

# NASBA

## Guiding Principles of Enforcement

The purpose of issuing these Guiding Principles is to promote consumer protection by promoting uniformly effective board enforcement and disclosure policies and practices nationally as a reinforcing compliment to mobility, which depends upon all states having confidence in the enforcement and disclosure policies and practices of the home state of the mobile licensee. While of course not binding on boards, these Guiding Principles are based on exhaustive, multi-year research into the enforcement and disclosure practices and policies of the boards of the 55 jurisdictions, and represent NASBA identifying common practices for boards to consider and, potentially, against which to measure themselves.

### ENFORCEMENT

Board enforcement throughout the nation is largely complaint driven. How boards handle complaints is, therefore, foundational to how well its enforcement program works to benefit consumers.

What follows are the performance-based hallmarks of enforcement programs and Guiding Principles related to each. How fast are complaints addressed? How are complaints prioritized? How fast are urgent complaints addressed? What discipline is imposed? What is the quality of the resources available and the capacity of those resources? These are some of the key questions to be weighed when evaluating an enforcement program.

#### 1. Time Frames for prosecuting a complaint from intake to final disposition

**General Findings:** State laws often dictate the manner in which boards prosecute cases, in some cases dictating the manner in which actions are handled. For example one board may have the authority to close a complaint without merit almost immediately based solely on the decision of the Executive Director, while another board may be required to hold the file open until a vote by the board at the next scheduled meeting.

When considering a new complaint, boards should first determine whether a complaint has legal merit and, if legal merit is found, whether the state board has jurisdictional nexus on the matter. If both these criteria are satisfied and the board determines to move forward with the enforcement matter, the board should then consider whether any discipline already issued by another agency, board, etc. was sufficient to address the violations or whether the harm justifies further enforcement action by the board.

An analysis of the various jurisdictions reveals useful benchmarks for the time frame of handling complaints. Set forth below are targeted time frames that boards should strive to meet, understanding there are instances where different time frames are appropriate in light of the legal and operational considerations (e.g. volume of complaints) that may justify different targets for certain boards.

- a. Decision to (i) close complaints for lack of legal merit or jurisdictional nexus or (ii) initiate an investigation
  - i. Target – 7 days after expiration of time period for responses with either receipt of all supporting document from parties or failure to respond, or at

- next scheduled board/complaint committee meeting
- b. Assignment of investigator
  - i. Target – 10 days from decision to initiate investigation
- c. Completion of investigation
  - i. Target – 180 days or less from initiation of investigation
- d. Formal Discipline at administrative level – final disposition
  - i. Target – 540 days or less from initiation of complaint
- e. Initiation of action (re-opening of complaint) or initiation of new complaint following probation violation
  - i. Target – 15 days or next scheduled board/complaint committee meeting

## 2. Enforcement resources to adequately staff investigations

**General Findings:** Both consumers and licensees have an interest in seeing complaints processed expeditiously, with a board enjoying adequate enforcement resources to ensure a fair and efficient process. Generally, the appropriate level of enforcement resources in a given jurisdiction is a function of the size of the jurisdiction’s licensee population, and the number and nature of complaints typically handled by that jurisdiction. A board with 70,000 licensees will need a much more robust investigative unit with more personnel, but a board with 1,500 licensees may be able to utilize board members with specialized knowledge to handle investigations. Overall, 33 jurisdictions have less than 10,000 licensees (“small” jurisdictions); 13 jurisdictions have 10,000-20,000 licensees (“mid-size”); and nine have more than 20,000 licensees (“large”).

- a. In determining adequate staffing resources a board should routinely evaluate staffing levels to ensure that the appropriate number of staff are assigned to the right positions and at the right time. A board should evaluate their respective program needs, taking into consideration workload projections and any new anticipated workload over the coming years (possibly as a result of law or rule changes). When evaluating staffing workload, a board should consider identified core tasks to complete investigations, general duration of time to complete the tasks, and the number of staff presently assigned to handle investigation. Based on this evaluation, a board should determine if any overages or shortages in workload exist and seek to align staffing resources accordingly.
- b. Factors that may warrant modification (up or down) to such ratios:
  - i. Ratio of administrative complaints to practice complaints – history of practice claims in a particular jurisdiction would warrant more investigators per licensee. Administrative complaints are typically less complicated and would include violations like failure to renew, failure to obtain CPE (“Administrative Complaints”). Practice complaints are generally more complex and would include violations such as failure to follow standards, failure to follow the code of conduct and actions involving dishonesty or fraud (“Practice Complaints”).
  - ii. Ratio of complaints involving firms with offices in multiple states versus smaller firms with local offices. The prevalence of complex cases, such as cases against the auditors in Enron and against big firms that involve

representation by outside law firms may require an increase in the ratio of investigators to licensees, to handle the added workload associated with periodic complex cases.

- c. Qualification and training of investigators
  - i. Large, mid-size and small accountancy boards should all seek to utilize CPAs, law enforcement, board staff, or other individuals with accounting or investigative training (such as the Investigator Training Series identified in Section 2 (c)(iii) below or the training offered by the Council on Licensure, Enforcement and Regulation (CLEAR)) as an investigator whenever possible;
  - ii. Encourage investigative staff to attend investigative training seminars such as those hosted by CLEAR;
  - iii. Encourage investigative staff to complete the Investigator Training Series on [NASBA.org](http://NASBA.org)
  - iv. Boards should establish and follow a process for determining appropriate utilization of CPA investigators and/or CPA board members or staff and non-CPA investigators, which considers whether the case involves an Administrative Complaint or involves a Practice Complaint.
  - v. Boards should utilize subject matter experts for complex investigations involving highly technical areas and standards, such as ERISA, Yellow Book, cases involving complicated tax issues, and fraud.
    - 1. Work with NASBA to identify a means of obtaining the necessary resources if costs are prohibitive to boards
    - 2. Use NASBA pool of available expert witnesses, if needed, to address complex issues, such as those items referenced in subsection (v) above
    - 3. Referral to a board member with expertise that is case specific
      - a. In such cases, the Board member should recuse himself/herself from further participation in any formal disciplinary action in the specific matter
- d. Boards should be able to access funds in a timely manner to handle a case against a big firm, as a demand arises, either through an appropriation process, the board, the umbrella agency, or the prosecuting agency.

### 3. Case management

**General Findings:** The volume of complaints considered by a board will also have a bearing regarding case management for a particular board. For example, a board handling 3,000 complaints a year typically should have a system in place to prioritize those cases based upon the potential for harm, while a board receiving only 1-3 complaints will not need a prioritization system because each complaint can receive immediate attention. If the number of complaints received by board requires prioritization in order to adequately address all complaints and best allocate board resources to achieve maximum protection of the public, then such jurisdiction should identify cases for potential to cause greatest harm, or offenses that are indicators of problems that could lead to such harm and adopt procedures to manage Administrative Complaints by handling them in a manner similar to that outlined below in Section 3(a)

and Practice Complaints by handling them in a manner similar to that outlined below in Section 3(b).

- a. Administrative Complaints involving matters of licensing deficiencies such as, failure to timely renew or obtain CPE, improper firm names, other administrative matters and certain first-time misdemeanor offenses, generally pose a lesser threat to the public and as such may be processed as follows:
  - i. Attorney, Executive Director, and/or qualified staff review informal matters
  - ii. Cases can be closed based on voluntary compliance
  - iii. Informal conference may be scheduled to assist in reaching a settlement or if there is non-compliance with an agreed resolution
- b. Practice Complaints generally involving matters of incompetence, dishonesty, violation of any rule of professional ethics or professional conduct, failing to timely complete an engagement, failure to communicate, criminal convictions, breach of fiduciary duty or fraud or disclosing confidential information pose a greater threat to the public and as such are generally processed as follows:
  - i. Summary of investigation is reviewed by Attorney, Executive Director, appointed Board member, or Complaint Committee (depending upon board structure)
  - ii. Further investigation may be requested
  - iii. Information Conference may be scheduled to aid settlement
  - iv. Upon determination of a violation, corrective (remedial) or disciplinary action is taken (either by consent agreement or proceeding to formal hearing) upon approval of the Board
- c. Boards should review discipline from other agencies, such as the DOL, SEC, PCAOB, and AICPA, included in the NASBA Quarterly Enforcement Report to determine whether such discipline should give rise to disciplinary action by the Board.
- d. Boards should use a method of tracking probationary matters with assigned personnel (staff or investigator) to monitor compliance with probationary terms, such as follow up phone calls or other correspondence with licensee, requiring the licensee to appear in person at interviews/meetings as directed by the Board to report on probation compliance, submitting written quarterly compliance reports, and/or allowing a practice investigation upon request of the Board.

#### 4. Disciplinary Guidelines

**General Findings:** Boards of accountancy are charged with protecting consumers by regulating the profession and disciplining licensees who fail to comply with the professional standards. Another goal of the disciplinary process is to increase adherence to licensing requirements and professional standards, thereby elevating the quality of services provided by the profession. Boards have the authority to impose discipline to revoke, suspend, condition, or refuse to renew a license or certificate for violation of rules and regulations or statutes of the accountancy law. Boards should strive to impose fair and consistent discipline against licensees who violate the accountancy laws or rules. These guidelines recommend penalties and conditions of probation for specific statutes and rules violated, as well as aggravating and mitigating circumstances that may necessitate deviation from the recommended discipline. The disciplinary guidelines are to be used by Board members, Board staff, and others involved in the disciplinary process. Boards may exercise discretion in recommending penalties, including conditions of probation, as warranted by aggravating and mitigating circumstances.

- a. The disciplinary process for boards of accountancy should consider offenses and their appropriate penalties, including the following major categories of offenses. Each determination should be fact specific and penalties may be escalated, reduced or combined depending on the Boards' consideration of the relevant mitigating and aggravating factors.
  - i. Grounds for Revocation
    - 1. Revocation of a license/permit by another agency or Board
    - 2. Failure to inform the Board of a failed peer review
    - 3. Fraud or deceit in obtaining a license
    - 4. Conviction of any crime substantially related to the qualifications, functions, or duties of a CPA (involving dishonesty or fraud)
    - 5. Dishonesty, fraud, or gross negligence in the practice of public accounting
    - 6. Commission of a felony
  - ii. Grounds for Suspension/Probation
    - 1. Failure to comply with board order
    - 2. Failure to meet firm ownership requirements
    - 3. Failure of a peer review
  - iii. Grounds for Monetary Fine/Penalty
    - 1. Unlicensed conduct
    - 2. Failure to comply with professional standards or code of conduct
    - 3. Failure to renew
    - 4. Failure to timely complete CPE or peer review
  - iv. Grounds for Remediation
    - 1. Failure to comply with professional standards
    - 2. Issues regarding client records/ownership of work papers
    - 3. Issues regarding confidential disclosures
    - 4. Unlicensed conduct due to inadvertence (i.e., mobility, multiple designations, foreign accountants, etc.)
    - 5. Misleading name, title, or designation
- b. Boards may adopt specific factors to consider in assessing penalties, such as:
  - i. Permissible sanctions available to the Board, including those sanctions set forth in Section 4(a) above
  - ii. Mitigating or aggravating factors (described in detail below)
  - iii. Past disciplinary history or "trends" in licensee's behavior involving this Board or other agencies such as SEC, IRS, PCAOB and societies
  - iv. Likelihood of repeating the behavior
  - v. Potential for future public harm
  - vi. Potential for licensee's rehabilitation
  - vii. Extent of damages or injury due to licensee's behavior
  - viii. Board sanctions with similar misconduct in other cases
  - ix. 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)
  - x. Whether action was a clear violation or was an area of law/rule subject to

- interpretation
- xi. Whether the individual or firm has already been sanctioned for the action by another state, PCAOB the SEC, or other enforcement body, and whether the enforcement body imposed sanctions consistent with sanctions the board would typically impose under the circumstances.
- c. Boards may consider the following mitigating factors in assessing penalties:
    - i. Passage of time without evidence of other professional misconduct
    - ii. Convincing proof of rehabilitation
    - iii. Violation was without monetary loss to consumers and/or restitution was made
    - iv. If multiple licensees are involved in the violation, the relative degree of culpability of the subject licensee should be considered
  - d. Boards may consider the following aggravating factors in assessing penalties:
    - i. Failure to cooperate with Board in investigation of complaint and/or disciplinary process (providing requested documentation, timely responses, participating in informal conference)
    - ii. Violation is willful, knowingly committed and/or premeditated
    - iii. Case involved numerous violations of Board’s statutes and rules, as well as federal or other state statutes
    - iv. History of prior discipline, particularly where prior discipline is for same or similar conduct
    - v. Violation results in substantial harm to client, employer and/or public
    - vi. 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

## 5. Internet Disclosure

**General Findings:** The goal is to allow market forces to elevate the profession by directing consumers away from licensees with troubled records and toward those who have adhered to professional standards. Thus, the disclosures must be of sufficient detail for consumers to be able to make informed judgments about whether discipline poses a risk to them or is indicative of a prior problem relevant to why they are retaining the CPA.

Finally, internet disclosure has two other beneficial consequences. One, it elicits confidence in the board’s operations. If a consumer found out that the board had secreted information from the public about a CPA that hurt the consumer, that consumer would not view the board as its champion. Likewise, as enforcement is the major duty of the board, disclosure of enforcement promotes transparency and accountability about the performance of an important state government agency.

Internet disclosures should for these reasons provide easy access by consumers to the disciplinary history, if any, of a CPA offering services to the consumer. States will vary in the documents that may be accessed by the public online, but at a minimum, states should provide sufficient information that a consumer can readily determine if any regulatory “red flags” exist that warrant further investigation by the consumer.

- a. Boards should participate in the ALD and CPAVerify
  - i. Boards should strive to provide final disciplinary action to ALD/CPA Verify for notation in the database

- ii. Boards should strive to provide information necessary for “hashing” licensee records across jurisdictions to the ALD to assist transparency and cross-border discipline
- b. Boards should publish final disciplinary action by the Board through a web site, newsletter or other available media, either with specific information regarding the facts that caused the board to impose discipline including, but not limited to, a board considering posting official documents that would be public records if requested by a consumer, or sufficient information to allow the consumer to contact the Board for particular details.
- c. Boards should capture “discipline under mobility” violation in CPAverify licensee record indicating the state where discipline was issued, with sufficient information to allow the consumer to contact the disciplining board to investigate the activity that resulted in discipline.

*\* These Guiding Principles are intended for use as a reference by NASBA Member Boards and staff only. Due to the unique structure of each Board of Accountancy, the enforcement process will be conducted differently in each jurisdiction. It is the reader's responsibility to learn state specific procedures, bearing in mind that each jurisdiction has different statutes, rules and case law which frequently change the ways that Accountancy Boards conduct enforcement. Only the current version of the document will be available for use.*