1993-94 license fees due

The Board is in the midst of the 1993-94 biennial individual license and 1993 annual practice unit license renewal process. All fees are due by December 31, 1992; it is essential that individual and practice unit licenses be renewed on a timely basis in order to comply with the provisions of the Public Accountancy Act of 1991, (including the quality review requirements) and to maintain good standing.

Besides paying the annual license fee, each firm is also required to undergo a quality review every three years as mandated by the Act and further defined by Board rules. In reviewing a firm, the reviewer as a matter of course insures at the outset that all certificate holders in the firm hold current licenses to practice. The direct relationship between practice units and the quality review program is described in Section 15B of the Act, which states, in part:

(a) The board shall by rule provide for a quality review program for the review of the work product of licensees under this Act to the extent determined necessary by the board to comply with any applicable standards adopted by generally recognized standard-setting bodies in the field of accounting.

(b) The board shall register practice units ... (emphasis added)

As such, anyone employed in government or industry with even a nominal sideline practice must be registered as a practice unit and is therefore subject to quality review. Board Rule 527.5 (Exemptions) allows a practice unit to claim an exemption from the quality review requirement only if the practice unit does not perform any accounting services (other than tax work); the practice unit is required, however, to notify the Board annually of this status.

Section 10(a) of the Act requires the following individuals and entities to be registered with the Board:

(1) all individuals registered as Public Accountants under the Public Accountancy Act of 1945 and all individuals registered under Section 14 of this Act;

(2) a firm qualified under this or prior Acts; and

(3) each office established or maintained in this state for the practice of public accountancy in this state by a firm of certified public accountants or by a firm of public accountants or by an individual registered under Section 14 of this Act ... (emphasis added)

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1 i.e., Practice unit.
2 As per definition of "person" in Section 2 of the Act.
Questions and Answers

Advertising and solicitation.

The Board receives many telephone calls daily on the Rules of Professional Conduct as they pertain to advertising and solicitation. Below are a few of the most commonly-asked questions.

Q May a CPA contact a potential client by telephone?
A No. All telephone solicitations are prohibited.

Q May a CPA contact potential clients by mail?
A Yes, provided the following guidelines are strictly observed.
   • The envelope containing the letter may use the name, title, and address of the intended recipient.
   • The name, title, and address of the intended recipient may not appear anywhere inside the envelope. Therefore, a CPA may write "Dear Sir or Madam," but may not write "Dear Bank President" or "Dear Ms. Johnson." Further, the mailout must conform to the rules regarding advertising and solicitation (see box at right).

Q What about newsletters?
A Newsletters may be sent to prospective clients, provided they are not personalized in any manner.

Q What about folding and stapling a mailout so that the mailing address also looks like the salutation to the potential client?
A Mailouts may not be folded in a fashion which is intended to circumvent the letter and spirit of the Rules.

Q May a CPA follow up on the mailouts with a telephone call?
A No. This is considered telephone solicitation, which is prohibited.

Section 501.40. Licensing/Registration Requirements.

A certificate or registration holder must perform accounting functions through an entity registered with the board pursuant to the Public Accountancy Act, Section 10. Accounting functions include, but are not limited to, the preparation of tax returns or the furnishing of advice on tax matters, bookkeeping services, the issuance of reports on financial statements, the furnishing of management advisory or consulting services, and the sale, advice, or management of computer software which includes or implies an expertise in accounting. Not included, however, is a certificate holder performing accounting services as an employee, partner, or shareholder of, and exclusively for:
   (1) federal, state, or local governmental entities; or
   (2) an employer or firm not offering accounting services to the public.

Q What about窗 envelopes?
A Window envelopes may not be used for direct mail advertising.

Q What about postcards?
A Postcards may be used, provided the name and address do not appear on the same side as the message.

Section 501.44. Soliciting.

(a) A certificate or registration holder may make a solicitation if and only if:
   (1) the solicitation is made to a person who is at that time a client of the certificate or registration holder;
   (2) the solicitation is invited by the person to whom it was made; or
   (3) the solicitation is made to a person seeking to secure the performance of professional services currently not being provided by another certificate or registration holder.

(b) A certificate or registration holder making a solicitation shall have the burden of ascertaining and proving that such solicitation meets the criteria of one or more parts of subsection (a) of this section.

(c) An uninvited solicitation is a violation of these rules. A certificate or registration holder will be presumed to be making an uninvited solicitation in violation of these rules if a specific person or title holder is being addressed on the letterhead.
**Update to Rules of Professional Conduct**

Board Rule 501.47 (Firm Names) has recently been amended as shown below. Please clip this rule and attach it to the August, 1992, special edition of the Texas Board Report (Vol. 45) containing all the Rules of Professional Conduct.

### Section 501.47. Firm Names.

(a) No certificate or registration holder shall engage in the practice of public accountancy using a professional or firm name or designation that includes descriptive words relating to the quality of services offered or that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners or shareholders may be included in the name of a firm or its successor.

(b) A professional or firm name or designation will be considered to be misleading if:

1. The name contains a misrepresentation of facts;
2. The name is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
3. The name is intended or likely to create false or unjustified expectations of favorable results;
4. The name implies educational or professional attainment or licensing recognition of the firm and/or its owners, partners, or shareholders which are not supported in fact;
5. The name of the firm that is incorporated does not include the words “corporation,” incorporated,” “professional corporation,” or “company,” or in each case, an abbreviation thereof, as a part of the firm name, and the words “professional corporation,” or “PC” are not included with the firm name each time it is used;
6. The name includes the designation “and company” or “and associates” or abbreviations thereof unless there are at least two licensees involved in the practice;
7. The name of a firm that is a partnership or professional corporation fails to contain the personal name or names of one or more individuals presently or previously a partner, officer, or shareholder thereof;
8. The name of a firm that is a sole proprietorship fails to contain the name of the sole proprietor;
9. The name contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived.

(c) A partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

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**MAY 1993 EXAMINATION SCHEDULE**

The May, 1993, Uniform CPA Examination will be conducted at the following locations and times:

**EXAMINATION SITES**

- **Austin**
  - Lester E. Palmer Auditorium
- **El Paso**
  - Vista del Sol Conference Center
- **Fort Worth**
  - Tarrant County Convention Center
- **Houston**
  - George R. Brown Convention Center
- **Lubbock**
  - Lubbock Civic Center
- **San Antonio**
  - San Antonio Convention Center

**EXAMINATION TIMES**

- **May 5**
  - 1:30 p.m. - 6 p.m. (Practice I)
- **May 6**
  - 8:30 a.m. - Noon (Auditing)
  - 1:30 p.m. - 6 p.m. (Practice II)
- **May 7**
  - 8:30 a.m. - Noon (Law)
  - 1:30 p.m. - 5 p.m. (Theory)

The deadline for submitting applications for the May examination is February 28, 1993. The national grade release date will be February 1, 1993, for the November, 1992, examination and August 2, 1993, for the May, 1993, examination.
ENFORCEMENT ACTIONS

Investigation No.: 91-08-31L
Respondent: Thomas A. Akin
Date of Board Ratification: 11/13/92
Disposition: The respondent accepted an agreed consent order for a reprimand for violating Sections 21(c)(2), 21(c)(4), and 21(c)(11) of the Public Accountancy Act (the Act) and Sections 501.12 (Integrity and Objectivity), 501.21 (Competence), and 501.41 (Discreditable Acts) of the Rules of Professional Conduct (the Rules).

The respondent performed quality reviews without his employer's knowledge or authorization. To facilitate performing the reviews, the respondent used firm stationery to issue engagement letters and reports, violated the firm's internal quality control review standards, and wrongfully retained payment for services, which funds were later returned.

Investigation No.: 89-01-11L
Respondent: Norman Dunham
Date of Board Ratification: 7/9/92
Disposition: The respondent mailed 500 personalized uninvited letters of solicitation which used the term “specializing” and offered services for a fee less than the direct labor cost reasonably expected to be incurred in performing the services offered. The letters were misleading because they failed to make full disclosure of relevant facts, and were intended or likely to create false or unjustified expectations of favorable results.

Investigation No.: 91-03-05L
Respondent: John Q. Barnridge
Date of Board Ratification: 7/9/92
Disposition: The respondent was reprimanded based on his violations of Sections 21(c)(2), 21(c)(4), and 21(c)(11) of the Act and Sections 501.24 (Other Professional Standards) and 501.41 (Discreditable Acts) of the Rules because he reviewed and signed off on workpapers prepared by another CPA, some or all of which were prepared while the CPA worked for another firm, without that firm's knowledge or consent.

Investigation No.: 91-12-18L
Respondent: T. Frank Fleming
Date of Board Ratification: 8/20/92
Disposition: The respondent executed an agreed consent order in which he was reprimanded for violations of Sections 20A and 21(c)(4) of the Act and Sections 501.11 (Independence), 501.43 (Advertising), and 501.44 (Soliciting) of the Rules.

The respondent mailed 500 personalized uninvited letters of solicitation which used the term “specializing” and offered services for a fee less than the direct labor cost reasonably expected to be incurred in performing the services offered. The letters were misleading because they failed to make full disclosure of relevant facts, and were intended or likely to create false or unjustified expectations of favorable results.

Investigation No.: 91-08-21L
Respondent: Kenneth A. Foust
Date of Board Ratification: 7/9/92
Disposition: The respondent executed an agreed consent order which: (1) prohibits performance of the attest function, including compilations, reviews, and audits; (2) requires completion of a three-semester hour college course in taxation accounting at East Texas State University before December 31, 1992, with a grade of "B" or better; and (3) requires acceptance of a reprimand.

The complaint was filed by the National Association of Insurance Commissioners alleging that the respondent failed to properly prepare an audit opinion letter and financial statements in accordance with industry standards. The respondent's conduct violated Sections 21(c)(2), 21(c)(4), and 21(c)(10) of the Act and Sections 501.12 (Integrity and Objectivity), 501.21 (Competence), 501.22 (Auditing Standards), 501.23 (Accounting Principles), and 501.24 (Other Professional Standards) of the Rules.

Investigation No.: 91-03-05L
Respondent: James R. Griffin
Date of Board Ratification: 7/9/92
Disposition: The respondent is prohibited from performing all
audits and reviews and from performing attest functions for any government entity for the duration of his debarment from HUD; however, the respondent may perform compilations, provided that he completes 24 hours of continuing professional education in attest work in addition to his regular continuing education requirements.

The respondent failed to properly conduct audits of several public housing authorities in accordance with generally accepted auditing standards and generally accepted accounting principles, and was subsequently debarred from HUD; further, the respondent failed to respond in writing to a communication from the Board requesting a response within thirty days of the mailing of such communication. The respondent's conduct as described above violated Section 501.21 (Competence), 501.22 (Auditing Standards), 501.23 (Accounting Principles), and 501.48 (Responses) of the Rules.

Investigation No.: 91-03-09N
Respondent: James O. Hayes II
Date of Board Ratification: 8/20/92
Disposition: In March, 1991, the Board opened an investigation against the respondent for practicing while under suspension. The respondent agreed to an additional six months' suspension for violations of Sections 8, 21(c)(4), and 21(c)(11) of the Act and Section 501.21 (Competence), 501.32 (Records), and 501.41 (Discreditable Acts) of the Rules. Following a public hearing on the original investigation on January 27, 1989, the Board ratified a proposal for decision in which the respondent's license was suspended for four years for violations of Section 501.41 (Discreditable Acts) of the Rules.

Investigation No.: 91-02-37L
Respondent: Michael James Moore
Date of Board Ratification: 10/1/92

Disposition: The respondent surrendered his certificate based on an investigation by the Texas Department of Insurance alleging that the respondent issued several audits which failed to comply with professional standards.

Investigation No.: 90-11-08L
Respondent: Amos Roy Morrison
Date of Board Ratification: 7/9/92
Disposition: (1) The respondent will contact the financial institutions necessary and make a diligent effort to obtain copies of the missing records; (2) during the period of his federal probation for the bribery charge, the respondent's license is suspended; (3) the suspension is probated as to his tax practice; and (4) the respondent is prohibited from appearing before the IRS or performing audits during the period of probation.

A complaint was filed alleging that the respondent failed to complete an engagement to prepare the claimant's 1988 tax return and failed to return client records. The IRS referred an investigation to the Board based upon the respondent's conviction for bribery of a public official, for which he received four years' probation. The respondent executed an agreed consent order which provided that he would: (1) complete 56 hours of continuing education which includes the forty hours required of all licensees plus sixteen hours in courses addressing the topics of compilations, review, and SSARS; the respondent must send the Enforcement Division a copy of his course certificates of completion on page 6

POLICY STATEMENT ON PUBLICATION OF DISCIPLINARY AND ADMINISTRATIVE ACTIONS

Board rule 519.29 authorizes the publication in its newsletter of the name of each certificate or registration holder who is the subject of a disciplinary action.

Although every effort is made to provide correct information, readers should verify accuracy prior to making a decision based on this publication.
Enforcement Actions
continued from page 5

completion; (2) pay for a technical consultant assigned by the Board to review the respondent's work at his office; (3) not perform audits or reviews until petitioning the Board and receiving permission to again perform such work; (4) receive a published reprimand from the Board; and (5) appear before the committee in an informal conference in November, 1992.
The respondent was in violation of Sections 21(c)(2), 21(c)(4), and 21(c)(11) of the Act, and Sections 501.21 (Competence), 501.22 (Auditing Standards), 501.23 (Accounting Principles), and 501.24 (Other Professional Standards) of the Rules.

Investigation No.: 90-12-01L
Respondent: Kenneth R. O'Neal
Date of Board Ratification: 7/9/92
Disposition: The respondent executed an agreed consent order for a reprimand based on his violations of Sections 10 and 21(c)(4) of the Act and Sections 501.46 (Form of Practice) and 501.48 (Responses) of the Rules because he failed to respond to Board communications and was practicing through a non-registered entity from July 12, 1989, through April 23, 1991.

Investigation No.: 92-04-37L
Respondent: Christina Plake
Date of Board Ratification: 11/13/92
Disposition: The respondent accepted an agreed consent order for a reprimand and probationary one-year suspension for violations of Sections 21(c)(4) and 21(c)(11) of the Act and Section 501.41 (Discreditable Acts) of the Rules. The respondent provided misleading information to independent auditors.

Investigation No.: 91-04-34L
Respondent: Robert M. Sander
Date of Board Ratification: 7/9/92
Disposition: The respondent held out as a CPA subsequent to the time that his license was suspended for failure to complete his continuing education requirements. The respondent
is required to: (1) pay delinquent license fees and delinquent penalties and current license fees; (2) complete his continuing education requirements within sixty days; and (3) be prohibited from practicing public accounting until he has met his requirements. Further, the respondent agreed to have his certificate voluntarily revoked if he fails to meet the conditions of the consent order.
The respondent's conduct as described violated Sections 8, 21(c)(3), and 21(c)(4) of the Act and Sections 501.32 (Records) and 501.41 (Discreditable Acts) of the Rules.

Investigation No.: 91-10-31L
Respondent: Stuart B. Willis
Date of Board Ratification: 10/1/92
Disposition: The respondent agreed to a reprimand based upon a violation of Section 21(c)(4) of the Act and Section 501.21 (Competence) of the Rules for failure to timely notify his client that he had investigated low income housing tax credits and had the necessary application forms.

Q & A
continued from page 2

Holding out.

The Board also receives numerous calls requesting clarification on whether a licensee employed in industry or government is considered to be practicing public accounting.

Q May a CPA perform accounting services as described in Section 501.40 of the Rules as an employee or owner of a non-registered firm, merely by not "holding out to the public" as a CPA either by letterhead, business card, word of mouth, or any other method?

A No. Accounting services by a certificate holder must be performed through an entity registered with the Board. A certificate holder is not allowed to avoid the Rules when performing accounting services.

Q Is a CPA who works for the government or business not providing accounting services to the public violating the Board's rules by practicing through a non-registered entity?

A No. The same rule (501.40) which requires a CPA to practice through a registered entity provides an exception for a CPA providing accounting services as an employee of the government or a business not providing accounting services to the public. He or she must comply with the Rules, but to require registration of businesses and governmental entities would be confusing to the public more than assisting.
$200 fee reaffirmed

The office of the Attorney General has reevaluated and reversed its previous answer on the applicability of the $200 legislatively-imposed professional fee as it relates to federal employees.

A new letter, dated November 18, concludes that "...the additional $200 licensing fee imposed by §9A(b) of the Public Accountancy Act of 1991 is not unconstitutional by virtue of its applicability to federal employees." Therefore, all licensees (except those claiming retired or permanent disabled status) must pay the fee annually, in addition to the biennial license fee.

The prior letter from the office of the Attorney General, dated July 29, was publicized in the August, 1992, issue of the Texas State Board Report (Vol. 44, page 8).

Individual letters of explanation are being sent to those licensees who have applied for refund of the $200 fee. A copy of the Attorney General's letter may be obtained by calling the Board office at (512) 451-0241.

Board endorses peer assistance

In accordance with the state minimum criteria established by the Texas Commission on Alcohol and Drug Abuse (TCADA), the Board has endorsed a confidential, voluntary peer assistance program to be administered by the Texas Society of CPAs. In doing so, CPAs have joined many other professionals in Texas in recognizing and assisting with the growing problems of substance abuse and mental illness among its licensees.

TCADA's legislative authority to develop guidelines for peer assistance programs by state agencies is under the Health and Safety Code, Texas Civil Statutes, Art. 5561c-2, Section 1.14(11) and Art. 5561c-3, Section 1.

The Board's Peer Assistance Oversight Committee has been established to review the TSCPA's quarterly statistical report by case number only. The Handbook for CPA Intervenors' statement of purpose describes the program not as a disciplinary tool, but rather as a means to "...identify, assist and monitor Texas cases of CPAs with job impairing mental health, alcohol or drug problems so that they may return to competent practice." The program will take a case-by-case approach to support sustained recovery while maintaining confidentiality and anonymity. The Handbook goes on to state:

Confidentiality is absolutely essential to the appropriate functioning of the Program. In addition ... the Texas Health and Safety Code requires that any information, report or record that the Program, the State Board, the TSCPA or any disciplinary authority receives, gathers or maintains in connection with the Program is confidential. Except for certain exceptions provided expressly in the Texas Health and Safety Code, a person may not disclose any such information, report or record without written approval of the impaired CPA...

The TSCPA's 24-hour hotline for the peer assistance program is (214) 699-6055.

Other professionals having similar peer assistance programs in Texas are attorneys, physicians, registered nurses and licensed vocational nurses, dentists and dental hygienists, and pharmacists and pharmacy students.

License fees continued from page 1

Furthermore, Section 2 defines person and firm in the following manner:

(2) "Person" means an individual, partnership, corporation, or other legal entity.

(3) "Firm" means a sole proprietorship, partnership, professional or other corporation, or other business engaged in the practice of public accountancy.
License fees
continued from page 7

Therefore, a practice unit is required to hold a license to practice, as specified in Section 9, below:

(a) ...licenses shall be issued by the board to the following upon the payment of fees hereinafter specified:

(1) holders of the certificate of “Certified Public Accountant” issued under this or prior Acts; and such persons as are registered with the board under the provisions of this or prior Acts.

(2) such persons as are registered with the board under the provisions of this or prior Acts. (emphasis added)

Please note that the Board is statutorily prohibited under Sections 9 and 9A from waiving any fee or penalty.

Any questions regarding the license renewal process should be directed to the Board’s Licensing Division at (512) 450-7052.

Public hearing scheduled on proposed rule

A public hearing will be held January 27, 1993, at 1 p.m. in the Board office for the purpose of receiving testimony on proposed Board Rule 501.15 (Accreditation), shown below in its entirety.

Oral testimony will be limited to ten minutes; a transcript of oral comments must be submitted as well. Written comments must be received by January 20, and will be read into the record at the hearing.

Section 501.15. Accreditation.

(a) A certificate or registration holder may publish a degree(s) obtained from a college or university recognized by any of the regional education accreditation associations recognized by the Council of Postsecondary Accreditation.

(b) A certificate or registration holder may publish an accreditation not recognized by the Board, as long as the fact that the accreditation is not recognized by the Board is disclosed in the form of a disclaimer in conjunction with such publication. The disclaimer shall read as follows: "Not accredited by the Texas State Board of Public Accountancy." This section does not authorize publication of any titles or designations prohibited by Section 8 of the Act.

(c) A certificate or registration holder permitted to publish accreditation is not permitted to use the word "specialist" or any derivation thereof as a part of the accreditation publication.

Please note that the Board is statutorily prohibited under Sections 9 and 9A from waiving any fee or penalty.

Any questions regarding the license renewal process should be directed to the Board’s Licensing Division at (512) 450-7052.