

**BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS**

DISCIPLINARY GUIDELINES AND MODEL ORDERS, 11TH EDITION

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing date has been scheduled.

Subject Matter of Proposed Regulations: Disciplinary Guidelines and Model Orders, 11th Edition.

Section(s) Affected: Section 98 of Article 13 of Division 1¹ of Title 16, California Code of Regulations (CCR).

Background and Statement of the Problem:

The California Board of Accountancy (CBA) licenses, regulates, and investigates complaints against five different license categories in California, totaling approximately 115,000 licensees and registrants. These licensing categories include Public Accountant, Certified Public Accountant (CPA), Accountancy Corporation, Accountancy Partnership, and out-of-state registered accounting firm. It is the CBA's duty to enforce and administer the Accountancy Act Chapter 1 (commencing with section 5000) of Division 3 of the Business and Professions Code (BPC). The CBA is authorized to establish necessary rules and regulations for the enforcement of the Accountancy Act and laws subject to its jurisdiction (BPC section 5010).

The CBA's mission is to protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards.

Existing law, BPC section 5116, requires the CBA to establish criteria for assessing administrative penalties for violations of the Accountancy Act.

Existing law, Government Code section 11425.50(e) specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule unless it has been adopted as a regulation.

Existing regulation, CCR section 98, incorporates by reference the CBA's "Disciplinary Guidelines and Model Orders, 10th edition, 2019" (Disciplinary Guidelines). The CBA reviews the Disciplinary Guidelines for relevancy on a triennial basis and the latest edition was adopted in June 2021. The CBA is proposing amendments to CCR section 98 to incorporate by reference its "Disciplinary Guidelines and Model Orders, 11th edition, 2023" which adopts policy direction by the CBA and makes non-substantive changes.

¹ All CCR references are to Division 1 of Title 16 of the California Code of Regulations, unless otherwise specified.

During the July 2023 meeting, the CBA approved the initiation of a rulemaking to include the National Association of State Boards of Accountancy (NASBA) Center for the Public Trust (CPT) Ethics Leadership Training in the Disciplinary Guidelines to promote ethical practices for licensees that receive discipline, and to make non-substantive corrections and updates where needed. The CBA also moved to add language to the Rehabilitation Evidence section related to petitions for reduction of penalty associated with reducing costs or an administrative penalty and to make non-substantive updates and corrections throughout the Disciplinary Guidelines.

During the January 2024 meeting, the CBA approved the initiation of a rulemaking to move the existing Tolling of Probation for Out-of-State Residence/Practice term from a standard term to an optional term of probation. The CBA also decided to add a standard term and condition to allow a licensee to surrender a license while on probation. The CBA approved staff's recommendations to include these changes in the next edition of the Disciplinary Guidelines.

Due to the critical nature of the document and the fact it is often relied upon by the CBA, licensees, attorneys, and Administrative Law Judges (ALJs) during the imposition of discipline, the aforementioned revisions are necessary to address the changes that have been made to the process and to ensure the CBA imposes discipline against licensees in a consistent manner.

Anticipated Benefits from this Regulatory Action:

This regulatory proposal amends the Disciplinary Guidelines to provide a reference for the consistent enforcement of the laws under the CBA's jurisdiction. The anticipated benefits of this proposal include providing clearer and updated guidance for the CBA's licensing and disciplinary functions for protection of the public.

Updating the Disciplinary Guidelines will ensure that the CBA, ALJ's and other individuals involved in the disciplinary process are provided current and consistent guidance and a clear reference in determining appropriate discipline of licensees as well as those practicing in the State without a valid permit issued by the CBA. As consumer protection is the CBA's highest priority, it is essential that information used during the disciplinary process is current, valid, and consistent.

Specific Purpose of, and Rationale for, Each Adoption, Amendment, or Repeal:

Amend CCR Section 98

The CBA proposes amendments to CCR section 98 to update the 10th Edition, 2019 of the Disciplinary Guidelines and Model Orders to 11th Edition 2023 in order to incorporate the CBA's changes in policy direction and to make non-substantive updates or corrections where appropriate.

The factual basis and rationale for the proposed amendment is as follows:

The proposed amendment to CCR section 98 would incorporate by reference the

“Disciplinary Guidelines and Model Orders 11th Edition, 2023.”

Amend Disciplinary Guidelines and Model Orders

The CBA proposes to amend the Disciplinary Guidelines as follows:

Title Page

The proposed amendments to the title page are non-substantive changes and reflect the new edition (11th edition) and update the year from 2019 to 2023, which coincides with the year of CBA’s review.

The basis for the changes is to ensure the title page reflects the revised edition number and year of the Disciplinary Guidelines.

Section I – Introduction (p. 1)

The proposed amendments to the Introduction are non-substantive changes to correct grammar. The non-substantive amendments include the following:

- Second paragraph – added a space between “Title” and “16” to correct grammar.
- Final paragraph – made “circumstance” plural to correct grammar.

The basis for the change is to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors.

Section II – General Considerations (pp. 2-3)

The proposed amendments to the General Considerations section are non-substantive changes to update pronoun usage and to correct grammar. The non-substantive amendments include the following:

- Paragraph c – “he or she is” was changed to “they are” to update pronoun usage.
- Paragraph e – “there from” was deleted in the first paragraph to correct grammar, “their” was added to the second paragraph, and “the” was added before “petitioner” in the final paragraph, all of which correct grammar.
- Paragraph g – “decisions” was corrected to “settlements” in the fifth paragraph to coincide with the original topic, stipulated settlements, being discussed throughout paragraph g, and “the” was added before “Respondent” in the seventh paragraph to correct grammar.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors or choosing consistent wording. The replacement of gendered language is necessary to provide consistency with Assembly Concurrent Resolution No. 260 (2018) which encourages

the use of gender-neutral pronouns when drafting regulations.

Section III – Evidence in Aggravation of Penalty (p. 4)

The proposed amendments to the Evidence in Aggravation of Penalty section are non-substantive changes to update pronoun usage and to correct grammar. The non-substantive amendments include the following:

- Paragraph 2 – “The licensee” replaced “Licensee” in the beginning of the sentence to correct grammar.
- Paragraph 3 – “The licensee’s” replaced “Licensee’s” in the beginning of the sentence to correct grammar, and “his or her” was changed to “their” to update pronoun usage.
- Paragraph 11 – “his or her” was changed to “their” in two instances to update pronoun usage.
- Paragraph 12 – “his or her” was changed to “their” to update pronoun usage.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors. The replacement of gendered language is necessary to provide consistency with Assembly Concurrent Resolution No. 260 (2018) which encourages the use of gender-neutral pronouns when drafting regulations.

Section IV – Evidence in Mitigation of Penalty (p. 5)

The proposed amendments to the Evidence in Mitigation of Penalty section are non-substantive changes to update pronoun usage and to correct grammar. The non-substantive amendments include the following:

- Paragraph 3 – “as well as” was changed to “and” to use more concise language.
- Paragraph 5 – “the” was added before “licensee” to correct grammar, and “his or her” was changed to “their” to update pronoun usage.
- Paragraph 7 – “the” was added before “violation” to correct grammar.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors or using more concise language. The replacement of gendered language is necessary to provide consistency with Assembly Concurrent Resolution No. 260 (2018) which encourages the use of gender-neutral pronouns when drafting regulations.

Section V – Rehabilitation Criteria (pp. 6-7)

The proposed amendments to the Rehabilitation Criteria section are non-

substantive changes to update pronoun usage, correct grammar and edit punctuation. The non-substantive amendments include the following:

- Opening paragraph – “or” was deleted, a comma was added after “permit” and after “certificate”, and “the” was added before “reduction” all of which correct grammar and punctuation.
- Paragraph (a)(3) – “subdivision” was made plural to correct grammar where reference is made to subdivisions (1) and (2).
- Paragraph (a)(7) – “his or her” was changed to “their” to update pronoun usage.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors. The replacement of gendered language is necessary to provide consistency with Assembly Concurrent Resolution No. 260 (2018) which encourages the use of gender-neutral pronouns when drafting regulations.

Section VI – Rehabilitation Evidence (p. 8)

The proposed amendments to the Rehabilitation Evidence section make non-substantive and substantive changes to update pronoun usage, correct grammar, edit punctuation, and add an example to the types of evidence that may be submitted to the CBA. The non-substantive amendments include the following:

- First paragraph – “his or her” was changed to “their” to update pronoun usage.
- Paragraph a – “the” was added before “Respondent” to correct grammar.
- Paragraph c – the comma indicated after “future” was deleted to correct punctuation.
- Paragraph e – “the” was added before “Respondent” to correct grammar, a hyphen was added after “community” to indicate “community-based”, and a hyphen was deleted after “based” to correct punctuation and grammar.
- Paragraph g – “the” was added before “reduction” to correct grammar.

The basis for the changes in paragraph a, c, e, and g are to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors. The replacement of gendered language at the beginning of section VI is necessary to provide consistency with Assembly Concurrent Resolution No. 260 (2018) which encourages the use of gender-neutral pronouns when drafting regulations.

The substantive amendment adds the following language to section VI:

- Paragraph h – added the sentence “Documents that support their financial inability to pay costs, including, but not limited to, financial statements, bank statements and bills when the Respondent is petitioning for a reduction of penalty associated with reducing costs or an administrative penalty.”

The proposed amendment to the Rehabilitation Evidence section adds paragraph “h” as an additional type of evidence the Respondent may submit to CBA. The new paragraph details the supporting documents licensees can include in their Petition for Reduction of Penalty, as it relates to a financial penalty. Examples of supporting documents that licensees can include are those that support their financial inability to pay costs, including, but not limited to, financial statements, bank statements and bills.

The basis for the change is to provide more options for licensees as they prepare their petition as well as providing more in-depth information for CBA to consider as they review Petitions for Reduction of Penalty that are related to financial penalties.

Section VII – Administrative Penalties (pp. 9-10)

The proposed amendment to the Administrative Penalties section makes a non-substantive change to update pronoun usage which includes changing “his or her” to “their” in item number 5 under criteria that should be considered in assessing administrative penalties.

The basis for the change is to improve overall clarity and consistency throughout the Disciplinary Guidelines. The replacement of gendered language is necessary to provide consistency with Assembly Concurrent Resolution No. 260 (2018) which encourages the use of gender-neutral pronouns when drafting regulations.

Section VIII – Disciplinary Guidelines (pp. 11-57)

The Disciplinary Guidelines are organized numerically by statutory and regulatory section numbers and lists the offenses and penalties that may be considered and imposed when circumstances warrant.

California Accountancy Act (pp. 11-36)

The proposed amendments make non-substantive and substantive amendments to provisions referenced under the California Accountancy Act section. The non-substantive amendments intend to correct grammar and punctuation throughout the section, as follows:

- Article 3, Section 5050(a) – “a” was added before “Respondent” to correct grammar and improve readability.
- Article 4, Section 5072(a) – the comma after “renews” in the first paragraph of the section was deleted to correct punctuation and improve readability.

- Article 4, Section 5078 – the comma after “supervision” under the Minimum Penalty section was deleted to correct punctuation and improve readability.
- Article 5, Section 5081(b)(c) – the comma after “examination” in the Minimum/Maximum Penalty section was deleted to correct punctuation and improve readability.
- Article 5.1, Sections 5096(e)(2), (5), (6), (7), (8), (9), (10), 5096(f), 5096(i), 5096.5, 5096.12 – the period at the end of the second required condition was deleted to correct punctuation and provide consistency with the other conditions listed in the Required section.
- Article 6, Section 5100 – the comma at the end of the section’s title was deleted to remove unnecessary punctuation and provide consistency with the other titles indicated throughout the guidelines.
- Article 6, Section 5100(a) – the semicolon after “CIRCUMSTANCES” in the last paragraph of the section was replaced with a comma to correct punctuation.
- Article 6, Section 5100(g) – the comma in the section’s title was deleted to remove unnecessary punctuation.

The basis for the changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors and punctuation.

Additionally, the proposed amendment to the California Accountancy Act section adds the Ethics Continuing Education (CE) and National Association of State Boards of Accountancy’s (NASBA) Center for the Public’s Trust (CPT) Ethical Leadership Training to the “If warranted” section of the Conditions of Probation. The amendments are as follows:

- Article 3, Section 5050(a) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the seventh optional condition.
- Article 3.5, Section 5061 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the tenth optional condition.
- Article 3.5, Section 5062.2 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the fourth optional condition.
- Article 3.5, Section 5063 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the eleventh optional condition.
- Article 3.5, Section 5063.3 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the eleventh optional condition.
- Article 5, Section 5095(a) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the ninth optional condition.

- Article 5.1, Section 5096(d) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the fourth optional condition.
- Article 5.1, Section 5096(e)(2) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the third optional condition.
- Article 5.1, Section 5096(e)(6), (7), (8), (9) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the second optional condition.
- Article 5.1, Section 5096(e)(10) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the third optional condition.
- Article 5.1, Section 5096(f), (i), and 5096.5 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the third optional condition.
- Article 5.5, Section 5097 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the thirteenth optional condition.
- Article 6, Section 5100 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the fifth optional condition.
- Article 6, Section 5100(a) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the thirteenth optional condition.
- Article 6, Section 5100(b) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the fourth optional condition.
- Article 6, Section 5100(c) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the fourteenth optional condition.
- Article 6, Section 5100(d) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the thirteenth optional condition.
- Article 6, Section 5100(e) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the twelfth optional condition.
- Article 6, Section 5100(h) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the fourteenth optional condition.
- Article 6, Section 5100(i) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the twelfth optional condition.
- Article 6, Section 5100(j) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the thirteenth optional condition.
- Article 6, Section 5100(k) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the eleventh optional condition.
- Article 6, Section 5100(l) – the Ethics CE and NASBA CPT Ethical

Leadership Training was added as the fourteenth optional condition.

- Article 6, Section 5100(m) – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the seventh optional condition.
- Article 9, Section 5154 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the fourth optional condition.
- Article 9, Section 5156 – the Ethics CE and NASBA CPT Ethical Leadership Training was added as the fifth optional condition.

The basis for the change is to provide the CBA the option of imposing one or both trainings – the Ethics CE course and/or the NASBA CPT Ethical Leadership training – as a condition of probation to rehabilitate the licensee. Depending on the severity of the violations, the CBA may opt to impose additional training to promote ethical practices and ensure only qualified licensees practice public accountancy. These courses will remind disciplined licensees of business ethics and how nationally recognized codes of professional conduct relate to the licensee's professional responsibilities to ensure consumer protection.

California Board of Accountancy Regulations (pp. 37-56)

The proposed amendments to the California Board of Accountancy Regulations section adds the Ethics CE and NASBA CPT Ethical Leadership training to the “If warranted” section of the Conditions of Probation. The amendments are as follows:

- Article 1, Section 5 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the sixth optional condition.
- Article 9, Section 54.1 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the seventh optional condition.
- Article 9, Section 54.2 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the fifth optional condition.
- Article 9, Section 56 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the tenth optional condition.
- Article 9, Section 56.1 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the eighth optional condition.
- Article 9, Section 57 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Condition of Probation as the tenth optional condition.

- Article 9, Section 58 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the eleventh optional condition.
- Article 9, Section 60 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the eighth optional condition.
- Article 9, Section 61 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the ninth optional condition.
- Article 9, Section 68.4 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the twelfth optional condition.
- Article 9, Section 69 – the Ethics CE and NASBA CPT Ethical Leadership Training was added under Conditions of Probation as the sixth optional condition.

The basis for the change is to provide the CBA the option of imposing one or both trainings – the Ethics CE course and/or the NASBA CPT Ethical Leadership training – as a condition of probation to rehabilitate the licensee. Depending on the severity of the violations, the CBA may opt to impose additional training to promote ethical practices and ensure only qualified licensees practice public accountancy. These courses will remind disciplined licensees of business ethics and how nationally recognized codes of professional conduct relate to the licensee’s professional responsibilities to ensure consumer protection.

Violation of Probation (p. 57)

The proposed amendment to the Violation of Probation section makes a non-substantive change to correct punctuation by removing the comma after “offenses” in the last paragraph of the section.

Unlicensed Activities (p. 57)

The proposed amendment to the Unlicensed Activities section makes a non-substantive change to correct punctuation by removing the comma after “Investigation” in the first paragraph of the section.

The basis for the changes made to the Violation of Probation and Unlicensed Activities sections is to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors.

Section IX – Model Orders (pp. 58-68)

The proposed amendments to the Model Orders section make non-substantive and substantive amendments to correct punctuation and update the standard and optional conditions of probation. The non-substantive amendments are as follows:

- Model Orders 8, 12, 13, and 14 – a comma was added after “granted” in the first sentence to correct punctuation.
- Model Order 25 – the comma after “restored” was deleted to correct punctuation.
- Model Orders 26, 27, 35, and 36 – “he or she” was changed to “they” to update pronoun usage.
- Model Order 29 – the font style of “Note” was changed to italics to provide consistency with similar references made in the Model Orders section.
- Model Order 40 – “are” was added to the second sentence of the order to correct grammar, and “his or her” was changed to “their” to update pronoun usage.

The basis for these changes is to improve overall clarity and consistency throughout the Disciplinary Guidelines by correcting grammatical errors. The replacement of gendered language is necessary to provide consistency with Assembly Concurrent Resolution No. 260 (2018) which encourages the use of gender-neutral pronouns when drafting regulations.

The proposed amendments to the Model Orders section updates and adds language to the standard and optional conditions related to the NASBA CPT Ethical Leadership Training, tolling of probation, and license surrenders while on probation. These substantive amendments are as follows:

Petition for Reinstatement (p. 59)

The proposed amendments add reference to the NASBA CPT Ethical Leadership Training under the parenthetical list of conditions precedent to Model Order 8.

The basis for this change is to ensure that reference to the training is shown as an example of a condition that must be met and included in response to the petition of reinstatement being filed.

Tolling of Probation for Out-of-State Residence/Practice (p. 62)

The proposed amendments to Model Order 23 deletes the term of Tolling of Probation for Out-of-State Residence/Practice from a standard term and moves them under optional terms, under new Model Order 50. Further explanation on the basis of this amendment is provided in new Model Order 50.

License Surrender While on Probation (p. 62) – New Model Order 23

The new Model Order 23 adds the following language:

“Following the effective date of this Decision, should Respondent cease to practice public accountancy due to retirement or health issues, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender Respondent’s

license to CBA for surrender. The CBA or its designee has the discretion to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the license surrender, Respondent will no longer be subject to the terms and conditions of probation. The surrender constitutes a record of discipline and shall become a part of the Respondent's license history with the CBA. If Respondent reapplies for a license, the application shall be treated as a petition for reinstatement of a revoked license."

The new Model Order 23 provides that a licensee may surrender their license during the period of their probation for reasons of retirement, health issues or their inability to satisfy the terms and conditions of probation. The new model order also provides discretion to the CBA or designee on whether to grant the request for surrender or take other reasonable or appropriate action.

The basis for this change is to allow licensees to surrender their license while on probation. Reasons for the surrender could include the licensee wanting to cease practice and no longer wanting to be subject to the terms and conditions of probation. Since the Disciplinary Guidelines presently contain no terms that allow the surrender of their license, the CBA denies such requests.

Any request from a licensee to surrender their license while on probation would be considered in conjunction with the criteria established in the Disciplinary Guidelines. Because the circumstances of each probationer and request for surrender are unique, the CBA will need to use discretion when considering whether to grant such a request. While not an exhaustive list, other factors impacting the CBA's discretion could include whether new violations of the Accountancy Act were committed, whether the terms of probation were violated and/or if revocation of probation is pending, etc.

Ethics Continuing Education (p. 62)

The proposed amendments to Model Order 26 adds the following language:

"Or

NASBA CPT Ethical Leadership Training

Within 180 days of the effective date of the Order, Respondent shall successfully complete and pass the Professional Ethical Leadership Training Program through the National Association of State Boards of Accountancy Center for the Public Trust and shall provide the certificate(s) of completion to the California Board of Accountancy (CBA)."

The proposed amendments provide an option to impose either the Ethics CE or the NASBA CPT Ethical Leadership Training as a standard term of probation on a disciplined licensee.

The basis for the change to Model Order 26 is to allow the CBA to use discretion when choosing which training course – the Ethics CE course and/or the NASBA CPT Ethical Leadership training – should be imposed as a condition of probation to rehabilitate the licensee. The CBA would consider this on a case-by-case basis and impose terms that fit the severity of the violations. The CBA may opt to impose additional training to promote ethical practices and ensure only qualified licensees practice public accountancy. These courses will remind disciplined licensees of business ethics and how nationally recognized codes of professional conduct relate to the licensee’s professional responsibilities to improve consumer protection.

Tolling of Probation for Out-of-State Residence/Practice (p. 68) – New Model Order 50

The proposed amendments adds the following language to the new Model Order:

“In the event Respondent should leave California to reside or practice outside this state, Respondent must notify the California Board of Accountancy (CBA) in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the CBA.

In the event Respondent has permanently relocated out-of-state, and if Respondent has informed the CBA that they have no intention of practicing in or returning to California, the probation will not be tolled and the probation term will expire according to its terms, without tolling.”

The new Model Order 50 was added to the Disciplinary Guidelines to move the terms of tolling from a standard term to an optional term. The new order includes the language as shown in the old Model Order 23 and adds language that allows for instances where the probationary term may expire without tolling such as when the licensee permanently relocates out-of-state, and they have no intention of returning to California.

The basis for the moving the term to an optional term is to allow the CBA to continue monitoring the licensee without tolling when notified by the licensee that they plan to practice or reside outside of California. Since the practice of public accountancy has evolved into the digital age, probation monitoring can be performed virtually, and tolling is no longer necessary. The basis for adding language is to remove the licensee from being subject to the probationary terms when specific circumstances should not be cause of tolling such as when the licensee has no intentions of returning to or practicing in California.

Underlying Data:

1. January 26-27, 2023: CBA Item XV.D.2. – Revision Schedule for Regulatory Changes Associated with the Disciplinary Guidelines and Model Orders, California Code of Regulations, Title 16, Division 1, Section 98
2. California Board of Accountancy Disciplinary Guidelines and Model Orders, 10th Edition, 2019
3. January 26-27, 2023: CBA Item XV.D.3. – Discussion and Feedback on Language Regarding the National Association of State Boards of Accountancy's The Center for the Public's Trust Ethical Leadership Training Being Incorporated into the Disciplinary Guidelines and Model Orders
4. NASBA Center for the Public Trust Ethical Leadership Training Prepared for California Board of Accountancy
5. July 27-28, 2023: CBA Item XVI.C.2. – Discussion and Possible Action to Initiate a Rulemaking to Amend California Code of Regulations, Title 16, Section 98, Disciplinary Guidelines and Model Orders
6. Proposed Regulatory Language Article 13 of Title 16, California Code of Regulations Section 98 as approved at the July 27-28, 2023, CBA Meeting
7. Updated California Board of Accountancy Disciplinary Guidelines and Model Orders, 11th Edition, 2023 as approved at the July 27-28, 2023 CBA Meeting
8. January 25, 2024: CBA Item XI.A.3. – Discussion Regarding Modifying the Tolling Term and the Addition of a License Surrender Term to the Disciplinary Guidelines and Model Orders
9. Proposed Changes to Tolling Probation Term as approved at the January 25, 2024, CBA Meeting
10. Proposed Changes to Add License Surrender While on Probation as approved at the January 25, 2024, CBA Meeting

Business Impact:

The CBA has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts/evidence/documents or testimony:

The proposed amendments to the Disciplinary Guidelines would only impact CBA licensees who are disciplined and placed on probation for violations of the Accountancy Act or CBA regulations. The CBA imposes probationary terms on a case-by-case basis and depend on the severity of the violations.

The proposed regulatory action would only adversely affect a negligible number of licensees who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the CBA's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the existing laws and regulations governing the practice of public accountancy in California.

Economic Impact Assessment:

This CBA has determined that this regulatory proposal will have the following effects:

It will not create or eliminate jobs within the state of California because the proposed regulation will only impact CBA licensees subject to discipline and placed on probation after the proposal's approval. This proposal does not impose any new requirements or restrictions that would affect the creation or elimination of jobs within the state.

It will not create new businesses or eliminate existing businesses within the state of California because the proposal will only impact CBA licensees subject to discipline and placed on probation after the proposal's approval. This proposal does not impose any new requirements or restrictions that would affect the creation of new businesses or elimination of existing businesses within the state.

It will not affect the expansion of businesses currently doing business within the state of California proposal will only impact CBA licensees subject to discipline and placed on probation after the proposal's approval. This proposal does not impose any new requirements or restrictions that would affect the expansion of businesses currently doing business within the state.

This regulatory proposal may benefit the health and welfare of California residents because the updated Disciplinary Guidelines will improve clarity for staff, licensees and individuals involved in the disciplinary process. The proposed changes enable the CBA to meet its mandate to protect consumers by ensuring that a licensee providing public accounting services to consumers is sufficiently rehabilitated and only qualified licensees practice public accountancy.

This regulatory proposal does not affect worker safety because the regulatory proposal does not relate to worker safety.

This regulatory proposal does not affect the state's environment because the regulatory proposal does not relate to the state's environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the CBA welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the CBA welcomes comments from the public.