



Activity Review

North Carolina State Board of Certified Public Accountant Examiners

1101 Oberlin Rd., Ste. 104 • PO Box 12827 • Raleigh, NC 27605 • 919-733-4222 • nccpaboard.gov • No. 11-2019



Avoiding Website Claims That Increase Malpractice Risk

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How a CPA firm portrays itself to the public through its website may be critical to its success.

Potential clients generally review firm websites when evaluating and selecting a service provider. Websites often convey a tone that is more marketing- or sales-oriented.

How is the content of a firm’s website relevant to professional liability? When the language used to describe the firm, its staff, and its services does not match up with the firm’s actual expertise or experience, the defense of a potential professional liability claim may be compromised.

Consequently, CPA firms should approach the development of their online presence with the same diligence and professionalism exercised with the delivery of their services.

When creating a website, a CPA firm may use off-the-shelf software with templates designed to streamline the development process and reduce cost. Such templates typically list a broad array of services and

innumerable industries, which a firm should customize to its own practice.

Or a CPA firm may hire a marketing professional who may not understand the potential professional liability implications of statements made on the firm’s website.

For the purposes of demonstration, this article uses theoretical statements that could be found on a CPA firm’s website to identify some practices to continue and others to reconsider when creating or maintaining a CPA firm website.

Exaggerating the Firm’s Experience

The following statements could be interpreted as exaggerating the firm’s experience in certain practice areas:

- We offer a full array of services to all of our clients. Below we have listed the services that we offer along with a brief description. This list is not comprehensive!

Websites

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Firm Renewal & Peer Review Compliance Reporting

Firm registration renewal and peer review compliance reporting is now available on the Board’s website, nccpaboard.gov. The link is in the “How Do I” box on the home page.

The deadline for renewing a firm’s registration and reporting peer review compliance is December 31.

Only firm registrations are being renewed at this time; individual CPA certificates will be renewed next spring.

The Board mailed firm ID numbers and step-by-step instructions to the administrative offices of firms earlier this month. Please refer to that letter while completing the online renewal.

If a CPA firm fails to comply with any part of 21 NCAC 08J, *Renewals and Registrations* or 21 NCAC 08M, *Peer Review Program*, the Board may take disciplinary action against the CPA firm’s members.

Please contact Cammie Emery at cemery@nccpaboard.gov or Buck Winslow at buckw@nccpaboard.gov with questions about firm renewal or peer review compliance.

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Disciplinary Actions

Pursuant to NCGS 93-12(9), civil penalties are remitted to the North Carolina Civil Penalty and Forfeiture Fund ("Fund") in accordance with NCGS 115C-457.2. NCGS 115C-457.1(b) states, "The Fund shall be administered by the Office of State Budget and Management. The Fund and all interest accruing to the Fund shall be faithfully used exclusively for maintaining free public schools."

DAVID A. KINGMAN, #16754 | KINGMAN, WHITE AND COMPANY, CPAs | WILMINGTON, NC

THIS CAUSE, coming before the North Carolina State Board of CPA Examiners ("Board") at its offices at 1101 Oberlin Road, Raleigh, Wake County, North Carolina, with a quorum present. Pursuant to N.C. Gen. Stat. §150B-41, the Board, the Respondent and the Respondent Firm stipulate to the following:

1. David A. Kingman, CPA (hereinafter "Respondent"), is the holder of North Carolina certificate number 16754 as a Certified Public Accountant.
2. Kingman, White and Company, CPAs (hereinafter "Respondent Firm"), is a registered certified public accounting firm in North Carolina. Hereinafter, the Respondent and the Respondent Firm shall collectively be referred to as the "Respondents."
3. The Respondents issued multiple audits, reviews, and compilation reports over the past two (2) years. The Respondents enrolled in the peer review program, however, they never completed the entire peer review process.
4. The Respondents failed to furnish to the peer review program selected financial statements, corresponding work papers, and any additional information or documentation required for the peer review program within eighteen (18) months of the issuance of the first report provided to a client.
5. The Respondents wish to resolve this matter by consent and agree that the Board staff and counsel may discuss this Consent Order with the Board ex parte, whether or not the Board accepts this Consent Order as written. The Respondents understand and agree that this Consent Order is subject to review and approval by the Board and is not effective until approved by the Board at a duly constituted Board Meeting.

BASED UPON THE FOREGOING, the Board makes the following Conclusions of Law:

1. The Respondents are subject to the provisions of Chapter 93 of the North Carolina General Statutes and Title 21, Chapter 08 of the North Carolina Administrative Code, including the Rules of Professional Ethics and Conduct promulgated and adopted therein by the Board.

2. The Respondents' failure to complete the peer review process constitutes a violation of 21 NCAC 08N .0203(b)(7).
3. The Respondents' failure to furnish to the peer review program selected financial statements, corresponding work papers, and any additional information or documentation required for the peer review program within eighteen (18) months of the issuance of the first report provided to a client constitutes a violation of 21 NCAC 08M .0105.
4. Per N.C. Gen. Stat. §93-12(9), and also by virtue of the Respondents' consent to this order, the Respondents are subject to the discipline set forth below.

BASED ON THE FOREGOING and in lieu of further proceedings, the Board and the Respondents agree to the following Order:

1. The Respondent David A. Kingman, CPA, is censured.
2. The Respondent's CPA certificate is suspended for one year. However, the suspension is stayed as long as the Respondent remains compliant with the Board's peer review regulations.
3. The Respondent Firm may not perform any of the services listed in 21 NCAC 08M .0105(a) until it provides evidence of its re-enrollment in peer review.
4. Upon completion of its peer review, the Respondent Firm shall provide the Board with a complete copy of its Peer Review Report, Letter of Response, and Final Letter of Acceptance for further review and evaluation by the Board.
5. The Respondent Firm shall pay a one thousand dollar (\$1,000) civil penalty to be remitted with this signed Consent Order.

Approved by the Board October 24, 2019.

BOARD MEETING

December 16, 2019

10:00 a.m.

1101 Oberlin Rd., Raleigh 27605

THIS CAUSE, coming before the North Carolina State Board of CPA Examiners (“Board”) at its offices at 1101 Oberlin Road, Raleigh, Wake County, North Carolina, with a quorum present. Pursuant to N.C. Gen. Stat. §150B-41, the Board and Respondent stipulate to the following:

1. Paul Edward Lloyd (hereinafter “Respondent”) is the holder of North Carolina certificate number 18800 as a certified public accountant.
2. In 2014, the Respondent disclosed on his annual renewal that he was under investigation by the Securities and Exchange Commission (“SEC”). The SEC action related to tax advisory services provided by the Respondent which utilized lawful conservation easements.
3. In order to effectuate the tax benefits of the conservation easements, the Respondent created LLCs and engaged a broker dealer known as Strategic Financial Alliance (“SFA”).
4. The Respondent and the SEC entered into an Order, in which the SEC found that the Respondent had violated Section 206(4) of the Investment Advisers Act of 1940 (“Order”). The Respondent, in that Order, agreed to be barred from association with, or employment by, any investment adviser or similar entity.
5. The Order recited the Respondent’s failure to accurately disclose all investors to SFA.
6. The Respondent has admitted that the failure to disclose all of the investors to SFA was a clerical mistake. The SEC alleged that the existence and identity of the additional investors was “clearly material.”
7. As part of his tax engagement, the Respondent was responsible for informing SFA about the identities of the investors in the LLCs and the amount of their investment.
8. The Respondent also undertook the responsibility to create Operating Agreements for the LLCs and to record the investors’ relative ownership interests in the LLCs through schedules attached to those Operating Agreements.
9. On at least one occasion, the Respondent provided SFA with inaccurate information regarding the number of investors in the LLCs, their identities, and their respective investments.
10. The Respondent also prepared at least one inaccurate Operating Agreement and transmitted it to SFA.

11. The Respondent wishes to resolve this matter by consent and agrees that the Board staff and counsel may discuss this Consent Order with the Board ex parte, whether or not the Board accepts this Consent Order as written. The Respondent understands and agrees that this Consent Order is subject to review and approval by the Board and is not effective until approved by the Board at a duly constituted Board Meeting.

Lloyd

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Notice of Default Judgment and Injunction

Wake County Superior Court Judge Winston M. Rozier, Jr., has issued a Notice of Default Judgment and Injunction (“Order”) against Jay William Glasser of Chapel Hill, NC, in which Glasser is barred from

using the terms ‘certified public accountant,’ ‘CPA,’ or any other words, letters, abbreviations, symbols, or other means of identification to indicate that he has been admitted to practice as a certified public accountant, unless the Defendant, at some time in the future, becomes a duly licensed certified public accountant.

The Order stems from a complaint filed by the Board in which the Board alleged Glasser to be in violation of a November 2000 Notice of Apparent Violation and Demand to Cease and Desist (“Agreement”).

In the Agreement, Glasser consented to stop using the CPA designation and identify himself as an accountant only.

The Notice of Default Judgment and Injunction is available from the Press Release section of the Resources page of the Board’s website, nccpaboard.gov.

Websites continued from front page

Ask us about a service if you do not see it listed. (*The website goes on to describe perhaps 40 services that the four-person CPA firm is able to provide.*)

- For our railroad clients, we are recognized as having the best team of professionals in the United States. (*This firm has one railroad client.*)

Reconsider statements that exaggerate your education or experience. Reexamine your website and make sure its statements regarding industry and area of practice expertise and experience are current and supported by the firm's practice.

The AICPA Professional Liability Insurance Program has experienced claims whereby a CPA's self-characterization as an "expert" has been called into question and used against the CPA by plaintiff attorneys.

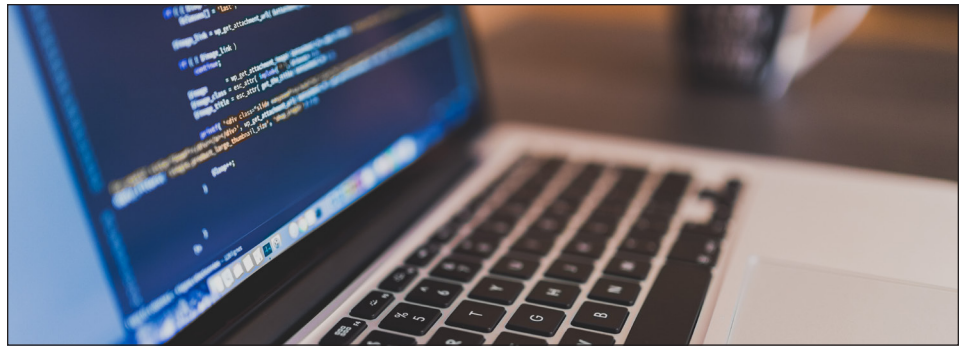
In these claims, the plaintiff attorney argues that, if the CPA had the expertise described in the firm's website, he or she would have identified important service or industry issues relevant to the engagement.

Plaintiff attorneys have used such language to add causes of action for misrepresentation and fraud to their negligence claims. More significantly, the AICPA Code of Professional Conduct (AICPA Code) states that a CPA is in violation of the "Acts Discreditable Rule" (ET §1.400.090) if the CPA promotes or markets the CPA's abilities to provide professional services or makes claims about the member's experience or qualifications in a manner that is false, misleading, or deceptive.

If a claim arises, a plaintiff's attorney may cite this section in an attempt to discredit the CPA's professionalism and credibility and allege a violation of the AICPA Code.

In addition, many states have consumer protection statutes for professionals who have false or misleading advertising, imposing potential civil or criminal enforcement actions.

Consider listing the services and industries in which the firm regularly



works. Be honest and focus on the firm's strengths. Emphasize training and experience without "puffing."

Consider using client endorsements or testimonials after obtaining the client's written permission.

Actual statements made by current or former clients demonstrate the value of the firm's services and can be more persuasive than a self-serving statement by the CPA firm.

Statements That Employ Absolute Terms

The following statements use words that could be interpreted as implying promises or guarantees regarding the outcomes of services provided:

- We provide all clients with a comprehensive tax planning strategy so you pay the least amount of tax legally possible.
- A senior partner is intimately involved in all aspects of every client engagement.
- With our part-time CFO services, you get an experienced professional who establishes the strongest financial controls for your business to eliminate employee theft and maximize profits.

Reconsider words that imply an absolute, such as "all," "every," "any," "always," or "constant."

These words establish a client's expectation of the services to be provided.

In addition, if a claim arises, a plaintiff attorney may contend that the CPA made a false or misleading statement and failed to deliver the service expected by the client.

Once again, in the event of a professional liability claim, the client's attorney may allege this was a violation of the "Acts Discreditable Rule" and state consumer protection statutes.

Consider softening the language. Phrases such as "endeavor to" or "our practice generally includes" help to avoid the perception that the firm's statements constitute promises and guarantees.

Overly Broad Statements

The following statements indicate, in overly broad terms, that the CPA firm will provide operations oversight or monitoring of the client's business:

- We promise to proactively manage your daily demands and plan for your future goals and needs.
- We will make financial decisions that will allow you to run your business in a highly profitable manner.

Reconsider statements that hold the firm out as being solely responsible for the client's business. Be careful not to give the impression that the CPA or firm will assume responsibility beyond that for which it is contracted in the engagement letter.

Consider proceeding with caution and using marketing messages to help manage client expectations. CPAs, especially those providing business process outsourcing services, may make decisions within the scope of the engagement and are responsible for identifying issues and providing relevant recommendations for client consideration.

CPAs typically advise the client regarding the benefits and drawbacks of various options but, as a general matter, should emphasize that the client is ultimately responsible for the success of its business.

Implying Influence Over the Client's Success

The following statements imply that the auditor or tax professional's work can influence the client's success:

- Our auditors are leaders in providing strategic, financial, business, operational, human resource, tax, administrative, and information technology expertise that has consistently driven the top and bottom line for our clients.
- Want to improve your bottom line? Work with our accounting and tax professionals. Their experience will lead your business to profitability and exceed your business goals.

Reconsider statements that promise that audit or tax work performed by the CPA firm will positively affect a client's success or profitability. Client performance is based upon numerous variables, and it may be misleading to suggest that many CPA firm services are directly correlated with client success.

In the event of a professional liability claim, the client's attorney may assert that this representation reflected a commitment made to the client that the firm was unable to fulfill.

Consider using client testimonials to support how recommendations or services provided by the CPA firm assisted them in achieving desired business results. These declarations can describe the impact of CPA firm services and prove beneficial.

Final Tips

Reconsider statements that may be construed as professional advice. CPA firms provide advice based upon client-specific facts and assumptions.

Consider designating individuals to review and update information often, ensuring that all content remains current, accurate, and relevant. This protocol also helps with search engine optimization.

Consider applying the concepts discussed here to other marketing materials and proposals, including those in print, social media, blogs, and any other format.

Remembering that in the event of a professional liability claim, the defense of the CPA firm may be difficult if the CPA did not deliver on the promises made in a website statement.

CPA Firm Websites Must Comply with Board Rules

Did you know that a CPA firm's website must comply with the Board's rules, including 21 NCAC 08N .0306, Advertising or Other Forms of Solicitation?

21 NCAC 08N .0306(d) allows a CPA firm to advertise using a portion of the firm name, initials, or acronyms derived from the firm name.

However, the exact firm name registered with the Board must be included so that it is easily accessible to anyone using the site.

The firm's contact information, including the principal place of business and telephone number, must be on the website.

Including email addresses, mailing addresses, and fax numbers allows clients to communicate with the firm efficiently.

As with all other forms of advertising, the website must not contain information that is deceptive or misleading.

The use of qualitative and quantitative terms like "reasonable" and "affordable" is discouraged. What is affordable to one person is not affordable to another.

Advertising the nature of services provided to clients is allowed, but using a title or designation that the CPA does not hold is not.

Unless the CPA has met the requirements of the title or designation and is on active status and in good standing with the granting organization, those titles or designations cannot be used.

[The Board does not approve or authorize designations or separate titles. The use of such designations is for public information purposes only.]

Using terms like "specializing in" or "specialization" in firm advertising



to indicate a concentration in or limitation of practice to certain areas is permitted.

However, a CPA or CPA firm may not use "specialist" in any form of advertising or solicitation.

Using "expertise" to refer to an area of practice in which the CPA holds a specialty designation is acceptable. But "expert" may be used only in conjunction with "witness" and then only if recognized as such by a court of law.

When listing the firm's employees, the licensed staff and unlicensed staff must be in separate, distinct sections. The sections should be titled so that it is easy to distinguish between the licensed employees and unlicensed staff.

Entries for licensed staff must include each person's name, North Carolina CPA license number, and North Carolina as the jurisdiction of licensure. Information about the CPA's position with the firm, professional experience, and contact information may be shown.

For unlicensed staff, the individual's name, his or her job title, and contact information should be included.

A CPA firm should periodically review its website for accuracy and compliance with the Board's rules.

Email the Board's Deputy Director, David R. Nance, CPA, at **dnance@nccpaboard.gov**, with questions about firm websites.

2019 Exam Score Release Dates

BASED UPON THE FOREGOING, the Board makes the following Conclusions of Law:

1. The Respondent is subject to the provisions of Chapter 93 of the North Carolina General Statutes and Title 21, Chapter 08 of the North Carolina Administrative Code, including the Rules of Professional Ethics and Conduct promulgated and adopted therein by the Board.
2. The number of investors, and identity of those investors, was a fundamental fact related to the Respondent's tax advisory engagement. The Respondent's prolonged failure to provide the correct number and identity of investors to the broker reflects a failure to exercise due professional care in the performance of that engagement in violation of 21 NCAC 08N .0212.
3. The Respondent's failure to provide the correct number and identity of investors to the SEC resulted in disciplinary action being taken by the SEC in violation of 21 NCAC 08N .0204.
4. Per N.C. Gen. Stat. §93-12(9), and also by virtue of the Respondent's consent to this order, the Respondent is subject to the discipline set forth below.

BASED ON THE FOREGOING and in lieu of further proceedings, the Board and the Respondent agree to the following Order:

1. The Respondent must pay a one thousand dollar (\$1,000) civil penalty, to be remitted with this signed Order.

**Approved by the Board
October 24, 2019.**

Testing Window: October 1 – December 10 (19Q4)

If you take your Exam on/before:	...and the AICPA receives your Exam data files from Prometric by 11:59 p.m. (EST) on:	Your target score release date is:
Nov. 14	Nov. 14	Nov. 22
Nov. 30	Nov. 30	Dec. 10
Dec.10	Dec. 11	Dec.19

NOTE: As of November 7, 2019, the AICPA had not released the 2020 Exam score release dates.

Staff Member Receives Resolution from Board

Mary Beth Britt, one of the Board's Professional Standards Specialists, has retired after more than 14 years with the Board. On October 24, 2019, Board President Arthur M. Winstead, Jr., CPA, presented Britt with a Resolution thanking her for her service to the Board, the public, and the CPA profession.

North Carolina State Board of Certified Public Accountant Examiners



Resolution

Whereas, Mary Beth Britt was hired as a Professional Standards Assistant for the North Carolina State Board of Certified Public Accountant Examiners on August 1, 2005;

Whereas, her title was changed to Professional Standards Specialist on April 11, 2011;

Whereas, during her tenure with the North Carolina State Board of Certified Public Accountant Examiners, she has faithfully and tirelessly served as a valuable employee of the Board; as a mentor to other Board employees; and as an advocate for the protection of the public and the best interest of the profession;

Be It Therefore Resolved that the members of the North Carolina State Board of Certified Public Accountant Examiners extend their thanks to Mary Beth Britt for her service to the Board and offer their best wishes to her on her upcoming retirement on October 31, 2019.

This the 24th day of October 2019.

North Carolina State Board of
Certified Public Accountant Examiners

Arthur M. Winstead, Jr.
Arthur M. Winstead, Jr., CPA, President



State Board of CPA Examiners

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Notice of Address Change

Please Print Legibly

Full Name:	
Certificate No.:	Last 4 Digits of SSN:
Home Address:	
City/State/Zip:	
Home Phone:	Home Fax:
Home Email:	
Firm/Business Name:	
Business Address:	
City/State/Zip:	
Business Phone:	Business Fax:
Business Email:	
Signature:	
Date:	Send mail to: <input type="checkbox"/> Home <input type="checkbox"/> Business

Mail form to: PO Box 12827, Raleigh, NC 27605

Fax form to: (919) 733-4209

Pursuant to 21 NCAC 08J .0107, all certificate holders & CPA firms shall notify the Board in writing within 30 days of any change in home address & phone number; CPA firm address & phone number; business location & phone number; & email address.