



Washington State Board of Accountancy

Policy Number: 2004-1

Title: Sanction and Penalty Guidelines

Revised: October 30, 2015

Approved: 
Donald F. Aubrey, CPA, Chair

*This policy rescinds and supersedes any previous Board policy.

The Board believes that consent agreements are more efficient and effective than administrative hearings. The key benefits of negotiated settlements are:

- The respondent participates in the development of the corrective action plan and sanction which enhances compliance and more timely public protection
- Cases resolved through the negotiated settlement process reduce costs for the benefit of both the general public and the respondent

The Board recognizes that administrative hearings:

- Delay the corrective action and thereby delay public protection
- Are not the most effective mechanism to generate a positive resolution to Board cases
- Are costly in terms of staff and other resources
- Require significant use of the Board's limited attorney general resources

Policy:

The Board embraces the respondent's involvement in determining the settlement proposal. This provides the respondent the opportunity to participate in development of the corrective action plan and ultimately encourages future compliance and public protection. To support the negotiation and settlement process, the Board provides the following guidance to the Executive Director and Consulting Board Member in crafting a suggested settlement proposal for presentation to the respondent and for negotiating a settlement. This guidance is solely for the use of the Consulting Board Member and the Executive Director. It is not applicable to the prosecuting Assistant Attorney General.

The objective of this process is to administer the enforcement process in a fair and equitable manner and, when appropriate, seek settlement in lieu of a formal Board hearing.

- I. **The Board provides the following suggested considerations for the Executive Director and Consulting Board Member when developing a suggested settlement; however, the Board does not intend that other factors, as deemed appropriate by the Executive Director and Consulting Board Member, to be excluded:**
- A. What are the enforcement goals of the particular case?
 - B. What are the permissible sanctions that the Board could impose?
 - C. What are the aggravating or mitigating factors relevant to the allegations?
 - D. What is the individual's past disciplinary or criminal history (if any)?
 - E. Are there identifiable trends, if any, in the individual's behavior?
 - F. What is the likelihood of the individual repeating the behavior?
 - G. What is the potential for future public harm?
 - H. What is the individual's potential for rehabilitation?
 - I. What is the extent of damages or injury?
 - J. What is the extent of public harm?
 - K. What is the extent of harm to the profession and the public's trust in the profession?
 - L. How can the public best be served and protected while implementing corrective action?
 - M. What steps are necessary to ensure the integrity of financial information?
 - N. What were the Board's sanctions with similar misconduct (if any exist) and has there been a trend in the Board's actions and/or changes in state law impacting the history of the Board's sanctions?
 - O. Has the individual been sanctioned by other enforcement agencies or through civil findings:
 - Fine
 - Cost recovery
 - Disgorgement
 - Practice or license restriction
 - Publication
 - Jail
 - P. What was the magnitude of the sanctions by other enforcement agencies/civil findings?
 - Q. What impact did these other sanctions have on:
 - The individual's behavior
 - The individual's taking responsibility for her/his actions
 - The individual's ability to earn a livelihood
 - The public's awareness of the individual's misconduct
 - R. Would a suspended license seriously impact the individual's livelihood and, if so, does the misconduct merit such an impact?
 - S. Did the individual lose their job/employment/livelihood due to the misconduct?
 - T. What is the individual's personal financial position?
 - U. Did the individual recently go through bankruptcy?

- V. What is the individual's ability to pay cost recovery?
- W. What is the individual's ability to pay a fine?
- X. Has the individual already taken self-imposed corrective action (such as CPE, field review)?
- Y. What is the length of time that has elapsed since the misconduct, the sanction, or the civil action?
- Z. What is the public's exposure to the individual?
- AA. Is the misconduct singular or repeated?
- BB. Is the misconduct a clear violation or does it involve a statute, rule or standard which is subject to different interpretations?
- CC. Was the misconduct intentional or unintentional?
- DD. Did the misconduct involve dealing with unsophisticated or vulnerable parties?
- EE. Did the CPA/individual profit or benefit from the misconduct?
- FF. Did the CPA/individual make an effort to limit the harm or solve problems arising out of the misconduct?
- GG. Did the misconduct take place after warnings from the agency?
- HH. What was the Board's sanctioning authority at the time the misconduct occurred?

II. The Board suggests the following considerations when considering a counterproposal negotiating a settlement:

- A. All of the items in Section I above.
- B. What is the value to have the individual participate in the development of the corrective action?
- C. How many outstanding Board cases have been referred to the prosecuting Assistant Attorney General and remain to be resolved?
- D. What is the effect of a delay in resolution of this particular case and/or the effect of a delay in prosecution of other cases?
- E. What is the severity of the particular case under negotiation as compared to the number of, and severity of, the cases with the prosecuting Assistant Attorney General?
- F. What are the key objectives and goals of the enforcement action and what sanctions are absolutely necessary to ensure those goals are achieved?
- G. Is there value to the public, the agency, and Attorney General's Office that can be obtained by having the agreement settled without going to an administrative hearing?
- H. Consider the sanctioning guidelines in Section V.

III. Legal and Investigative Costs

RCW 18.04 authorizes the Board to recover legal and investigative costs. The Board considers the following to be reasonable legal and investigative costs:

- A. Investigative staff salaries and benefits (based on actual salary and benefit rates) for state staff conducting the investigation, including reporting, review, and follow-up costs

- B. Investigator travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
- C. Contract investigator, specialist, and expert witness expenses including travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
- D. Salaries and benefits (based on actual salary and benefit rates) for state staff preparing and reviewing the Board's order and associated communications with the respondent
- E. Prosecuting Assistant Attorney General charges associated with the case including travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
- F. Expenses for an administrative law judge including travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
- G. Administrative hearing costs including, but not limited to:
 - Attorney General charges (both for the Board's legal counsel and the prosecuting Assistant Attorney General) associated with the case including travel expenses and per diem based on the state travel regulations as established by the Office of Financial Management
 - Salaries and benefits (based on actual salary and benefit rates) for state staff preparing and reviewing the Board's order and associated communications with the respondent
 - Salaries and benefits (based on actual salary and benefit rates) for state staff called as a witness by either party to the administrative hearing
 - Witness expenses including travel and per diem expenses based on the state travel regulations as established by the Office of Financial Management
 - Court reporter charges
 - Administrative hearing room costs and set-up charges

IV. The Board acknowledges the following general sanctioning guidelines for the Executive Director and the Consulting Board Member's consideration as part of their process to develop a suggested settlement. The Board does not intend these guidelines to be a prescription or binding; nor does the Board wish to exclude or limit other sanctions or considerations that the Executive Director and Consulting Board Member consider appropriate.

General Categories of Misconduct	Examples of Sanctionable Acts:
<p>ADMINISTRATIVE NON COMPLIANCE</p> <p>Use of title or holding out in public practice with a lapsed license/certificate</p> <p>Use of the CPA title by a CPA-Inactive certificateholder</p>	<ul style="list-style-type: none"> • License/certificate lapsed because the individual failed to file a license/certificate renewal. • License/certificate lapsed because the individual failed to notify the Board of a change of address, failed to receive their renewal application, and failed to file a license/certificate renewal. • The individual disregarded the lapsed license and continued to knowingly hold out with a lapsed license. • The individual discovered that their license/certificate lapsed and signed the reinstatement application stating that they did not use the title when the evidence demonstrates that they used the title. • CPA-Inactive who is a corporate CFO uses the CPA title in filing corporate documents with the SEC. • CPA-Inactive uses the CPA title to obtain a job in private industry. • CPA-Inactive who is also an attorney uses the CPA title when offering legal services to the public.
<p>CONSUMER/EMPLOYER HARM</p> <p>Embezzlement, fraud, dishonesty, or negligence</p> <p>Fiduciary malfeasance or breach of fiduciary duties</p> <p>Noncompliance with code of conduct including conflict of interest and confidentiality</p> <p>Failure to comply with a Board order</p> <p>Failure to respond to Board inquiry</p> <p>IRS/SEC sanction/denial of practice privilege</p>	<ul style="list-style-type: none"> • Theft from employer. • Felony obstruction of justice. • Theft of trust funds where the CPA was the trustee. • Manipulated a client's trust for the benefit of the CPA's child. • Manipulated a mentally impaired client for self-enrichment. • Failed to file personal tax returns and pay personal FIT. • Failed to transmit FICA and FIT withheld from employee's salary. • Failed to pay employer's portion of FICA. • Provided services to both the seller and the buyer during a business transaction without consent. • Provided services to both parties during a divorce without consent. • Failed to make restitution to injured parties as required by Board order. • Repeated noncompliance with stipulated Board Orders. • Suspended from practice before the IRS due to substandard tax work. • SEC practice restriction and/or sanction due to fraudulent SEC filing.

General Categories of Misconduct	Examples of Sanctionable Acts:
	<ul style="list-style-type: none"> • SEC practice restriction and/or sanction due to substandard accounting practices.
<p>CONSUMER/EMPLOYER HARM</p> <p>Noncompliance with technical standards</p>	<ul style="list-style-type: none"> • CPA is referred to the Board by the SEC due to an audit failure as a result of the CPA performing substandard audit procedures. • CPA is referred to the Board by federal agencies due to failure to comply with <i>Yellow Book</i> standards. • Substandard tax work resulted in penalty to a tax client.
<p>CONSUMER/EMPLOYER HARM</p> <p>Failure to provide client records upon reasonable notice and request</p>	<ul style="list-style-type: none"> • Refused to return client records until the client paid the CPA's fees • Did not return multiple clients' records due to procrastination. • Did not return client records because the client terminated the relationship and obtained a new CPA.
<p>ADMINISTRATIVE NON COMPLIANCE</p> <p>Acts and omissions in filing an application for reinstatement or renewal of a license, certificate, or registration</p> <p>Failure to comply with a Board approved CPE waiver request</p>	<ul style="list-style-type: none"> • Represented on the CPE audit form that CPE courses were obtained when evidence discloses that no or only a portion of the required CPE courses were taken. • Signed the reinstatement or renewal form under the penalty of perjury that the CPE requirements were met and the individual obtained only a portion of the required hours. • Signed the reinstatement or renewal form under the penalty of perjury that the CPE ethics requirements were met and the individual did not take the required ethics CPE.
<p>CONSUMER/EMPLOYER HARM</p> <p>Failed good character determination for initial licensure</p> <p>Cheating on CPA Exam</p>	<ul style="list-style-type: none"> • The good character review was at the request of the applicant who was found guilty of a felony 3 years ago. • The good character review as a result of the applicant's disclosure that 7 years prior they failed to file an income tax return and pay their tax obligation. • The good character review was the result of the prosecutor alerting the Board to the applicant's being charged with a felony. • Cheating observed by the exam proctor.

<p>CONSUMER/EMPLOYER HARM</p> <p>Use of title or holding out in public practice by a non-CPA</p>	<ul style="list-style-type: none"> Continued use of title after passing the exam for the earlier of 90 days prior to obtaining a license or the posting of a Notice of Noncompliance. Used title to intentionally defraud investors.
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V. Guidelines for 1st Time Administrative Violations

These guidelines will be used when (a) it is the first time an individual or firm has been notified of an alleged specific type of violation of the Public Accountancy Act or Board rule, (b) the alleged violation occurred during any period the individual or firm is or was subject to Board jurisdiction, and (c) a preponderance of evidence is obtained by investigation to merit a monetary penalty.

	Administrative Violation:	Board Approved Sanction:
1.	First noncommercial use of a restricted title on <i>Business Cards, Resumes</i> or other <i>Applications for Employment</i> in Washington state after establishing residency in this state but prior to obtaining credentialed status in Washington State, <i>Provided:</i> the individual did not use the title while a resident in conjunction with offering or rendering professional services.	Administrative Notice of Noncompliance and advisory to obtain a license or cease title use and offering or performing public accounting services within 90 days of the U.S. postmark of the Administrative Notice of Noncompliance.
2.	First-time use of a restricted title by an individual within the 18-month period following successful completion of the Uniform CPA Examination but who has not yet been credentialed by the Board	\$500 monetary penalty + cost recovery + submission of proof of completion of Board approved course in ethics and regulation in Washington State regulation applicable to the practice of public accounting <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i>
3.	First time representation on a reinstatement application that the CPA title had not been used when in fact the title had been used.	\$750 monetary penalty + late fee + cost recovery <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i>

4.	First time failure to obtain a firm license by a Washington resident firm owned by one individual for more than 90 days after <i>the date of transmittal</i> by Board staff of a <i>notice of noncompliance</i> .	\$750 monetary penalty + cost recovery + submission of proof of completion of Board approved course in ethics and regulation in Washington State <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction..</i>
5.	First-time failure to timely change either or both individual and/or firm addresses.	\$0 - \$200 monetary penalty + cost recovery (unless <i>the failure to timely change the address results in a more severe first-time administrative violation and sanction</i>) <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction..</i>
6.	First-time failure by a firm to timely notify the Board of changes in the firm name, ownership, or managing licensee of the firm's main office after <i>the date of transmittal</i> by Board staff of a <i>Notice of noncompliance..</i>	\$500 monetary penalty + cost recovery <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i>
7.	First-time misunderstanding of courses qualifying for the CPE in regulatory ethics specific to Washington State.	\$100 monetary penalty + cost recovery + submission of proof of completion of Board approved course in ethics and regulation in the state of Washington <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i>
8.	First-time failure to meet CPE documentation requirements <u>determined by CPE audit</u> provided the documentation deficiency results from a cause or circumstance beyond the control of the credentialed person.	\$0 - \$250 monetary penalty + cost recovery + submission of proof of completion of Board approved course in ethics and regulation in the state of Washington <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i>
9.	First-time use of titles likely to be confused with CPA, Certified Public Accountant, or CPA-Inactive by person never credentialed by this Board or not qualified for practice privileges pursuant to RCW 18.04.350(2).	\$1,500 monetary penalty + cost recovery + <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i>

10.	First-time failure to timely deliver records requested by a client as required by WAC 4-30-051, UNLESS the lack of "timely delivery" results in financial harm to the client by a state or federal regulatory agency or governmental unit.	\$1,500 monetary penalty + cost recovery + restitution for proven client costs incurred to reconstruct essential records incurred as a result of the lack of availability of such records + submission of proof of completion of Board approved course in ethics and regulation in the state of Washington <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction..</i>
11.	First-time failure to timely respond to a request for administrative information or documents directly related to information and/or documents specified in Board rules (Title 4 WAC).	\$1,500 monetary penalty + cost recovery + submission of proof of completion of Board approved course in Ethics and Regulation in the state of Washington <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i>
12.	First-time Quality Review Program violation, e.g. lack of cooperation with reviewers, failure to comply with peer review program requirements, and/or non-payment of fee for a completed peer review service.	\$500 monetary penalty + cost recovery + (if applicable) restitution to reviewer (firm) + other appropriate corrective remedies.
13.	First-time Resident or Out-of-State CPA firm violation for not obtaining a Washington State license before offering or performing Compilation, Review, Audit, or other Attest engagements for a client with an office in this state or with a home office (RCW 18.04.025(10)) in this state.	\$1,500 monetary penalty + cost recovery + submission of proof of completion of Board approved course in Ethics and Regulation in the state of Washington <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i> <i>This monetary penalty will not apply to CPA firms applying and receiving a firm license within 90 days from the U.S. Postal Date of the Notice of Non-Compliance for unlicensed firm practice in Washington State sent by the Board to the firm.</i>

<p>14. First-time CPE deficiencies by licensees, certificate holders, and non-CPA firm owners.</p> <p>Example:</p> <p>Licensee failed to timely complete 120 hours of CPE, including failure to register and successfully complete the Board approved 4-hour course on Ethics and Regulation in Washington State during the CPE Reporting Period. The licensee:</p> <ul style="list-style-type: none"> • Self-Reported a deficiency during the renewal period but did not complete the required CPE credit hours by June 30 of the licensee's renewal year; or • The licensee failed to file a request for extension of time for reasonable cause and failed to Self-Report a deficiency. The deficiency was identified by CPE audit. <p>Maximum Monetary Sanction</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">1st 8 hours Short</td> <td style="padding: 2px; text-align: center;">\$ 250</td> <td style="padding: 2px; text-align: right;">8Hrs.</td> </tr> <tr> <td style="padding: 2px;">2nd 8 hours Short</td> <td style="padding: 2px; text-align: center;">\$ 250</td> <td style="padding: 2px; text-align: right;">8Hrs.</td> </tr> <tr> <td style="padding: 2px;">Additional hrs.</td> <td style="padding: 2px; text-align: center;"><u>\$3,000</u></td> <td style="padding: 2px; text-align: right;"><u>100Hrs.</u></td> </tr> <tr> <td></td> <td style="padding: 2px; text-align: center;">\$3,500</td> <td style="padding: 2px; text-align: right;">116Hrs.</td> </tr> <tr> <td style="padding: 2px;">Ethics Course</td> <td style="padding: 2px; text-align: center;">\$ 500</td> <td style="padding: 2px; text-align: right;">4Hrs.</td> </tr> <tr> <td style="padding: 2px;">Totals</td> <td style="padding: 2px; text-align: center;"><u>\$4,000</u></td> <td style="padding: 2px; text-align: right;"><u>120Hrs.</u></td> </tr> </table>	1 st 8 hours Short	\$ 250	8Hrs.	2 nd 8 hours Short	\$ 250	8Hrs.	Additional hrs.	<u>\$3,000</u>	<u>100Hrs.</u>		\$3,500	116Hrs.	Ethics Course	\$ 500	4Hrs.	Totals	<u>\$4,000</u>	<u>120Hrs.</u>	<p>Licensee: Exclusive of the required 4-hour course addressing ethics and regulation in Washington State a sliding scale:</p> <p>\$250 monetary penalty for a deficiency up to and including 8 CPE credit hours;</p> <p>\$500 monetary penalty for a deficiency up to and including 16 CPE credit hours;</p> <p>Plus an additional \$30 monetary penalty for each CPE credit hour deficient from 17 CPE credit hours to 100 CPE credit hours.</p> <p>Additional (Separate) \$500 monetary penalty if the deficiency includes or is limited to failure to complete the required 4-hour course addressing ethics and regulation in Washington State.</p> <p><u>CPA-Inactive Certificateholder or Non-CPA firm owner:</u></p> <p>\$500 monetary penalty + cost recovery for failure to complete the required 4-hour course addressing ethics and regulation in Washington State.</p> <p>All amounts assessed are <i>to be received by the Board's office within 90 days of signing an agreement consenting to an Administrative Sanction.</i></p>
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No information of a first-time Administrative Violation will be disclosed by staff; however Board staff will:

- Post statistics related to these sanctions on the Board's website
- Comply with the Public Records Act.

If an individual or firm's conduct includes multiple first-time administration violations of different types, the Executive Director may impose the more severe first-time

administrative sanction or open an investigation if the matter demonstrates a pattern of unprofessional regulated conduct.

Effective: October 29, 2004

*Revised: October 24, 2014; April 23, 2013; April 26, 2012; April 25, 2011; October 17, 2008; April 28, 2006; January 28, 2005