

**VIRGINIA**

**BOARD OF ACCOUNTANCY**

**ADJUDICATION MANUAL**



First Edition, June 14, 2004  
Second Edition, February 1, 2008  
Third Edition, November 16, 2011  
Revised November 20, 2013

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## CHAPTER 1

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### **Overview of This Manual**

The Virginia Board of Accountancy ("Board") is required by statutory mandate to take appropriate action against license holders, individuals and organizations to ensure the protection of the public. The general statutory mandate provides the Board with the authority to investigate possible violations of the Board's regulations, and provides the Board with authority to enforce these laws by revoking, suspending or restricting a license if a violation is determined.

In addition to the general statutory mandates and the Board's basic law, the disciplinary process is governed by the Virginia Administrative Process Act (APA), Section **2.2-4000 et Seq.** of the Code of Virginia. Both the Board and the Attorney General's Office provide significant resources to support the Board in the quasi-judicial role of hearing charges of misconduct which have been made against a regulated person or entity.

This manual is designed to provide guidance on the investigation of Complaints filed against Certified Public Accountants (CPA's) and Certified Public Accounting Firms. It has been prepared by the Enforcement Division of the Virginia Board of Accountancy. This manual should be used in conjunction with the Board of Accountancy's Regulation and Statutes.

## CHAPTER 2

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### **Receipt, Acknowledgement, And Review of the Complaint**

Consistent with statutory duties of the Executive Director of the Board, all reports received by the Board that may allege misconduct are referred to the Enforcement Department. All information is reviewed to determine if a violation of law or regulation may have occurred. If the information submitted and received is accepted for investigation it is given a Case Number, date stamped and recorded in the agency's Master Complaint Log.

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#### **A. Initial Receipt (Intake)**

A Complaint will always be **date stamped** immediately upon receipt. This is important because the date this agency receives the Complaint may be what ultimately determines the Complainant's ability to seek redress of alleged violations, even if this agency is not the appropriate agency to investigate the Complaint. The receipt date by a State agency becomes the receipt date for other State agencies. A Complaint actually asks a State agency to take action concerning allegations of violations of regulations and state statutes. The correspondence need not be directed to the correct agency or part of an agency in order for it to be a Complaint.

The Enforcement Manager is responsible for determining if the information received warrants investigation, (determination of probable cause). Initially, the Enforcement Manager reviews the information, checks the licensure status of the subject of the report and identifies possible violations of laws or regulations to the Enforcement Committee with a brief summary explaining the details and major points. If the Enforcement Manager requires additional information to make a determination, a preliminary investigation is instituted. Various types of records and documents may be obtained, interviews may be conducted by telephone, or correspondence may be generated to gather information to assist in making the initial determination.

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## **Matters Which Do Not Warrant Investigation**

If the Enforcement Manager determines that the information does not appear to warrant an investigation, it is referred to the Executive Director for review. If the Executive Director concurs with the Enforcement Managers recommendation, the information is filed as “No Probable Cause and all parties are notified. If the Enforcement Manager determines that the matter requires further investigation, the appropriate letters are sent and the source of the information is notified by the Enforcement Manager, in writing. Whenever possible, reports or Complaints received which do not fall within the Board’s jurisdiction are referred elsewhere. Persons who believe they are entitled to reimbursement, restitution or damages are advised to consider pursuing their claim through civil action.

The following are examples of items/documents that will not be considered a Complaint, unless the item contains a signed cover letter specifically asking that this State agency take action concerning the allegations:

- Inquiries seeking advice or information;
- Courtesy copies of Complaints addressed to another local;
- Newspaper articles unless the person is using the CPA designation without a valid license;
- Allegations of tax evasion or of violations that the VBOA does not have jurisdiction over which will be sent to the perspective Departments/Agencies;
- Courtesy copies of internal grievances;
- Allegations submitted with no supporting documentation;
- Allegations that a violation has been committed in another state.
- Fee Disputes

When it is obvious from the information submitted that VBOA has no jurisdiction over the Respondent alleged to have violated), VBOA will refer it to the appropriate agency. When the correspondence is a Complaint and it appears that VBOA may retain it, it will be assigned a case number at this point -- even if it does not contain enough information to clearly explain the discrimination that is alleged. A separate case number may be assigned to each named recipient in the Complaint. Complaints from more than one person against the same recipient should generally

be assigned separate case numbers to help comply with the requirements of the Privacy Act and the Freedom of Information Act.

Additional allegations from the same Complainant against the same recipient after the investigative process has begun can be reviewed on a case-by-case basis to determine whether the allegations should be added to the open Complaint or treated as a new Complaint. Retaliation Complaints that are received after an investigation has begun should be assigned a new Complaint number.

A person may file a third party Complaint, i.e., a Complaint that is filed on behalf of another named individual(s). VBOA will contact that individual (or, where the victim is a minor child or incompetent adult, contact the victim's parent, guardian, or attorney) on whose behalf the Complaint is filed to ensure that the named victim wishes to pursue the allegations raised on his/her behalf. If the person declines to pursue the Complaint, VBOA will close the Complaint and inform the third-party Complainant of the reason for the closure. A memo will be put in the file explaining the steps that were taken and the reasons that the Complainant did not wish to pursue the Complaint.

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### **B. Acknowledge the Complaint**

The Complaint will be acknowledged within 15 days of receipt with a simple boilerplate letter stating that the correspondence has been received and is being reviewed for jurisdiction and/or probable cause. The letter need not state a deadline by which the decision will be made, unless a particular statute or regulation provides otherwise. The letter is simply to let the Complainant know that the correspondence has been received and is under review. This acknowledgment helps reduce the number of calls and requests that are received from upset Complainants who do not know if their correspondence has even been received or is being reviewed.

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### **C. Determining Whether the Complaint is Complete**

Once the correspondence received is deemed to be a valid Complaint and it has been assigned a docket/case number, is reviewed and deemed to have the information for completeness, it must have the following:

1. *A signed*, written explanation of what has happened; The Official Complaint Form (See Appendices)
2. The action took place in Virginia or to a Virginia citizen;
3. The person or group is a licensed CPA or CPA Firm Registered/Licensed with the Board of Accountancy;
4. Supporting documentation to substantiate any and all allegations;
5. Sufficient information to understand the facts that led the Complainant to believe that a violation has occurred and when the violation took place.

Each Complaint will be worked to ensure that sufficient information has been received to properly evaluate the Complaint and determine probable cause. The Board will provide appropriate assistance to Complainants, including persons with disabilities and individuals who speak a language other than English, who may need help in providing the information needed to properly assess jurisdiction, probable cause and investigate the Complaint.

Please note that, while the list above indicates a Complaint must be in writing, the Board will accept Complaints filed in alternate formats from persons with disabilities. For example, the Complaint may be filed on a computer disk, by audio tape, or in Braille. If the Complainant is unable to write and cannot have someone write out the Complaint or cannot tape it, the Enforcement Manager may write out the allegations provided over the telephone by the Complainant and send the Complaint to him or her for signature. The Complainant will be asked in what format s/he would like written documents that are sent; generally, they should be sent in the format in which the Complaint was received from the Complainant. In those cases in which Complaints are filed in formats such as audio tape or computer disk, the Enforcement Manager will ask that the Complainant sign a Privacy Act Release Form before proceeding with the investigation.

Complaints in languages other than English will be translated and responded to in the language in which they were received, to the greatest extent possible. In addition the **Privacy Act Release Form** should also be translated or other steps taken to ensure that the Complainant understands what is contained in it and the legal implications of signing the form.

#### **D. Contact the Complainant**

It will often be necessary to contact the Complainant by telephone or a face-to-face visit to discuss the information needed to process the Complaint. In instances where the Board will need further information in writing, an Official Complaint Form will be sent to the Complainant. However, the Complainant will be advised that he or she is not required to use the Complaint Form to submit the Complaint or additional information, but rather may choose to simply provide the information required in some other format. Without the information requested in the items marked with a star (\*), the Board will be unable to process the Complaint further.

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#### **E. When the Complainant is Represented By an Attorney**

If the Complaint is submitted on behalf of a Complainant by his or her legal counsel, a letter of representation must accompany the Complaint and the attorney will be contacted for any additional information needed. The attorney may be asked if the Board can contact the Complainant directly to discuss the information needed. In addition, if it appears from the information received that the Complainant is represented by an attorney (especially if the Complaint states that the matter raised has been or soon will be filed in court); the Complainant will be asked whether he or she is represented by an attorney concerning this Complaint. If this is the case, the attorney will immediately be contacted to request the information needed or to request permission to contact the Complainant directly. If the Complainant is represented by an attorney, and a good faith effort to contact the attorney has been made (notes will be made of any attempts to contact the attorney) by telephone with no success, the request will be put in writing to the attorney and a copy will be sent to the Complainant. If still unsuccessful, a letter will be sent to the Complainant notifying him/her that the Complaint will be closed if the information needed is not received by a specified date; with a copy of this letter to the Complainant's attorney.

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**F. Setting a Deadline for the Complainant to Provide Additional Information**

The Complainant will be given a specific deadline by which the requested information should be submitted, generally it is 15 days from the date of the Boards written request to complete a Complaint and submit the required information. It will be explained in the letter to the Complainant that failure to provide the requested information by that date will result in assumption by the Board that the Complainant is no longer interested in proceeding with the investigation and therefore; the case will be administratively closed with no further action. If enough information is received to complete some allegations in a Complaint but not others, only those allegations that remain incomplete will be closed and therefore the Enforcement Manager will proceed with the analysis and investigation process of the others.

## CHAPTER 3

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### **Creating The Case File**

The case file is a structured compilation and repository of all documents and information, within this agency's possession, pertaining to the case. A case file will be established for each Complaint accepted for investigation.

Complaints that are administratively closed for lack of jurisdiction, because they are untimely filed, for failure to exhaust local remedies, or for failure to state a claim over which your office has jurisdiction will not be given a Case File number.

The purpose of the case file is to establish a methodology for the systematic compilation and **structured storage** of all documents, records, and information associated with the case. This is done in such a manner that the case file (a) provides the basis and supporting documentation for the Investigative Report, and (b) allows a reader of that report to easily verify the facts upon which it is based.

#### **A. Format for the Case File**

The case file will include the following:

Section I –LEFT SECTION- Case Communication History - This section has two types of entries, and is attached to the inside left-hand of the file folder.

- Case Communication History. This entry describes each session of communication with the Respondent or Complainant to determining how much administrative time is spent with this case. The purpose of this log is to record all contacts and activities relevant to processing the Complaint for which there is no paper trail. The log is to be used as a reference of the actions taken by the investigator on the case. (Not available to FOIA)

Section II –RIGHT SECTION- Information received such as the Official Complaint Form and supporting documents. (Available under FOIA)

Section III- RIGHT SECTION- External Correspondence - All external correspondence sent is included under this section to include standard boilerplate letters to the Complainant and to the Respondent kept in chronologically (i.e., most recent first), sequence. (Available under FOIA)

Section IV –RIGHT SECTION- All Responses from the Respondent. (Available under FOIA)

Section V –RIGHT SECTION- Investigative Report – This section contains the Investigative Report which is the formal analysis made by the investigator. (Available under FOIA)

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## CHAPTER 4

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### **Determining Jurisdiction and Identifying Issues**

Once the Board has determined that the correspondence received is a Complaint, it must be determine if this agency is responsible for investigating all or some of the allegations it raises. Jurisdiction over both must be determined (1) the organization or agency that is alleged to have jurisdiction over the violations, and (2) the subject matter of the issues the Complaint addresses.

#### **A. Jurisdiction**

In order to determine whether VBOA has jurisdiction to investigate the Complaint, the Complaint should meet certain basic criteria:

- The act must have taken place in the State of Virginia or to a Virginia citizen.
- The subject matter (i.e., issues) addressed by the Complaint must be covered by one or more of the statutes and or regulations that the Board is responsible for enforcing.
- The Complainant must come under the Board's jurisdiction by way of licensure or Substantial Equivalency.

If the Complaint meets these criteria and is not affected by any regulatory exemptions or exceptions, VBOA most likely has jurisdiction to investigate the Complaint. If there is insufficient information to determine whether it meets these criteria, the Complainant will be contacted to get this information. Any jurisdictional questions will be resolved **at the onset**, prior to investigating the allegations.

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**B. Immediate Referral to Another Agency** - VBOA has the responsibility to make a good faith effort to refer the Complaint (or those allegations for which we do not have jurisdiction) to the appropriate agency that can handle the case.

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C. **Complaint Basis** The Complaint must allege wholly or in part a violation of any Virginia statute or regulation including the Professional Standards. These violations are subject to disciplinary action by the Board possibly resulting in revocation.

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D. **Pre-Investigative Administrative Closures**

Determining if the Complaint is appropriate for investigation, Alternative Dispute Resolution (Mediation or Conciliation) or should it be closed?

Upon approval from the Enforcement Committee, the Board need not proceed with or continue a Complaint investigation and attempts at resolution of an allegation under certain circumstances, which include the following:

- 1) The Complaint is so weak, attenuated, or insubstantial that it is facially without merit, or so replete with incoherent statements that the Complaint, as a whole, cannot be considered to be grounded in fact and the Enforcement Committee has been notified and have given permission to close the Complaint at the staff level.
- 2) The Complaint is a continuation of a pattern of previously filed Complaints involving the same or similar allegations against the same recipient or other recipients that repeatedly have been found factually or legally insubstantial by this agency.
- 3) The same allegations and issues of the Complaint have been addressed in a recently closed Complaint or compliance review conducted within the same time frame as the recently closed Complaint.
- 4) Litigation has been filed raising the same allegations. Such cases may be re-filed following termination of the proceeding if there has been no decision on the merits or settlement of the Complaint allegations. As an alternative, VBOA may investigate the Complaint if the trial will not begin for an extended period of time or if VBOA believes that the case raises important legal or policy issues it wishes to pursue with the approval of the Enforcement Committee. The Enforcement

Committee may consider suspending investigation of the Complaint (rather than closing it) and monitoring the court action.

5) The same Complaint allegations have been filed with another Federal, State, or local agency, or through a recipient's internal grievance procedures, including due process proceedings, and it is anticipated that the agency will provide the Complainant with a comparable resolution process. The Complainant should be advised that she or he may re-file the completion of the other agency's action.

6) The information received from the Complainant does not provide sufficient detail to proceed with Complaint resolution.

7) A Complaint over which VBOA otherwise has jurisdiction may be closed when VBOA transfers or refers the Complaint to another agency for investigation.

8) The death of the Complainant makes it impossible to investigate the allegations fully.

#### **E. Notification of Closure**

The Board will notify the Complainant (and the Respondent if prior notification has been sent) if the Board will not proceed further with the Complaint. The letter to the Complainant (and recipient, if appropriate) should state that the Complaint is being closed and explain the reason(s) for the decision. The closure letter should also include the reminder of the Freedom of Information Act notice.

## CHAPTER 5

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### **The Investigation**

It is the responsibility of the Board's Enforcement Manager or Investigator to conduct an investigation by interviewing potential witnesses, obtaining copies of relevant documents and accumulating evidence either in person or by mail. Telephone responses are not to be used to gather information from the Respondent.

Typically, the investigator will interview the source of the initial report and all witnesses or persons with pertinent information. After collecting and reviewing relevant documents, the investigator will conduct an interview with the Respondent (the person being investigated or responding to a Complaint). The results are fully documented as a written report, which is submitted to the Enforcement Committee.

Cases that document unlicensed activity can be either presented to the appropriate Commonwealth's Attorney for consideration of prosecution as a criminal matter if no response is received from the Cease and Desist Order that is mailed to the person. Or, the case can be heard by the Board's Enforcement Committee in an IFF and sanctioned by the Board.

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#### **A. Determining Probable Cause**

Upon receipt of a report of investigation, the Enforcement Committee conducts a review to determine if probable cause exists and charges should be issued against the Respondent. The process used must be fair, unbiased and in compliance with law. If probable cause is found, the result is typically that a Consent Order is issued, or that a pre-hearing consent agreement is reached with the Respondent. If probable cause is not found, the source and the Respondent are so notified.

This section discusses the steps involved in a complete investigation of a Complaint. These steps would also occur when VBOA conducts a CPE or Peer Review compliance review. As discussed in the previous section, Approaches to Complaint Resolution, VBOA may decide that it is appropriate to initiate settlement negotiations at any time during an investigation. However, VBOA will ensure

that there is enough information to discuss settlement to be certain that the resolution is sufficient for the case at hand. In cases where a full investigation is needed to make legally sufficient findings, VBOA will identify all aggrieved victims, and determine appropriate resolution. VBOA will identify the best possible administrative approach to take up front to the extent possible, determine what kind and how much evidence will be needed, and remember that it is up to the CPA or CPA firm regarding the burden of proof.

When the Enforcement Committee receives the investigative report from the Enforcement Department a preliminary review of the case is made during the Enforcement Committee meeting to determine whether probable cause exists to proceed with an administrative proceeding on charges that one or more of the Board's statutes or regulations may have been violated.

Sometimes, a Respondent or his attorney may contact Board staff and initiate negotiations resulting in a consent agreement which may be ratified by the Enforcement Committee or by the full Board if suspension or revocation is the sanction. The Board may determine that the matter should be resolved differently and may, for example, seek an expert opinion or initiate further fact-finding.

If the reviewing Enforcement Committee members independently conclude that there is probable cause to believe a violation of Board law or regulation has occurred, the Enforcement Committee will make its recommendations to the full Board in an Enforcement Report which will require approval by the full Board. In certain circumstances, the Enforcement Committee may request that an Assistant Attorney General review and approve the notice prior to conducting the informal conference.

Regardless of whether the initial review of the case is conducted by the Enforcement Committee members or by Board staff, the methods and types of further action available to Board are as follows:

- If the investigation reveals that there is no jurisdiction and/or no probable cause, the Complaint may be dismissed and the case closed without any type of disciplinary action taken against the licensee.
- If the facts are complete and there is probable cause, a consent order may be offered to the Respondent in lieu of an informal conference, but the Respondent is advised that an informal conference may be requested. By agreeing to or not contesting the findings of fact, conclusions

of law and a sanction contained in the consent order, the Respondent acknowledges the validity of the Complaint. Once the Respondent has signed and returned the consent order, it is presented for ratification to the full Board if the sanction is suspension or revocation. A committee or full Board, after reviewing the findings of fact, conclusions of law and sanction, may adopt, modify, or reject the consent order. The full Board may also request further information from the Enforcement Committee, schedule an informal conference, or dismiss and close the matter. Should a committee or full Board agree to the entry of the consent order, the case will be closed.

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### **B. Complainant and Respondent Notification**

If the VBOA determines that there is probable cause to proceed with an investigation, the Complainant and the Respondent will be notified that VBOA has accepted the Complaint for investigation. The notification letter to the Complainant and the Respondent should contain the following information:

- 1) The basis for the Complaint including who filed the Complaint with the Board;
- 2) A brief statement of the allegations over which the agency has jurisdiction;
- 3) A brief statement of the agency's jurisdiction over the recipient to investigate the Complaint;
- 4) An indication of when the parties will be contacted, if statute prohibits notification, the statute must be cited;
- 5) A copy of the Complaint and any and all supporting documents that were submitted.

By providing the Respondent with copies of all information regarding the allegations of a violation, and by providing the Respondent a “reasonable” time to respond, the Board is providing “due process” to the accused.

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## CHAPTER 6

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### **A. Requesting Information from the Respondent**

Generally, in gathering information from the Respondent, an initial request for response letter is sent to the Respondent requesting information relevant to the allegations under investigation. The information request letter may take any of several forms. It may be:

An information boilerplate request letter should contain:

- Identification by case number;
  - Citation to the statute and/or regulations under which the investigation is being conducted;
  - Reference to the agency's legal authority for access to information;
  - The information requested;
  - A deadline for responding to the request for information.
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### **B. Determining Whether an Onsite Visit is Necessary**

An onsite investigation will not be necessary where any one of the following conditions are present:

1. All of the allegations have been addressed and supporting documents have been submitted with the response from the Respondent;
2. The Respondent is out of the State of Virginia;
3. The Respondent can provide written documentation to verify his/her position in the response to the agency's information request letter.

### **C. Pre-Onsite Activities**

Upon the determination that a VBOA Investigation requires an onsite visit to either the Respondent or the Complainant, a notification letter will be sent to both parties prior to arrival. VBOA will have already informed the Complainant at the time of the acknowledgment of the Complaint of the

Board's intention to investigate his/her allegations. The onsite notification letter to the Complainant will include, but need not be limited to, the following:

- Anticipated date of the onsite visit.
- Time and place for interviewing the Complainant. (The interview will not take place at the recipient's place of business.)
- Request for the Complainant to provide any additional information and documentation he/she considers relevant to the investigation. This will include a list of witnesses whom the Complainant believes have information relevant to the allegations.
- A timeframe to provide the additional information or documentation and list of witnesses.

At this point of the review process, the recipient is already aware of the existence of the Complaint, VBOA's jurisdiction, the basis of the Complaint, and the legal authority to investigate the Complainant's concerns. In addition, the letter notifying the recipient of the scheduled onsite visit will:

- Restate the allegations made by the Complainant, the basis on which they are made, and the legal authority under which the Complaint is being investigated.
- State the section of the appropriate regulation that explains the violation.
- Provide the general time schedule under which VBOA will conduct its investigation.
- Request the additional information or data that VBOA wants the Respondent to submit for review prior to the onsite visit, including a timeframe for submission of the information.
- Identify additional data that VBOA wants to review during the onsite visit, as a result of the review of information and data obtained prior to the onsite visit.
- Request that all of the recipient's staff to be interviewed and staff responsible for the release of additional records be asked to be available as appropriate during the onsite visit.
- If necessary, VBOA will identify the recipient's staff to be interviewed, if this can be determined in advance. VBOA will suggest that the recipient designate a liaison person to facilitate this process.
- Interviews

## CHAPTER 7

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### On Sight Interviews

Before conducting the interview, the investigator will know as much as possible about the purpose(s) intended to be served by the interview. He/she will know in advance on which subjects he/she wants the interviewee's unequivocal statement and in which areas he/she might want to wait to pursue questioning. The investigator will make certain strategic decisions as to which witnesses to interview for which purpose, and in what sequence the interviews are to be conducted.

The VBOA Investigator will:

- Introduce themselves (**show credentials**) and frame the interviewing process for the interviewees;
- Listen effectively during the interview;
- Distinguish factual information from opinions;
- Be able to deal with negative reactions during the interview;
- Use effective probes;
- Plan and take clear, precise notes; and
- Obtain a signed summary statement of the interview.

A written record of both telephone interviews and face-to-face interviews will be made to preserve the probative value of the information obtained and will be placed in the Case File. Notes and subsequent reports of the interview will contain the following information:

- Case number;
- Name, address, and phone number of the witness;
- Date, time, and location of interview, including whether the interview was conducted by telephone;
- Name of the investigator or person conducting the interview;
- A summary of the questions and responses. (This need not be a verbatim transcript but should accurately reflect the questions posed and the responses of the witness);
- Signature of the interviewee.

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## **A Interview with the Complainant**

Prior to meeting with the Respondent, the Investigator from VBOA will hold an in-depth meeting with the Complainant. Based on prior information received from the Complainant, a list of questions for the Complainant should be developed. The purpose of the meeting with the Complainant is to:

- Explain the investigation and the mediation/conciliation process;
- Remind the Complainant that the role of the investigation is only to determine, in connection with each allegation raised by the Complainant, whether the Respondent did or did not violate specific legal authorities this agency is responsible for enforcing;
- Secure any additional information with respect to the allegations;
- Explain the Complainant's rights under the Privacy Act and Freedom of Information Act; and
- Explain that the Complainant may be contacted periodically, as necessary, during the investigative process to be given an opportunity to respond to any information that is presented by the recipient that is a factor in the investigation findings.
- Remind the Complainant of the prohibitions against retaliation and intimidation.

The desired rapport between the Investigator and the Complainant is a relationship in which each understands and accepts the role that the other has in the investigation and resolution of the case at hand.

The Complainant should be made to understand:

- That once the case is closed, all of the information submitted regarding the Complaint will be made available to the public upon a FOIA request;
- That Complaint cases are kept on file permanently;
- That the Respondent will be contacted in order to obtain a response to the allegations;
- That Statute § 54.1-108 of the Code of Virginia, Disclosure of Official Records, prohibits the Board from disclosing any information regarding open disciplinary cases, however, the Board will attempt to keep them as informed as possible.

Generally, the Investigator will have already obtained at least the following information from the Complainant in the first interview (which is usually by telephone or, if that is not possible, in writing):

- The name and location of the recipient and individuals involved in the case;
- The precise circumstances and chronology of events that led to the action, decision, or condition giving rise to the Complaint;
- The identity of any witnesses who can attest to the validity of the Complainant's statements, and some indication of the matter on which each witness may be expected to provide information;
- The specific resolution sought by the Complainant; and
- Any additional information essential to an understanding of the specific matter giving rise to the case and the environment in which it occurred.

Since much of the information described above will have already been gathered and already in the Complaint File, a face-to-face interview with the Complainant will provide the Investigator with an opportunity to evaluate the information given in the context of the Complainant's presentation of what happened.

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#### **B. Impartiality of the Investigator**

The VBOA Investigator(s) must conduct unbiased investigations. In situations where there may be an appearance of bias on the part of any Investigator, a Supervisor/Director will be advised in writing. In addition, the investigator will not express opinions or conclusions to the public/Complainant/Respondent concerning matters under investigation unless specifically authorized to do so.

## CHAPTER 8

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### The Investigative Report (IR)

#### A. When to Prepare an Investigative Report (IR)

The Investigative Report (IR) will be prepared whenever a full investigation is completed and the Enforcement Division has all supporting documentation, evidence, responses and statistical information needed for the Enforcement Committee to make a fair and equitable decision or recommendation to the Board.

The IR is a detailed and logical document that (a) sets forth all facts pertinent to the case, (b) analyzes those facts in light of the Complainant's allegation(s), and (c) recommends a determination as to the validity of the allegation(s) based on that analysis and the compliance status of the recipient. Generally, the IR is not released to the Complainant or the Respondent except in conjunction with a judicial or administrative proceeding. (IFF)

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#### B. Purpose of the Investigative Report

The purpose of the IR is to:

- Organize and present the factual information collected during the investigation.
  - Identify the location in the case file of the specific supportive documentation from which each statement, allegation, conclusion, or determination was drawn.
  - Present an analysis of the information to determine the relevance of the facts to the allegations.
  - Draw conclusions based on the analysis.
  - Provide the Enforcement Committee with a summary of the case file.
-

### **C. Formatting the Investigative Report (IR)**

The IR should contain the following major Sections:

<b>I</b>	<b>Name of Respondent and Complainant</b>
<b>II</b>	<b>Introduction/Summary of Allegations</b>
<b>III</b>	<b>Allegations/Time Line of Events</b>
<b>IV</b>	<b>Response to the Allegations from Respondent</b>
<b>V</b>	<b>Conclusion (Up to the Present)</b>

Citations of Board Regulation will be included to direct the reader of the report to the appropriate supporting documentation in the Case File.

**Introduction** - This section will provide an Executive Summary of the case to include any and all, statutory or regulatory provision which the allegation would violate to include any activities that may have take place prior to accepting the Complaint for investigation.

**Allegations** - In this section of the IR, the investigator should describe a time line of events after the acceptance of the Complaint as succinctly and clearly as possible. The investigator should organize the Complainant's allegations into a logical sequence that would be necessary to sustain a finding of compliance or noncompliance.

**Response to the Allegations from Respondent** - Here the investigator will provide the information regarding all allegations from the Respondent. The Respondent must have addressed each allegation with an explanation of who, what, when, where and why.

Where attempts have been made to provide the Respondent with an opportunity to reply to the Complainant's allegations, but the Respondent has failed to respond or provide any support for its position, a description of the investigator's efforts to let the recipient respond should also be included in this section.

**Conclusion** - All facts relevant to the investigator's analysis and recommended determination in the case will be set forth in this section. It is important both to the settlement/conciliation process and for establishing credibility of the determination that only clear, accurate and factual evidence be included in this section. Facts should be presented in a logical sequence, such as the chronological order of the events or by subject matter. Factual issues in dispute should be resolved through examination of the relevant documents. This section is intended only to establish the factual and logical basis for a determination on the merits of the allegations. Each fact or series of related facts should be sequentially numbered and listed separately.

**Analysis and Recommended Determination** - In this section, the investigator conducts an analysis of the facts presented, and draws his or her conclusions as to the validity of the Complainant's allegations based on that analysis and include any similar previous Board action for the Enforcement Committee to use as a guideline to remain consistent.

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**D. Forwarding the Case File to the Enforcement Committee for Review**

Upon completion of the Investigative Report, complete the following prior to sending the case file to the Enforcement Committee for review and recommendation:

- Put all documents in chronological sequence.
- Make sure the official Complaint form has been properly date stamped.
- Review the original Complaint, then check the Respondents reply to make sure each allegation has been addressed completely.
- Separate all exhibits provided by the Respondent and the Complainant.
- Tab and Bate Stamp all documents.
- Use a cover memo numbering or lettering each document.
- Never send original documents.

## CHAPTER 9

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### **Approaches to Complaint Resolution**

This section discusses a number of approaches to resolving Complaints. In the past, many agencies investigated Complaints by following procedures that required a full investigation, formal consent agreement or informal fact-finding conferences for every case in which a violation existed. VBOA has found that a more efficient method is by varying the approaches taken to Complaint resolution based upon the nature and individual circumstances of each case.

This section suggests a number of alternatives for resolving Complaints of Standards of Practice, including the use of alternative dispute resolution (ADR) techniques. As used here, ADR refers to settlement negotiations to resolve a Complaint at any stage prior to the issuance of a formal violation notification. Recipients are frequently very positive about resolving Complaints in a manner that does not result in the issuance of a violation.

The decision concerning which approach to use is sometimes a difficult one; often, an appropriate resolution is not clear until at least some of the investigation has been completed.

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#### **A. Alternative Dispute Resolution (ADR/Settlement)**

ADR can consist of anything from the use of a neutral third party or mediator to informally resolving a matter without completing a full investigation. VBOA will decide what methods it will utilize in investigating and resolving its Complaints. Both the President and the Attorney General have encouraged the use of ADR in matters that are the subject of civil litigation. The Administrative Dispute Resolution Act of 1966, Public Law 104-320, authorizes the use of ADR to resolve administrative disputes.

Formal Mediation - Formal mediation is an approach to resolution that may be considered in a variety of circumstances, both prior to or following the issuance of findings. In mediation, the mediator attempts to assist the parties in working out a resolution to their dispute that is acceptable to both

sides. This does not mean that VBOA will lose its ability (or its responsibility) to reach an agreement that is legally sufficient. Rather, VBOA has a non-partisan third party who is assisting VBOA and the recipient in reaching a resolution of the "dispute." A mediator will attempt to develop a relationship of trust between the parties that could be important to this agency in its future dealings with the recipient. VBOA may consult with a local ADR office for additional information as to how ADR is applied and whether the use of a mediator may be appropriate.

The use of ADR does not mean that VBOA will ignore the resolution that would be appropriate if a full investigation is conducted. Rather, ADR is a means of resolving cases with basically the same resolution obtained after a full investigation, while avoiding the expenditure of staff time the full investigation requires. When considering whether to use ADR at any point during the case processing, the following will be taken into consideration:

- VBOA can/should be open to negotiate a resolution to a case at any point during the processing of a Complaint;
- the type of ADR ("settlement approach") will be selected carefully, based upon the allegations, number of persons affected, type and extent of resolution involved, cooperation of the recipient, and other factors;
- the case file will include an explanation of how the resolution was determined to constitute adequate resolution;
- the resolution should provide for monitoring whenever appropriate; and,
- VBOA will reopen a Complaint if the Respondent has not complied with its commitments.

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#### **B. If the Complainant Does Not Agree to Settlement**

VBOA does not represent the Complainant, but rather the interests of the citizens of the Commonwealth in ensuring regulatory and statute compliance by its recipients. Therefore, the resolution sought is dictated by the facts of the case and not by the Complainant.

If the Respondent has agreed to provide what VBOA has determined would constitute full resolution and the Complainant disagrees with the policy changes or refuses to accept individual resolution, VBOA may complete the agreement with the Respondent and close the Complaint on that basis. If

the Respondent has already offered full resolution to the Complainant and no other resolution is appropriate (e.g., change in policies or practices, or resolution for other victims), and the Complainant refuses to accept it, VBOA may administratively close the Complaint for "failure to accept full resolution.

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**C. Full Investigation Approach**

Those cases that do not appear to be appropriate for early ADR processing will be handled according to the more standard investigative procedures. As indicated above, VBOA may still be able to resolve the Complaint successfully prior to issuance of formal findings. This will become evident as VBOA proceeds with the investigation.

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## CHAPTER 10

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### **Types of Closure Letters**

To complete a Complaint investigation or compliance review, there are usually three types of letters you can use upon direction by the Enforcement Committee.

#### **A. No Violation Letter**

The first letter is a No Violation Letter. This letter is issued when the Respondent is found to be in compliance or the Enforcement Committee has determined that there has been no violation of Regulations or Statutes

#### **B. Unfounded Letter**

The second letter is a letter of “Unfounded” meaning there were either not enough information to determine if a violation had occurred or there were too many mitigating circumstances regarding the violation and a determination could not be made either way.

#### **C. Letter of Violation/Consent Order**

The third letter is a letter indicating a violation which will be in the form of a Consent Order/Agreement. This Consent Order/Agreement is to be issued and directed by the Enforcement Committee when the Respondent is found to be in violation or noncompliance.

All letters are sent to the Respondent and then a letter of information to the Complainant upon the closing of the case.

#### **D. Contents of Closure Letters**

All Closure Letters will include the following:

- The Complaint or compliance review number, the name of the Complainant, and the date the Complaint was received.

- A statement of the jurisdictional authority, including the recipient status and the statutory basis for the investigation.
  - A statement of each allegation and the applicable regulation.
  - An explanation of the status of any issues that were investigated but are not included in the letter or any issues that were raised but not investigated.
  - The name and telephone number of the staff person to contact for additional information.
  - Thanks to the recipient for its cooperation (optional).
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## CHAPTER 11

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### **Disciplinary Action By The Enforcement Committee**

#### **A. Consent Orders**

Consent orders are typically offered by the Enforcement Committee when the Respondent admits to the facts or when the issues are clear. Consent Orders are always the best way to proceed with a case that is a clear violation because if the Respondent agrees to the settlement offered, (terms and conditions) they waive the right to an IFF and the right to appeal. When entered by the Board, the case is closed. The benefits of this tool includes a rapid settlement and avoidance of costly proceedings. While Consent Orders are generally offered prior to an informal conference or formal hearing is scheduled, they may be used prior to a Final Order being entered.

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#### **B. Informal Conferences (IFF) 2.2-4019 and 2.2-4020 of the APA**

The Virginia Administrative Process Act provides for two types of proceedings, informal fact finding conferences and formal hearings.

At an informal conference, a special conference committee (“committee”), consisting of at least two (2) Board members, meet with the Respondent accused of a violation in an informal setting for the purpose of allowing the Respondent to speak directly to a member of the Board and explain in their own words. Prior to the convening of an informal conference, the Respondent receives a notice that contains the specific allegations and violations asserted by the Board. The Respondent receives all information in the possession of the committee that it may rely upon in making a decision. The source of the information that led to the investigation is notified of this session and may attend as this is considered an Open Meeting, available to the public. The Complainant may be called upon to answer questions from the committee members, but is not usually required to do so. Informal conferences are open to the general public and are posted on the Town Hall/ Commonwealth Calendar prior to the meeting date.

If the committee believes there is insufficient evidence to substantiate a violation of law or regulation, the matter is dismissed. If the committee believes there is evidence that a violation of law or regulation was committed, the presiding officer of the IFF will make a recommendation in the way of a formal summary which contains findings of fact, conclusions of law and a disciplinary action/sanction and the rationale for the recommendation. This recommendation is first sent to the Respondent along with a copy of the transcripts from the IFF, then the Complainant, and then sent to each Board member prior to the next scheduled full Board meeting for ratification.

During closed session at the full Board meeting the Board votes (without the presence of the two Board members involved at the IFF level. The sanctions that are decided upon may include the following ranges:

- Place the Respondent on probation with terms;
- Reprimand;
- Modify a previous order; and/or
- Impose a monetary penalty.

Additionally, the Board may agree that suspension or revocation of the Respondent's license is justified. After the full Board meeting, staff will send to the Respondent a "5-Day letter" indicating that the Board has reduced the findings to a written order and they will be notified upon completion of the order. As noted, this letter must be mailed within 5 days of the Board decision.

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### **C. Setting Up the Informal Fact-Finding Conference**

If the Respondent requests an IFF, it must be received in writing for the purpose of including the written request in the case file.

An IFF written notice will be developed and mailed to the Respondent (Due Process) and the Complainant for notification of date, time and place of the IFF to include the allegations and all exhibits that will be reviewed or taken into consideration by the Enforcement Committee and eventually by the full Board.

The package that will be sent to the Respondent will include the following:

1. The IFF Letter to the Respondent
2. The Investigative Report (IR)
3. The Original Complaint
4. The Original Complaint's supporting documents
5. The Respondent's Response to the allegations
6. The Request for the IFF from the Respondent
7. A copy of any and all subpoena's that are requested or may be required
8. Put these documents in a binder

The package that will be sent to the Complainant will be an amended IFF letter that states the time, place and date the IFF will be held. The IFF is considered a public conference.

#### **After the IFF is Completed**

- Receive Transcripts
- A copy of this case file will be sent to each Board member, the Board's Counsel, Executive Director, Assistant, and an additional copy to the public once the Presiding Officer has determined the recommendation to the full Board.
- The transcripts received from the court reporter will be sent to the Presiding Board Member for use in development of the Presiding Officers Recommendation/Summary Report to the Board.

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#### **After the Full Board Review**

A letter will be sent to the Respondent within five (5) business days that will advise the Respondent that the Board has rendered a final case decision and will be reduced to a Final Board Order.

#### **D. The Formal Hearing**

Should a case be referred to a formal hearing, the process begins again with notice to the Respondent. A formal hearing may be conducted by a hearing officer, a panel of the Board or the full Board. A formal hearing is an administrative proceeding similar in many ways to a trial. It is open to the public and all parties may call witnesses and introduce evidence. The Board decides whether the accused has violated a law or regulation, and if so, it imposes disciplinary action.

At the conclusion of the hearing, the decision of the Board is announced, and a final order is served on the Respondent. If the Respondent wishes to contest the action, he may appeal the decision to the appropriate circuit court.

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**E. Judicial Review**

A Respondent has the right to appeal a Board's decision to a circuit court. The circuit court may affirm the Board's decision, or suspend or set it aside the decision and remand the matter back to the Board for further proceedings.

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The Respondent may further appeal the circuit court's decision, as a matter of right, to the Court of Appeals. The Court of Appeals may affirm the Board's decision, or suspend or set it aside and remand the matter to the Board. A further appeal is to the Supreme Court of Virginia, if certain conditions are satisfied.

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Also, the law provides for suspension of a license by the Executive Director when a Respondent has been convicted of a felony; has had his license revoked or suspended in another jurisdiction and not reinstated; or has been adjudged legally incompetent. Lastly, under certain circumstances, a court may suspend a license for non-payment of child support.

## **What is an Order**

A Board's disposition of a case involving violations of law or a regulation by a Respondent is documented in the form of an order and it may be as of July 1, 2007 in the form of a Confidential Consent Order (CCA). An order may result from a disciplinary proceeding or from a negotiated settlement of alleged violations in lieu of further disciplinary proceedings. An order (Board Order) from a disciplinary proceeding, such as an informal conference or formal hearing, reflects a Board's case decision following the proceeding. This type of Order can be appealed through Circuit Court which can start the entire process of adjudication all over again if the Judge so elects to remand the case back to the Board.

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### **Consent Orders/Agreements**

An Order resulted from a negotiated settlement of alleged violations, either prior to or in lieu of further disciplinary proceedings, reflects a decision agreed to by the Board's Enforcement Committee and/or the Board and the Respondent in the form of a Consent Order. The Consent Order or Consent Agreement cannot be appealed and the Respondent agrees to waive his rights to an Informal Fact-Finding or Formal Hearing before the Board. In other words, they AGREE to be responsible for all terms and conditions stated in the Order.

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### **Confidential Consent Agreements**

- A. The Board may enter into a Confidential Consent Agreement with a person or firm in lieu of disciplinary action;
- B. A confidential consent agreement:
  - 1. Shall be entered into only in cases involving minor violations of the provisions of this chapter or regulations promulgated by the Board;
  - 2. Shall not be disclosed by the person or firm;
  - 3. Shall include findings of fact and may include an admission or a finding of a violation; and
  - 4. Shall not be considered a notice or order of the Board but may be considered by the Board in future disciplinary proceedings.

C. The Board shall adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to implement the provisions of this section. Such regulations shall identify the type of minor violations for which confidential consent orders may be offered and limit the number of confidential consent orders that may be offered to the same licensee in any given period. The Board shall not enter into a confidential consent agreement if there is probable cause to believe a licensee has demonstrated gross negligence or intentional misconduct in the practice of public accounting.

### **Board Order**

An order results from the findings of fact obtained at an IFF. The full Board is provided a copy of the IFF proceedings, transcripts and all documents submitted for review in consideration of the allegations. After reviewing all documents, the Board convenes in executive session to deliberate and reach a final case decision in the matter. If the Board finds evidence of a violation of law or regulation the decision is typically announced to the Respondent if he is present at the conclusion of executive session and are subsequently provided in writing in the form of a Final Board Order. The Board determines Findings-of-Fact and Conclusions of Law, which form the basis for its sanction.

An order which results from a **formal hearing** represents the final decision of the Board in the matter. After all evidence in the case is presented in the formal administrative proceeding, each party is given the opportunity to submit closing argument or proposed findings of fact and conclusions of law for consideration by the Board or panel hearing the matter. The Board then convenes in executive session to deliberate and reach its final decision. If the Board finds evidence of a violation warranting disciplinary action, its decision is typically announced to the Respondent after reconvening in open session. The Board may read the findings of fact, conclusions of law, and ordered sanction (if any), and the decision is transcribed by a court reporter. Subsequent to the proceeding, a written order is provided to the Respondent.

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## **Appeal**

If the order has resulted from an IFF, the order becomes “final” thirty-three (33) days after the Order is mailed to the Respondent, unless a written request for a formal hearing is received by the Board during that time period. Once a timely written request for an appeal to a formal hearing is received, the order from the committee is vacated and a formal hearing before the Board or a panel thereof is scheduled and held. The order which results from the Board’s decision at any subsequent formal hearing is the final decision and disposition of the case by the Board in the matter.

An order resulting from a formal hearing may also be appealed. An appeal of a Board Final Order following a formal hearing must also be made within thirty-three (33) days from the date of service by mail, and is handled in the judicial system at the circuit court level. An appeal at this level must comply with the procedures in Part 2A of the Rules of the Supreme Court of Virginia, as more fully explained in the following chapter of this Manual. The order of the Board is not automatically vacated when appealed to the circuit court. However, the appealing party may request from the court a “stay” of the Board’s Order pending the appeal.

Final orders are matters of public record, according to Sections 2.2-4023 and 54.1-2400.2 of the Code of Virginia. A copy of a Final Board Order is usually mailed to the original source of the Complaint. While Board Orders are made available to the public, all related disciplinary case information (such as the investigative report and accompanying records and evidence) obtained and maintained during the course of an investigation or disciplinary proceeding may be considered strictly confidential and remain unavailable to the public.

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## CHAPTER 13

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### **Monitoring the Terms and Conditions of the Agreement**

VBOA will monitor agreements that require actions to be taken subsequent to the effective date of the Consent Order/Agreement and Final Order. Monitoring may or may not require on-site visits, depending on the type of issues involved.

Monitoring activities should be tailored to follow the Order. The Respondent should be notified upon successful implementation of the agreement. Where the agency determines that the recipient has failed to implement the terms and conditions of the agreement, the recipient should be immediately notified.

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### **Roles of Support Staff**

**The Enforcement Manager** of the Agency receives reports of potential violations, evaluates and records such information, conducts investigations and reports the investigative findings and evidence to the Enforcement Committee. The Enforcement Manager is also responsible for preparation of notices (specific written allegations of misconduct) provided to a Respondent, presentation of facts and evidence at informal conferences and formal hearings, and preparation of Orders.

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**Investigator** is defined as a sworn investigator/Regulatory Board Investigator that assists in the coordination of enforcement of the statutes and regulations including, both licensed and unlicensed activities. The Investigator assists in analyzing Complaints to determine if probable cause exists to warrant investigation. The investigator is also responsible for the initial communication, (intake) both written and oral, to all parties involved in the Complaint process. The investigator assists in the determination of eligibility of applicants and assists in the evaluation of applications for completeness and strict compliance with statutes, Board regulations, and policies. The investigator notifies all applicants of eligibility issues and the

applicable procedures required under the law and regulations to include the assistance of creating, maintaining, and updating accurate state filing system.

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**The Attorney General's Office** is by law the legal representative of all state agencies including the Boards. In certain cases, the Attorney General's Office will assign a prosecutor to present a matter at the administrative proceeding in lieu of the Presiding Board member. In all instances, the Attorney General's Office remains as counsel to a Board. All Board counsel, who functions separately from those who prosecute cases, advise all Boards on matters of law and represent Boards in court.

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### **Executive Director**

The Executive Director appointed by the Board shall be sworn to enforce the statutes and regulations pertaining to the Board. Within the parameters of policies and guidelines established by the Board, the Executive Director shall have the power and duty to:

1. Employ personnel and assistance necessary for the operation of the Board and the purposes of this chapter;
  2. Make and enter into all contracts and agreements necessary or incidental to the performance of the duties of the Board and the execution of its powers under this chapter, including, but not limited to, contracts with the United States government, with agencies and governmental subdivisions of the Commonwealth, and with other states;
  3. Accept grants from the United States government, its agencies and instrumentalities and any other source, and to these ends, the Board shall have the power to comply with conditions and execute agreements that are necessary, convenient, or desirable;
  4. Serve as the secretary of the Board;
  5. Maintain all records of the Board;
  6. Collect and account for all fees and deposit them into the Board of Accountancy Fund, from which the expenses of the Board shall be paid;
  7. Enforce all statutes and regulations the Executive Director is required to administer;
  8. Exercise other powers necessary to function as the sole administrative officer of the Board; and
  9. Perform any additional administrative functions prescribed by the Board.
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## **Experts and Consultants**

The scope of the Boards' regulatory authority and the range of Complaints associated with it demand that Boards not only streamline the Complaint review process, but also receive guidance from consultants for licensing and disciplinary matters involving specialized fields of practice.

The Board may contract with an expert in a particular specialty to review the investigative file and, if necessary, to testify on behalf of the Board in an administrative or court proceeding arising from the matter. An expert assists the staff in understanding the standard of practice in the specialty, and in evaluating the evidence to determine whether a regulant performed in accordance with that standard.

The contract with the expert provides that the expert will:

- Be available to work with the Board to develop and present evidence of the alleged violation;
- Review and evaluate a completed investigative report and other supporting material indicating the standard of practice;
- Render in writing a well-documented expert opinion regarding the standard of practice provided by the subject;
- Assist the staff in preparing for any disciplinary proceedings which are brought against the subject practitioner by the Board; and
- Provide expert testimony on behalf of the Board on any administrative or court proceeding arising from the matter.

## CHAPTER 14

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### **Court Review of Agency Action**

Rule 2A:3 requires the appellant to deliver to the Board with the notice of appeal or within thirty (30) days thereafter a transcript of the testimony. The Board must then prepare and certify the record as soon as possible after the notice of appeal and transcript is filed and transmit the record to the clerk of the court named in the notice of appeal once it has been certified. The Board must then notify all parties in writing when the record is transmitted, naming the court to which it is transmitted. The record on appeal from the Board consists of all notices of appeal, any application or petition, all orders promulgated in the proceeding by the Board, the opinions, the transcript of the testimony, and all exhibits accepted or rejected, together with other material certified by the Board to be part of the record.

Rule 2A:4 requires that within thirty (30) days after the filing of the notice of appeal, the appellant must file a petition for appeal with the clerk of the circuit court named in the notice. The appellant is also responsible for serving a copy of the petition on the Board and every other party, designating the case decision appealed from, specifying the errors assigned, the reasons why the case decision is deemed to be unlawful, and concluding with a specific statement of the relief requested.

## ADJUDICATION MANUAL

### GLOSSARY

**Administrative Process Act (APA)** - The procedural requirements for promulgating regulations and for deciding cases, found in Sections 2.2-4000 of the Code of Virginia. The APA supplements the basic law of the Board.

**Appellant** - The party who appeals a case decision of a Board to a circuit court for review.

**Appellee** - On appeal, the party who argues against the setting aside or the remand of a Board decision.

**Board** - The Virginia Board of Accountancy.

**Certify** - when referenced to financial information or the practice of public accountancy, are terms which, when used in connection with the issuance of reports, state or imply assurance of conformity with generally accepted accounting principles, generally accepted auditing standards, and review standards. The terms include forms of language disclaiming an opinion concerning the reliability of the financial information referred to or relating to the expertise of the issuer.

**Certification** - One of the forms of regulation of a profession (as opposed to licensed or permitted). Generally, a lesser standard than licensure, certification may be required of all practitioners of a particular profession or only those who use a particular title.

**Client** - means a person or entity that contracts with or retains a firm for performance of services by a CPA certificate holder or registration certificate holder subject to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

**Committee** – Enforcement Committee of the Virginia Board of Accountancy assigned by the Board Chairman to review Enforcement Cases.

**Consent Order** – An order voluntarily agreed to by both a Respondent and a Board. Sometimes called a “pre-hearing consent order” when it is offered in lieu of an informal conference or a formal hearing. Consent orders have the same effect as any order.

**CPA Certificate** - A certificate as a Certified Public Accountant (CPA) issued by the Board pursuant to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter, which shall function as a license, or a corresponding certificate as a certified public accountant issued after meeting *the CPA exam* and other requirements under the laws of any other state.

**Formal Hearing** - The parties are the Board of Accountancy and the licensed/certified practitioner alleged to have violated laws or regulations governing their practice. The hearing is conducted before either the full Board, a quorum or panel of the Board, or a hearing officer. The formal hearing is a trial-like proceeding, which includes sworn testimony, cross-examination of subpoenaed witnesses, introduction of evidence, and transcription by a court reporter.

**Informal Fact-Finding Conference (IFF)** - A fact-finding proceeding conducted by a special conference committee of a regulatory Board (or by a hearing officer) with a Respondent. It may result in one or more of the following actions: exonerate the CPA or CPA firm; reinstate, place on probation with terms deemed appropriate; reprimand; modify a previous order; and impose a monetary penalty. The case decision and sanction ordered at this level still must be approved by the full Board and a subsequent full Board meeting.

**Investigator** - The person(s) responsible for conducting the investigation of the Complaint. Investigation of the Complaint may be part of his or her primary job duties, or a duty assigned only occasionally. Regardless of the situation, the consistent adherence to sound investigative techniques is important to ensure a thorough and legally sufficient investigation.

**Investigative Report (IR)** - A written time sensitive compilation (time line of events) regarding the statement of alleged violations, background summary, actions as they happened, response to the allegations and any previous Board action regarding similar violations in the past.

**Notice** - A statement of specific charges provided to the Respondent who is the subject of a Complaint. The notice states the time, place, and nature of the proceeding. Also enclosed with the notice is any information on which a Board will rely to make a case decision.

**Order** – A decision issued by a Board, or special conference committee of a Board, pursuant to its statutory authority, affecting the license of a CPA licensed by the Board.

**Presiding Officer** - A person who is designated by the Board of Accountancy to preside over the Board's administrative proceedings conducted in accordance with Section 2.2-4019 and 2.2-4020 of the Code, when the Board (full Board, a quorum, or a panel thereof consisting of at least four members) does not convene to conduct the hearing itself.

**Party or Parties** - A person or persons having a direct interest in the subject matter or outcome of a case; one(s) who could assert a claim, make a defense, control proceedings, examine witnesses, or appeal a case decision, e.g., a Respondent.

**Probable Cause** - Reasonable cause; having more evidence for opening or initiating an investigation than against. A reasonable ground for belief in the existence of facts as reported.

**Respondent** - The person (or facility) being investigated or responding to a Complaint.

**Service** - The delivery of a notice of an administrative proceeding, a consent order, or an order of a Board to a party which charges the party with receipt of the document and subjects the party to the legal effect of it.

**Standing** - The legal right of a party to assert or enforce legal rights and duties against another. On appeal of a Board decision, the party aggrieved or claiming the unlawfulness of such decision, e.g., the Respondent.

**Transcripts** - A preservation of the basis for a case decision; an official transcript of a formal administrative proceeding prepared during the hearing by a court reporter obtained by the relevant Board, and all evidence entered into the record during the proceeding, with findings of fact and conclusions of law.

**Violation** - The act of violating a regulation of state statute as in an infringement of a law or regulation.

**Vacate** - To set aside or render void an order of a Board or an order of the Department.

## Code of Virginia

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<b><u>54.1-4400</u></b>	Definitions
<b><u>54.1-4401</u></b>	Applicability of chapter
<b><u>54.1-4402</u></b>	Board; membership; qualifications; powers and duties
<b><u>54.1-4403</u></b>	General powers and duties of the Board
<b><u>54.1-4404</u></b>	Board to employ Executive Director; legal counsel
<b><u>54.1-4405</u></b>	Board of Accountancy Fund; receipts; disbursements
<b><u>54.1-4405.1</u></b>	Board of Accountancy Trust Account; creation; expenditures; excess moneys
<b><u>54.1-4406</u></b>	Powers and duties of the Executive Director
<b><u>54.1-4407</u></b>	Enforcement of laws by the Executive Director or investigators; authority of investigators appointed by the Executive Director
<b><u>54.1-4408</u></b>	Subpoenas
<b><u>54.1-4409.1</u></b>	Licensing requirements
<b><u>54.1-4409.2</u></b>	How a person may obtain a Virginia license
<b><u>54.1-4411</u></b>	Substantial equivalency provisions for persons who hold the license of another state
<b><u>54.1-4412.1</u></b>	Licensing requirements for firms
<b><u>54.1-4413.2</u></b>	The renewal and reinstatement of licenses and lifting the suspension of privileges
<b><u>54.1-4413.3</u></b>	Standards of conduct and practice
<b><u>54.1-4413.4</u></b>	Penalties
<b><u>54.1-4413.5</u></b>	Confidential consent agreements
<b><u>54.1-4414</u></b>	Prohibited acts
<b><u>54.1-4415</u></b>	Exemptions from unlawful acts
<b><u>54.1-4416</u></b>	Board's powers with respect to hearings under this chapter
<b><u>54.1-4418</u></b>	Recovery of cost after grant of formal fact-finding
<b><u>54.1-4420</u></b>	Annual audit
<b><u>54.1-4421</u></b>	Biennial report
<b><u>54.1-4423</u></b>	Use of consultants in investigations
<b><u>54.1-4424</u></b>	Certain information not to be made public
<b><u>54.1-4425</u></b>	Time for filing complaints against CPAs or CPA firms