particular matter. Ms. Avallone noted that this process is established by the Freedom of Information Commission Rulings.

Ms. Fox asked if the Board Members have immunity from individual lawsuits if there is an allegation of biased when the decision was made. Ms. Avallone noted they have State Immunity because they are a State Agency and represented by the Office of the Attorney General. Ms. Avallone also explained that rarely do individual Board Members have lawsuits brought against them; it is the Department. What is being appealed is the decision.

Ms. Avallone asked that the Board Members arrive at the most, five minutes early. Also, it was established that Mr. Schuyler will serve as the Presiding Officer over the Hearing and all Board Members will receive various documents including the Hearing Script that is being referenced today ahead of time. It was also noted that if the respondent does not show up, the Hearing will still be conducted. Further, all exhibits are redacted of all personally identifiable and confidential information.

ADJOURN

The meeting adjourned at 1:42 PM.

Next scheduled meeting: Tuesday, May 10, 2022 at 10:00 AM. The Meeting will be held remotely by ZOOM Webinar.

Respectfully submitted,

Robert M. Kuzmich, Architect Emeritus
License and Applications Specialist