

CHAPTER 14
DISCIPLINARY AUTHORITY AND GROUNDS FOR DISCIPLINE

193A—14.1(17A,272C,542) Disciplinary authority. The board is empowered to administer Iowa Code chapters 17A, 272C and 542 and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals and firms for the performance of public accounting services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and prosecute disciplinary proceedings, establish standards of professional conduct, and impose discipline, pursuant to Iowa Code sections 17A.13, 272C.3 to 272C.6, 272C.10, 542.4, and 542.10 to 542.16.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—14.2(17A,272C,542) Disciplinary policy.

14.2(1) In exercising its disciplinary authority and in construing the meaning of the phrase “conduct discreditable to the public accounting profession” as used in Iowa Code section 542.10, subsection 1, paragraph “i,” the board shall be guided by the legislative policies, goals and standards set forth in Iowa Code section 542.2.

14.2(2) The board’s disciplinary policy rests upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence inherent in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on persons and firms engaged in such practice certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence of thought and action; to strive continuously to improve one’s professional skills; to observe, where applicable, generally accepted accounting principles, generally accepted auditing standards, and similar principles and standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; and to maintain high standards of personal conduct in all matters affecting one’s fitness to practice public accountancy.

14.2(3) The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

14.2(4) A CPA or LPA firm is subject to discipline for its own violations of Iowa Code chapter 542 and administrative rules and the violations of the firm’s CPAs, LPAs, nonlicensee owners, persons acting or purporting to act under a practice privilege, and others performing professional services on the firm’s behalf. Whether a CPA or LPA firm will be charged based on the acts of such individuals will depend on the circumstances. Among the factors the board will consider are whether the firm took reasonable steps to prevent the violation, whether the violation was or could have been discovered by the firm upon reasonable inquiry, what steps the firm took upon discovering the violation, whether the acts or omissions involved licensees of the board or were committed by persons who are not individually licensed by the board, the nature of the services at issue, and whether the violations are isolated matters or more systemic to the firm’s performance.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

193A—14.3(17A,272C,542) Grounds for discipline. The board may initiate disciplinary action against a CPA or LPA, or a firm of CPAs or LPAs, which holds an active, inactive or lapsed certificate, license or permit to practice on any of the following grounds:

14.3(1) *Fraud or deceit in procuring a license.* Fraud or deceit in procuring or attempting to procure an initial, reciprocal, renewal, or reinstated certificate, license, or permit to practice includes any intentional perversion of the truth when submitting an application to the board, or when submitting information in support of another's application to the board, including:

- a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.
- b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, continuing education certificate, or verification of peer review.
- c. Failing or refusing to provide complete information in response to a question on an application.
- d. Reporting information, such as satisfaction of continuing education, peer review, or attest qualification, in a false manner through overt deceit or with reckless disregard for the truth or accuracy of the information asserted.
- e. Otherwise participating in any form of fraud or misrepresentation by act or omission.

14.3(2) *Professional incompetence.* Professional incompetence includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of public accounting.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.
- d. Failure to conform to the minimum standards of acceptable and prevailing practice of public accounting in this state.
- e. A willful, repeated, or material deviation from generally accepted engagement standards, generally accepted accounting standards, generally accepted auditing standards, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542).
- f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest.

14.3(3) *Deceptive practices.* Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

- a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of public accounting.
- b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.
- c. Acceptance of any fee by fraud or misrepresentation.
- d. Falsification of business or client records.
- e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule or 193A—Chapter 18.
- f. Knowingly presenting as one's own a certificate, license, or permit to practice, or a certificate, license, or permit number, or the signature of another or of a fictitious licensee, or otherwise falsely impersonating a person holding a CPA certificate or LPA license, or a permit to practice as a firm of CPAs or LPAs.
- g. Representing oneself as a CPA, LPA, CPA firm, or LPA firm when the certificate, license, or permit to practice has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed, except as allowed under Iowa Code section 542.20.
- h. Fraud in representations as to skill or ability.

14.3(4) *Unethical, harmful or detrimental conduct.* Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established.

Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of public accounting or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of public accounting would place the public at risk.

b. A violation of a rule of professional conduct relating to improper conflicts of interest, or lack of integrity, objectivity or independence, as provided in rule 193A—13.3(542).

c. A violation of a provision of Iowa Code section 542.13, or aiding or abetting any unlawful activity for which a civil penalty can be imposed under Iowa Code sections 542.13 and 542.14.

14.3(5) *Lack of proper qualifications.* Lack of proper qualifications includes, but is not limited to:

a. Continuing to practice as a CPA or LPA without satisfying the continuing education required for certificate or license renewal.

b. Continuing to perform attest services or compilation services without timely completion of peer review.

c. Performing attest services as an individual without proper certification or attest qualification, or without acting through a CPA firm holding a permit to practice pursuant to Iowa Code section 542.7.

d. Performing attest services as a firm without holding a permit to practice pursuant to Iowa Code section 542.7, or without ensuring that the individuals responsible for supervising attest services or signing or authorizing someone to sign the accountant's report on financial statements are attest qualified, hold the required certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 and 193A—Chapters 6 and 7.

e. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the CPA's or LPA's ability to practice in a safe and competent manner.

f. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b," or that impairs a practitioner's ability to safely and skillfully practice the profession.

14.3(6) *Negligence in the practice of public accounting.* Negligence in the practice of public accounting includes the following acts, practices, or omissions, whether or not injury results:

a. Failure or refusal without good cause to exercise reasonable diligence in the practice of public accounting.

b. A failure to exercise due care including negligent delegation of duties in the practice of public accounting.

c. Neglect of contractual or other duties to a client.

14.3(7) *Professional misconduct.* Professional misconduct includes, but is not limited to, the following:

a. Violation of a generally accepted engagement standard, generally accepted accounting standard, generally accepted auditing standard, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542), or any other violation of a provision of 193A—Chapter 13.

b. Violation of a regulation or law of this state, another state, the United States, or the PCAOB in the practice of public accounting.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation of a licensed or unlicensed firm, individual, or other entity, or failure to fully cooperate with a disciplinary investigation of a licensee or with an investigation of firms, individuals or other entities that are not licensed by the board, including, without limitation, failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken against a licensee or person or firm exercising a practice privilege by a licensing authority of this state or another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is

overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.

e. Suspension or revocation of the right to practice before any state or federal agency, or the PCAOB.

f. A violation of Iowa Code section 542.17 (confidential communication).

g. A violation of Iowa Code section 542.18 (licensees' working papers—client records).

h. Violating or aiding and abetting another's violation of Iowa Code section 542.13 or 542.20.

i. Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

j. A violation of a practice privilege afforded to an Iowa licensee in another state.

k. Engaging in the practice of public accounting on a lapsed or inactive certificate, license or permit when the acts or practices require active Iowa licensure and, in the case of a firm, allowing such acts or practices by firm CPAs or LPAs.

14.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542 or any administrative rule adopted by the board in the administration or enforcement of such chapters.

14.3(9) *Failure to report.*

a. Failure by a CPA firm to timely report as provided in rule 193A—7.7(542).

b. Failure of an LPA firm to timely report as provided in rule 193A—8.5(542).

c. Failure to timely report judgments and settlements and reportable violations by others as provided in 193A—Chapter 18.

d. Failure to report in writing to the board any issuance, denial, revocation, or suspension of a license by another state, or the voluntary surrender of a license to resolve a pending disciplinary investigation or action, within 30 calendar days of the licensing authority's final action.

e. Failure to report the conviction of any felony, or a crime described in Iowa Code section 542.5(2), within 30 calendar days of the conviction.

f. Failure to report to the board a change in the licensee's physical or mailing address within 30 calendar days of the change.

g. Failure to report as provided in 193A—subrules 13.6(7) and 13.6(8).

14.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

14.3(11) *Conviction of a crime.* Conviction, in this state or any other jurisdiction, of any felony, or of any crime described in Iowa Code section 542.5(2). A copy of the record of conviction or plea of guilty shall be conclusive evidence. "Conviction" shall include any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred or suspended, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction shall be vacated.

14.3(12) *Conduct discreditable to the accounting profession.* Conduct discreditable to the accounting profession includes any act or practice that diminishes the public's confidence in the profession, impairs the credibility of the profession, or otherwise compromises the public's trust. While it is not possible to list all conduct that is discreditable to the accounting profession, the following list provides an illustrative range of acts or practices that are implicated:

a. Dishonesty in business or financial affairs, or a pattern of fiscal irresponsibility.

b. Placement on the sex offender registry.

c. Securities fraud or violation of the Iowa consumer fraud Act.

d. Willful or repeated failure to timely file tax returns or other tax documents.

e. False testimony in a court or administrative proceeding, or affidavit, or otherwise under oath.

f. Providing false or misleading information to a financial institution or governmental body or official.

g. Stating or implying an ability to improperly influence a government agency or official, or attempting to do so through deception, bribery or other unlawful means.

h. Violation of a breach of fiduciary duty when acting in the capacity of a trustee, conservator, or other fiduciary, or as the professional advisor to a fiduciary.

i. Any violation of Iowa Code chapter 542 or administrative rules that involves dishonesty, bad faith, or unethical behavior.

[ARC 7715B, IAB 4/22/09, effective 7/1/09]

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]

[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]