

REGULATIONS

OF THE

RHODE ISLAND BOARD OF ACCOUNTANCY

FOR THE

CONSIDERATION AND PROCESSING OF COMPLAINTS

SEPTEMBER 17, 1997

1.0 INTRODUCTION, PURPOSE, FINDING

1.1 Introduction

The General laws of Rhode Island §5-3.1-4(f), authorizes the Board of Accountancy (the "Board") to promulgate rules and regulations.

1.2 Purpose

The purpose of these regulations is to provide for the fair and expeditious investigation and consideration of complaints against persons, partnerships, and corporations under the jurisdiction of the Rhode Island Board of Accountancy.

1.3 Effect

These regulations shall repeal and supplant regulations filed on October 16, 1987 entitled "Regulations of the Board of Accountancy for the Consideration and Processing of Complaints."

1.4 Finding

In considering the adoption of these regulations, the Board finds that there is no alternative approach which would be as effective and less burdensome to affected persons as another regulation. The Board further finds that this regulation will not have a significant adverse economic impact on small business. These regulations shall take effect twenty (20) days after filing with the Secretary of State in accordance with Rhode Island General Laws §42-35-4.

2.0 DEFINITIONS

The following words and terms, when used in these regulations, shall be construed as follows:

2.1 Board. The Board of Accountancy is a public authority created by R.I. Gen. Laws §5-3.1-4.

~~2.2 Licensee. Includes a person, partnership, or corporation holding (a) a certificate issued under R.I. Gen. Laws § 5-3.1-5; (b) an authority issued prior to July 5, 1995 pursuant to § 5-3.1-6; (c) an annual permit issued under R.I. Gen. Laws § 5-3.1-7 or 5-3.1-9; (d) an annual limited permit to practice issued under R.I. Gen. Laws § 5-3.1-8.~~

~~2.3 The Act. The Accountancy Act of 1995 as set forth in Chapter 3.1 of Title 5 of the General Laws of the State of Rhode Island.~~

~~2.4 Complaint. Information received by the Board from whatever source indicating that a licensee may have violated the Act or any regulation concerning professional conduct of licensees promulgated by the Board pursuant to the Act.~~

~~2.5 Probable Cause Committee. A committee appointed at the discretion of the Board to investigate the conduct of licensees on behalf of the Board.~~

3.0 INVESTIGATION UPON RECEIPT OF A COMPLAINT BY THE BOARD

~~3.1 Applicability. Any person, firm, corporation or public officer, including a licensee, may submit a complaint to the Board against any licensee.~~ 3.2

~~Form. All complaints shall be submitted in writing and signed by the complainant or its authorized representative. A complaint shall state the grounds for the complaint, including a statement of facts or circumstances upon which the complaining party relies for the charge. A complaint shall state the name, address, and telephone number of the complainant or representative to be contacted by the Board or probable cause committee for purposes of investigation or giving of notice.~~

~~3.3 Construction of Complaint. Failure to include any of the information described in Article 3.2 will not preclude the Board from acting on the complaint or acting with respect to the factual allegations upon its own motion.~~

~~3.4 Notice to Licensee. Upon receipt of a complaint, the Board shall notify the licensee against whom the complaint is made, personally or by certified mail, return receipt requested to the address of the licensee registered with the Board, of the facts of the complaint.~~

~~3.5 Response by Licensee. Within twenty (20) days of receipt of notice that a complaint has been filed, the licensee shall respond in writing to the Board, acknowledging receipt of notice of the complaint, responding to the factual allegations of the complaint and indicating the licensee's willingness to cooperate fully with any investigation initiated by the Board~~

~~4.0 INVESTIGATION UPON MOTION BY THE BOARD~~

~~4.1 Procedure. The Board may, upon its own motion, after receipt of any apparently reliable information from any source, including a state or federal agency, that a licensee may have violated the Act or any regulation concerning professional conduct of licensees promulgated by the Board pursuant to the Act, investigate such information in accordance with all provisions of Article 5.0 of these regulations.~~

~~4.2 Investigation and Notice. The probable cause committee and/or the Board may investigate and consider the information in the manner set forth in Article 5.0 of these regulations, provided that one or more members of the Board or the probable cause committee may begin its investigation without giving notice to the licensee of the investigation as required in Article 3.4.~~

~~4.3 Information on Criminal Acts. Where the information received by the Board involves the conviction of or pleading guilty or nolo contendere by a licensee to a crime or an act constituting a crime in a court of competent jurisdiction of this or any other state or federal court of any of the offenses set forth in R.I. Gen. Laws § 5-3.1-12(5), the Board shall obtain or the probable cause committee shall obtain and present to the Board as part of its report a copy of~~

~~such conviction or plea. A judgment of conviction or plea of a licensee for such crime shall be conclusive evidence of the conviction of that crime in any hearing before the Board.~~

~~The pendency of an appeal from such conviction or the sentence imposed pursuant thereto shall not constitute a reason for the Board to withhold action against the licensee, except that an appeal from a conviction which entitles the licensee as a matter of right to a trial de novo shall not be considered as a conviction.~~

~~4.4 Information on discipline by a Board of Accountancy of another state. Upon receipt by the Board of information from any authority of any other state having jurisdiction to govern the practice of accountancy or to impose disciplinary action against any accountant authorized to practice in such state that the right of a licensee to practice as a public accountant or certified public accountant, or to provide services of a related nature before any state or federal agency, has been suspended or revoked for any reason other than the failure to pay a fee or to meet the continuing education requirements in such state, the Board may, in any hearing before the Board, consider a copy of the record of the proceedings before such state authority to be prima facie proof of the contents of such record and conclusive evidence of such action. Upon receipt of such information, the Board may require the licensee to appear before the Board to show cause why like discipline should not be imposed by the Board of Accountancy of this state. In the event that the Board votes to impose a sanction against a licensee, the Board shall not be bound by the nature or time period of any sanction imposed by any other authority or agency.~~

5.0 INVESTIGATION

~~5.1 Investigation. The Board may investigate the conduct of a licensee after receipt of a complaint pursuant to Article 3.0 or receipt of apparently reliable information pursuant to Article 4.0 alleging that the licensee may have violated the Act or any regulation concerning professional contract promulgated by the Board. The Board may refer the investigation of the licensee's conduct to one or more members of the Board or may appoint a probable cause committee to investigate the conduct of the licensee on behalf of the Board. The probable cause committee shall be comprised of licensees in good standing, as determined by the Board.~~

~~5.2 Authority of the Board. Pursuant to an investigation, the Board shall have the authority to compel licensees to provide to the Board or to the probable cause committee any information that is necessary for the investigation, including, but not limited to, tax returns and working papers. For the purposes of an investigation, the Board shall have the authority to compel the licensee to appear before the Board or the probable cause committee to provide information for the purposes of fact finding.~~

~~5.3 Conduct of a Licensee During an investigation, the licensee shall be required to provide information as to the licensee's conduct in response to any request, whether formal or informal, for such information from the Board or from the probable cause committee. The licensee shall at all times during the investigation cooperate fully with the Board and with the probable cause committee to facilitate the expeditious resolution of the investigation. Failure of the licensee to cooperate fully complying with requests by the Board or probable cause committee is unprofessional conduct on the part of the licensee and may lead to the imposition of sanctions pursuant to R.I. Gen. Laws § 5-3.1-12.~~

~~5.4 Informal Resolution. The Board shall have the power to use any means to expeditiously resolve the investigation of alleged unprofessional conduct brought against a licensee, including mediation.~~

~~5.5 Report. In those instances where no referral is made to a probable cause committee, one or more members of the Board shall investigate the conduct of the licensee against whom allegations were made and shall present a report to the remainder of the Board. In those instances where a probable cause committee investigates the conduct of the licensee pursuant to Article 5.1, the probable cause committee shall investigate the factual allegations brought against the licensee and shall report its findings in writing to the Board. Each report shall include a summary of the facts, an opinion as to whether probable cause exists, as set forth in R.I. Gen. Laws § 5-3.1-12, for further action by the Board on the allegations against the licensee, and a recommendation to the Board as to whether the charges should be dismissed or the Board should conduct a hearing on the allegations of unprofessional conduct. The report may contain other relevant matters and information.~~

~~5.6 Dismissal. If the Board finds insufficient grounds to support the charges, the complaint shall be dismissed. Notice of dismissal shall be provided in writing to the person who filed the complaint and to the licensee against whom the complaint was filed.~~

6.0 HEARINGS

~~6.1 Notice to Licensee. Upon determination by the Board that a hearing is required, a specification of the charges of unprofessional conduct shall be prepared and provided to the licensee either personally or by certified mail, return receipt requested, together with notice of the hearing. The notice to the licensee shall include the time and place of the hearing and shall be provided to the licensee not less than twenty (20) days prior to the date of the~~

hearing. Such notice shall also notify the licensee that the licensee will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence on his or her behalf, to cross examine witnesses, and to have subpoenas issued on his or her behalf by the Board.

~~6.2 Attendance at a Hearing. At any hearing, the licensee may appear in person or may be represented by counsel. Partnerships and corporations shall be represented before the Board by counsel. At all hearings, the attorney general of this state, or such other legal counsel as may be employed, shall appear and represent the Board.~~

~~6.3 Powers of the Board. The Board may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs and receive exhibits in evidence in connection with a hearing under these regulations. In case of disobedience of a subpoena, the Board may petition the Superior Court to require the attendance and testimony of witnesses and the production of documentary evidence.~~

~~6.4 Hearing Procedure. The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conducting of its proceedings, but any determination of the Board shall be based upon sufficient legal evidence to sustain the determination.~~

~~6.5 Record of Hearings. A stenographic record of the hearings shall be kept and a transcript filed with the Board. The Board shall maintain a separate file with respect to each investigation as the official record of the Board.~~

~~6.6 Hearings and Records Open to the Public. Hearings shall be open to the public, provided that the Board shall retain the authority to close all or any portion of any hearing in accordance with the Open Meetings Statute, R.I. Gen. Laws § 42-46-1 et seq. in existence at the time of the hearing. The Board~~

shall additionally have the authority to preserve the confidentiality of any materials received pursuant to an investigation of a licensee's conduct and any record of the investigation by the Board pursuant to the Public Records Statute, Title 38 of the Rhode Island General Laws, in existence at the time of the hearing.

~~6.7 Voting. A majority vote of the Board shall be required in order to take action against a licensee. Each member of the Board voting shall be required to have attended the hearing or any continuance thereof or to have read the record of the hearing or continuance at which he or she was not in attendance.~~

~~6.8 Conclusion of Hearing. The Board shall issue a decision after conclusion of the hearing. The decision shall include findings of fact and conclusions of law. The decision of the Board shall be delivered to the licensee in person or by regular mail. Unless precluded by law, and subject to approval by the Board, at any time prior to the entry of an order, informal disposition may be made of any contested matter by stipulation, agreed settlement, consent order, or decree.~~

~~6.9 Sanctions. If the decision is adverse to the licensee, the Board may impose any of the sanctions set forth in R.I. Gen. Laws §§ 5-3.1-12 and 5-3.1-13.~~

7.0 ADMINISTRATIVE MATTERS

~~7.1 Related Matters. Where the allegations against a licensee are similar or related to the material allegations of a pending criminal or civil matter, the Board may postpone action on the complaint pending resolution of the civil or criminal matter. The acquittal of a licensee on criminal charges or a verdict or judgment in favor of a licensee in civil litigation involving substantially similar material allegations to allegations of unprofessional conduct brought against a licensee shall not in itself justify dismissal of a complaint or termination of an investigation predicated upon the same material~~

~~allegations, but such acquittal, verdict, or judgment may be considered by the Board or probable cause committee in reaching its decision or recommendation. The dismissal of criminal charges against a licensee, the settlement of civil litigation against a licensee involving substantially similar material allegations to a complaint, or any agreement between a licensee and a complainant or a licensee and any person in consideration of which such person agrees not to make or pursue a complaint against the licensee shall not preclude the Board in its discretion from referring such matter for investigation or from continuing to process a complaint previously filed.~~

~~7.2 Other Agencies. The Board will cooperate with the agencies and authorities of other states exercising similar jurisdiction with respect to the practice of accountancy in exchanging information concerning disciplinary action against any licensee, and specifically shall, upon the entry of any order by the Board which imposes a sanction pursuant to R.I. Gen. Laws §§ 5-3.1-12 or 5-3.1-13 against a licensee, notify such agency or authority of each state in which the licensee is known to hold a license or permit.~~

~~7.3 Factors in Imposing Sanctions. In determining the sanction to be imposed in any case, the Board shall consider aggravating and mitigating factors in assessing which sanctions to impose against a licensee.~~

8.0 SEVERABILITY

~~If any provision of these regulations or the application thereof to any licensee or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the regulations which have been given effect, and to this end the provisions of these regulations are declared to be severable.~~