

**Connecticut State Board of Accountancy
Special Meeting Minutes
June 10, 2022**

The Special Meeting was called to order by Chairperson John H. Schuyler at 10:04 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
Martha S. Triplett, Esq. Public Member

Board Members Absent: Dannell R. Lyne, Certified Public Accountant

Board Vacancies: Two Public Members

DCP Staff Present: Robert M. Kuzmich, Architect Emeritus, License/Applications
Specialist
Jason Cohen, Director of Operations
Julianne Avallone, Legal Director
Cat Arsenault, Staff Attorney
Verinda Birdsong, Licensing & Applications Analyst
Kristina Corbett, Accounts Examiner
Steven Della-Giustina, Legal Intern

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. DISCUSSION ON FINAL DECISION AND ORDER IN CASE #2022-1

Chairperson John H. Schuyler called the Meeting to order at 10:04 AM.

Ms. Marien noted she presented the questions (5 total) the Board had regarding the Final Decision to their Counsel - Assistant Attorney General Ms. Alma Nunley.

1. The first question concerned Civil Penalties relative to the \$50,000.00 cap and the potential of exceeding this amount when penalties were individually totaled. The Board was told the fairest reading of the Statute is a \$50,000.00 total cap. The Board may then elect to bring criminal proceeding against the practitioner, which may result in a criminal fine of not more than \$1,000 or imprisonment for not more than one year, or both. That would be a criminal conviction and sentence separate from the civil penalty imposed by the Board

2. The Board has asked that the practitioner send a notification to his clients that he has been practicing without a license. Their question is can they ask for a listing of the clients that he sent this to and would that listing then become subject to the Freedom of Information Act?

The answer was that there is no provision in the accountancy statutes that would exclude a list of a practitioner's clients from disclosure pursuant to the Freedom of Information Act. The confidentiality provisions found in the Statutes apply to financial information provided to or from a client, but not the identity of the client. Ms. Nunley noted that there is a provision of the Freedom of Information Act that exempts from disclosure trade secrets under certain circumstances and commercial and financial information given in confidence.

Based upon a previous case from the Connecticut Supreme Court, there would be at least an argument before the Freedom of Information Commission that the practitioner's client list should not be subject to disclosure.

3. This practitioner was fined and asked to complete additional education in the past. He neither paid the fine, nor completed the additional education. The Board is concerned that he will ignore these actions as well. For that reason, they are wondering if they can publicize the Boards decision in a newspaper having a circulation in the practitioner's area. If they can, what are the requirements or limitations they should be aware of before doing so?

Ms. Nunley advised against this approach. She noted that there is no provision in the statutes governing accountancy, and the Board of Accountancy's powers specifically, that contemplates publication in a newspaper. In addition, her Office is not aware of other licensing boards or commissions having similar powers. As such, this may lead to litigation.

Ms. Nunley recognizes the Board's concern regarding ensuring that the public is aware that the practitioner is non-licensed. Rather than taking any action as part of this contested case, her Office recommends working with the Department after the conclusion of the case to find a way to publish the information through their website/licensing platform.

In addition, if the Board orders the practitioner to cease holding himself out as a CPA as part of its decision and the practitioner continues to do so, then pursuant to the Statutes, the Board may, through the Attorney General, petition the Superior Court "for enforcement of any order issued by it and for appropriate temporary relief or a restraining order" and the court "may grant such relief by injunction or otherwise." This would provide an avenue to ensure compliance with the Board's decision in this case going forward since failure to comply with the court's order could result in contempt proceedings.

4. The practitioner never paid the penalty charged a few years ago. Can the Board add payment of that penalty as part of this case? In addition, can they charge interest, and if so, at what rate? What other methods are available to use for collection of the penalties?

Ms. Nunley replied that the Accountancy Statutes do not authorize the Board to add previously unpaid penalties to the new civil penalties it imposes in a subsequent contested case. Also, the statutes do not authorize the board to charge interest. The Board can, however, seek enforcement of an unpaid civil penalty. Some state boards and commissions have statutory provisions that either establish that a civil penalty they impose is a money judgment that can be enforced like any other court judgment or expressly permit them to make an application to the superior court for an order requiring payment.

The Accountancy Statutes are ambiguous as to whether the Board has authority to seek enforcement of the civil penalty in court. They do permit the Board, through the Attorney General, to seek a temporary or permanent injunction from Superior Court for enforcement of its orders. They do not expressly state whether those orders include assessments of civil penalties. Ms. Nunley believes the Board would have a strong argument if they brought a case to Superior Court, via the Attorney General, to secure a judgment based upon the assessment of the civil penalty and then to enforce that judgment.

Although there is no statute of limitations for bringing such an enforcement action, the length of time since the original penalty was imposed may make it more difficult to enforce. It may be more advisable to attempt to collect any new penalty imposed in the present case and seek enforcement through an action in Superior Court of the new penalty if the practitioner declines to satisfy the penalty. If such an action is brought for the new penalty, and there is a sufficient factual record to support enforcement of the prior penalty, then at that time it may be advisable to also seek enforcement of the prior

penalty or, at the least, to use the existence of the prior penalty as leverage to get the practitioner to satisfy the current penalty.

5. What is the response time that the Board needs to consider closing this case?

Ms. Nunley stated that a final decision must be issued within 90 days following the close of evidence or the due date for the filing of briefs, whichever is later.

Hearing no further discussion, the Board voted to accept Final Decision Draft written prior to the meeting today. Ms. Marien motioned to approve the Draft of the Final Decision presented by Attorney Arsenault and amended by the Board at their meeting held on May 10, 2022. Ms. Triplett seconded the motion.

The motion was read aloud to the Board by Ms. Marien at the request of Ms. Fox.

Ms. Avallone clarified for the Board that this is not a motion. It is a Final Decision that the Board needs to decide whether or not to accept. The Board needs to review the amendments made to the Decision to determine why they were made. Upon doing this the Board needs to vote on the Orders at the end and further decision to modify the same. She asked the Board to specifically review their changes to this document at which point, Ms. Marien reviewed aloud each one with the Board which included changes to the Findings of Fact, Conclusions of Law, and Orders. Ms. Avallone and the Board discussed details on the Orders Section regarding Civil Penalties.

Ms. Avallone clarified to the Board that they are voting on adopting the Final Decision Draft as written with the technical amendments as noted. Mr. Niedermeyer asked a question on the notification/advertisement of the Decision and whether the Board need to incorporate a directive for the same in their motion. Ms. Avallone stated that this an administrative function of the Department.

Mr. Egan questioned the date in Section 5 of the Orders being May 1, 2022 (relative to the period in which the respondent has not prepared any Financial Statements) and asked if this date be changed to the present. After some discussion, it was decided to leave the date as written.

As such, the Board's first motion was withdrawn, and a new motion was made by Ms. Marien to accept the Final Decision Draft, as discussed today, and to send this Draft to the Department of Consumer Protection for their technical edits. Ms. Triplett seconded the motion. The motion carried unanimously.

2. NEW AGENDA ITEM

Mr. Schuyler advised he Board that he and Ms. Avallone had a discussion recently concerning the operation of the Accountancy Board going forward with the Department. Ms. Avallone explained how the Department has been charged with the integration of

many Boards and Commissions which now fall under their auspices including the Board of Accountancy. She noted that this Board is the only one that has not been integrated with their system of investigation, complaints, and legal services. Ms. Avallone detailed the role of the new Department Board coordinator, Ms. Verinda Birdsong, with the Board of Accountancy as well as other Boards she will be working with to provide uniformity and consistency in their administrative procedures.

Ms. Avallone described the new complaint process which will be in place as it relates to this Board. The complaints for this Board will now be integrated with the Department's Complaint Center and she detailed their procedure in place as to how complaints are processed including the role of the Department's Investigation Division as it related to complaints. She also cited the unusually strong relationship with this Board and their National Association (NASBA) unlike other Boards within the Department. Ms. Arsenault was noted as the Department's contact with NASBA going forward.

Ms. Avallone also discussed how the Department can best serve the Board of Accountancy and their industry. She used the Architectural Licensing Board and other Boards as an example and cited some of their issues as it relates to their Continuing Education requisite and related penalties for being late with compliance. Ms. Avallone answered questions from Ms. Triplett regarding the Department's other Boards that have a continuing education requirement. She has some concerns with the integration of the Accountancy Board's CE requirement being administered in a "cookie cutter" type process as is used for other trades within the Department.

Ms. Avallone emphasized the fact that the Department is not their Legal Representative (Attorney) and only provides administrative support. The Office of the Attorney General is the Board's Counsel. This Board does not have staff unlike other Boards and Commissions under the Department. The Department relies on the Board to guide them in the right direction as to how to best serve their industry.

Mr. Schuyler noted that he believes they are the only Board of Accountancy in the nation without independent staff or budget despite having the highest fees far beyond the national average. He agrees with Ms. Avallone that the Governor and the Legislature can remedy this by providing true staff or the budget to hire the same. Ms. Avallone suggested the use of the Board's lobbyist's to maybe accomplish this or dedicate a portion of the fees collected, such as late fees, towards getting a staff. The possibility of acquiring an industry expert on staff was discussed in terms of defining the roles of this position and possibly bringing this suggestion to the Governor's Office for consideration.

Ms. Verinda Birdsong shared her contact information with the Board at the request of Mr. Schuyler. She will provide more information in the upcoming minutes from this meeting. It was also noted that Mr. Kuzmich will still be the contact person for this Board relative to agenda items while the transition to Ms. Birdsong is being done. The Board will be notified when Ms. Birdsong is fully transitioned into this position.

Ms. Avallone clarified for Ms. Triplett that the Board's Attorney General (AG) is only at the Board Meetings at the request of the Board for a specific issue. Going forward, there will be a legal representative at Board meetings only if there is a legal issue to be discussed, whether from the Department or the AG's Office as necessary.

Mr. Schuyler noted to the Board that they have many changes coming ahead pertaining to the CPA Evolution and he wants to alert the Board to begin thinking about presentations on this subject. He expressed his concern about dealing with these changes relative to the Department's new operating procedures going forward and the Board's meeting frequency. Ms. Avallone stated the meeting schedule can be set to meet the Board's needs such as proposed legislation changes as an example. She alerted the Board that any proposed changes in legislation need to be to the Department by mid-August including the reason for the change and its fiscal impact.

Ms. Arsenault stated to the Board that she will be at most of their meetings because of items she may have for them to address.

ADJOURN

The meeting adjourned at 11:25 AM. (Marien/Egan)

Next scheduled meeting: Tuesday, July 5, 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