OUTSIDE THE PROFESSION: SHOULD A CPA BE DISCIPLINED FOR ACTIONS NOT DIRECTLY RELATED TO PUBLIC ACCOUNTING?

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I. INTRODUCTION

To rebuild the integrity of the accounting profession, accounting regulators have worked diligently to discourage and reprimand unethical behavior of accounting professionals. While most ethics violations relate to professional misconduct, such as defying an accountant’s rules regarding independence, integrity, objectivity, competence, and technical standards, some Certified Public Accountants (CPAs) have had their licenses suspended or revoked for acts in their personal lives not related to the profession. The State Boards of Accountancy have the power to suspend or revoke a license due for professional violations and due to acts discreditable to the profession.

It is clear that conduct of a CPA while acting within the accounting profession is regulated by state boards of accountancy. However, whether state boards of accountancy should be allowed to discipline CPAs for behavior outside and not necessarily related to the accounting profession has become a matter for court determination.

II. DOES A STATE BOARD OF ACCOUNTANCY HAVE JURISDICTION OVER A CPA RELATED TO WRONGS COMMITTED OUTSIDE THE PROFESSION?

In the Greenen v. The Board of Accountancy1 (hereinafter referred to as Greenen) decision entered on April 12, 2005, the Court of Appeals of Washington reviewed an administrative order of the Washington Board of Accountancy (hereinafter referred to as the Board) which ordered discipline for a CPA related to wrongful actions taken outside the profession of accounting. In this case, the Appellate Court was charged with determining whether the Board had the authority to discipline its member for such non-accounting activity.2

A. FACTS OF THE GREENEN CASE

In October of 1993, Marilyn Greenen, a CPA licensed by the Washington State Board of Accountancy, began working as an account manager for the Port of Vancouver (hereinafter

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2 Id. at 225.
referred to as the Port) in Washington. Greenen was not directly engaged in public accounting in her position as an account manager, but she was responsible for overseeing the preparation of financial statements and supervision of accounting employees. According to the case, her previous employer was the Washington State Auditor’s Office, where she had worked for over three years.

As a Washington State agency, the Port provided Greenen with health insurance benefits through the state’s medical plan which would include dependent coverage for her spouse and any children. The Port had provided a copy of its employee benefits booklet to Greenen upon her employment. A specific provision in this booklet explained the Port’s insurance benefits eligibility rules for dependents as follows:

Employees are responsible for notifying the Port on approved enrollment forms of their eligible dependents. Any extra costs associated with a lack of notification shall be the employee’s responsibility.

Although Greenen was married when she started working at the Port, her marriage was dissolved in November of 1993. The dissolution decree did not contain any obligation to provide health insurance benefits for her ex-husband. However, Greenen did nothing to notify her employer of the change in her former husband’s status as an eligible dependent under the Port’s policy or update her health insurance information for over four-and-a-half years. This failure resulted in a cost to her employer of over $1,000 per year for her former husband’s ineligible insurance coverage.

In May of 1998, Greenen’s supervisor confronted her about the dissolution of her marriage. Following this, Greenen was required to submit an updated health insurance form to remove her ex-husband from coverage and to provide the actual date of her dissolution. Greenen complied in part, by submitting a form that changed her status to single and indicating “delete spouse effective May 31, 1998.” She did not, however, provide the date of her dissolution decree as required by her supervisor, nor did she accurately indicate her rationale for the change as the dissolution. Instead, she stated the rationale for the change was that the information was “[n]o longer applicable.” Later, the form was returned to Greenen for the required dissolution date, but despite her assurances to the contrary, a properly completed form was not received.

Once again, in April of 1999, Greenen’s supervisor asked her to submit the properly completed updated health insurance form. Greenen submitted the form but this time asserted that the date of her ex-husband’s ineligibility was May 31, 1998, and stated “agreement to cover ex-spouse expired as of 5/31/98” as her rationale for the change. At this point, nearly five-and-a-half years had passed since Greenen’s divorce, which caused her ex-husband to be ineligible for health insurance benefits as a dependent of Greenen. Due to Greenen’s non-compliance with the stated eligibility policy, the Port had continued to fund her ex-husband’s health insurance. That same month, the Port terminated Greenen, releasing all related claims.

B. WASHINGTON ACCOUNTING DISCIPLINARY BOARD DECISION

In September of 2000, the Washington State Accountancy Board filed six disciplinary violations against Greenen under the Public Accountancy Act and the Washington Administrative Code. Specifically, the charges filed against Greenen were for fiscal dishonesty and misleading misrepresentations not within the profession of accounting.

Applicable Washington law allowed the Board to take disciplinary action against a CPA for “dishonesty, fraud, or negligence while representing oneself as a CPA” and similar acts, specifically listed as “making misleading, deceptive, or untrue representations” and/or “engaging in acts of fiscal dishonesty.” Monetary damage for such a violation was limited to $1,000 plus the cost of the Board’s investigation and legal costs.

After hearing testimony of Greenen and two other witnesses, the Board rendered its decision in November of 2002. While the Board’s decision exonerated Greenen on four of the charges, it did render disciplinary action against her on the other charges. The Board’s disciplinary order required Greenen to take a CPA ethics exam and course, pay a fine of $1,000, and cover eighty percent of the costs of the Board’s investigation. After the Board denied her motion to reconsider, Greenen appealed the Board’s order to the Superior Court of Thurston County. Thurston County affirmed the Board’s decision and denied her motion. Greenen exercised her right to appeal to the Court of Appeals of Washington.

C. WASHINGTON APPELLATE COURT RULING

On appeal, Greenen’s burden was to prove the Board’s decision invalid through information already in the record. Under the applicable standard of review, the Appellate Court was only required to grant relief to Greenen if it could find that the Board was erroneous in its interpretation of the law or if the Board’s decision was found to be arbitrary or capricious.

In her argument before the Appellate Court, Greenen attempted to illustrate that the Board lacked jurisdiction to discipline her for misrepresenting her ex-husband’s eligibility for medical insurance. However, the Public Accountancy Act provisions specifically provide the Board jurisdiction on numerous issues related to holders of CPA licenses, including the power to revoke, suspend, or refuse to renew a CPA license and impose fines for a variety of independent reasons that do not require the practice of public accounting for liability. In fact, a review of the legislative history clearly illustrates that in 1992 when the Washington legislature revised the Public Accountancy Act, it specifically omitted the phrase “in the practice of public accounting” and added “while representing oneself as a CPA” instead. This is a clear indication that the legislature intended to allow for certain CPA discipline for activities when not acting within the profession. Further, the legislative history also specifically indicates that it does not intend the specific listing to be all inclusive and therefore other activities not specifically listed could also be grounds for discipline.

Greenen also argued that to “represent oneself as a CPA” within the terms of the Act, she would have been shown as serving in an actual accounting function while committing the proscribed activity of being dishonest. Under current Washington law, which was enacted in 2001, the Board is clearly provided jurisdiction over CPA conduct which is found to be dishonest even if

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3 Id.
4 Id. (emphasis added).
5 Id.
6 Id.
7 Id.
8 Id. at 226.
9 Id.
10 Id.
12 Greenen, 110 P.3d at 226.
14 WAC § 4-25-910 (2000).
15 Id.
17 Id.; WAC § 4-25-910 (2000).
18 Id.
19 RCW § 34.05.570 (2004); and Keene v. Board of Accountancy, 894 P.2d 582 (1995).
21 Greenen, 110 P.3d at 228.
23 Greenen, 110 P.3d at 229.
it is not related to public accounting. Applying the previous version of Washington law, the Appellate Court found that the Board had jurisdiction to discipline a person for dishonesty carried out while merely holding a valid CPA license or certificate, and not necessarily acting within the profession of public accounting.

In its decision, the Washington Board established three primary reasons for disciplining Greenen and finding she misrepresented her marital status and dependent eligibility for health care benefits. First, Greenen’s admissions in this case establish that she failed to “affirmatively notify the Health Care Authority of her divorce in 1993.” Second, despite her employer’s specific request in 1998, she failed to appropriately update her health care benefits dependent eligibility information, and attempted to mislead her employer by withholding the specifically requested information. Third, upon her employer’s second request to update her health care benefits information nearly a year after the first request, Greenen again misrepresented facts by indicating that the effective date of her ex-husband’s ineligibility was May 31, 1998, when in fact, his ineligibility occurred some four-and-a-half years earlier.

Greenen also attempted to claim her conduct was the result of inadvertent mistakes. However, it is clear from the record that on two separate occasions her employer specifically asked for certain information that she refused to provide. The Executive Director of the Board specifically indicated in her testimony that Greenen “obtained benefits for an ineligible person for a significant period of time while she was a licensed CPA, and that relates to the public’s expectations of CPAs, regardless of what they are doing for a living.”

Thus, Greenen failed to prove that the Board erred in asserting jurisdiction over her or that the Board’s decision was arbitrary or capricious. The Board did have jurisdiction over Greenen’s non-accounting-related activities and therefore Greenen is required to comply with the disciplinary ruling as originally rendered. While her activities were not “related to the actual practice of accounting,” they were sufficient to cause detriment to the perceptions of the accounting profession and therefore the Board felt they should be sanctioned.

III. STATE BOARDS OF ACCOUNTANCY—GENERAL POWERS

The Greenen case calls for a short review of the powers granted to the state boards of accountancy. While the codes of each individual state accountancy board use slightly different language to describe the boards’ authority, the general powers of the boards are similar. The state boards are accountable for certifying and licensing new CPAs. They do so by assessing the candidates’ educational and practical experiences and by administering the uniform CPA examination. Additionally, the accountancy boards evaluate and measure continuing professional education requirements and review the practice of licensed CPAs. The individual state accountancy boards are also responsible for protecting the public by taking appropriate disciplinary action against CPAs who have violated board regulations.

A. LICENSING AND CERTIFICATION OF CPAS

The first law using the CPA designation was passed in New York on April 17, 1896. Previous efforts by two accounting organizations to certify accountants had failed. The Institute of

Accounts and the American Association of Public Accounts had both administered accounting exams to their members since 1884, but neither could prevent practice by non-members. The two rival organizations joined forces to introduce legislation in New York to regulate the certification of accountants. The resulting passage of the 1896 New York CPA law set the example for state governmental regulation of the CPA designation.

OTHER STATES EMULATED THE NEW YORK EXAMPLE. Eventual, all fifty-four licensing jurisdictions (including the fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands) enacted legislation that required passing of the national CPA examination, and provided for the establishment of state boards of accountancy. Following the example set by the 1896 New York CPA law, the boards of accountancy have remained responsible for administering compliance with public accountancy laws. Specific requirements for becoming a CPA are set forth in the laws administered by these state boards and generally codified by the individual state legislatures. All fifty-four jurisdictions uniformly require successful completion of the computerized CPA exam, and forty-eight jurisdictions currently require 150 hours of higher education credit prior to examination.

While the application fees differ, the state boards issue the original CPA certificates and licenses or permits to CPA candidates who have passed all four sections of the CPA exam, met the experience requirements, and are not otherwise in violation of the respective state code. CPAs that are licensed in one state may obtain a license in another state through reciprocity. Obtaining a license by reciprocity is facilitated in states that are substantially equivalent to the state which originally granted the CPA license.

B. REVOCATION, SUSPENSION, AND REINSTATEMENT OF CPA LICENSE OR CERTIFICATION

As discussed in the following section, revocation and suspension of a CPA license or certification are potential disciplinary actions. The boards will decide, based upon the severity of the code violation, if suspension or revocation is an appropriate punishment. To determine if a state board should be allowed to punish a CPA for an act discreditable to the profession, but not directly related to the practice of accounting, a review of disciplinary proceedings brought before the state boards is appropriate. However, confidentiality provisions limit the availability of the state board files to the state society of CPAs of a Midwestern state. From this data, Loeb concluded that between 1946 and 1969 the state society of CPAs considered on average 3.5 professional conduct cases a year, while the state board handled approximately 2.9 cases a year.

Most of the charges brought to the attention of the state board and the state society stemmed from offenses against colleagues and inappropriate advertising. Disciplinary action, including actions to revoke CPA licenses, resulted from 1.5 of these cases. Loeb’s research provided no separate information on disciplinary proceedings due to acts discreditable to the profession.

C. DISCIPLINARY ACTIONS

The boards of accountancy have the right to discipline accountants certified by their state. The authors of this article decided to limit the numbers of states evaluated. Three states—Texas, Oklahoma, and Virginia—were incorporated in the authors’ research. While the three states have similar procedures for filing complaints against CPAs, each has its own unique enforcement
provisions. In Texas, the State Board refers potential code violations to the Board’s Enforcement Division. In Oklahoma, the Investigation Committee evaluates potential code violations. In Virginia, complaints are referred to the Enforcement Committee.

In Texas, complaints against CPAs include: fraud in obtaining a license or in preparing false statements, failing to file a tax return or otherwise violating the rule of professional conduct, or for any misdemeanor conviction which relates to fraud or dishonesty as an element of the offense.\(^{36}\) If a CPA is found guilty, the sanction will vary, depending upon the seriousness of the misconduct. Sanctions include required completion of a peer review program, Continuing Professional Education (CPE), restitution, administrative penalties, reprimand, probation, suspension, or revocation of the license, limitation of practice, or any combination thereof.\(^{37}\)

In Virginia, complaints against CPAs must be in writing and can come from the public, another CPA, a client, a previous client, a state or federal agency, or the Board itself. The Board may also file complaints against a non-CPA if the individual is practicing accounting without a license. Licensees who violate any Virginia statute or regulation including the professional standards are subject to disciplinary action by the Board, possibly resulting in revocation. Causes for a complaint may include technical errors, retention of client records, illegal or unethical conduct. The Board can discipline those who violate the rules and laws of the state, but cannot award damages to any individual. Sanctions include fines, education, public reprimand, prespective release work reviews, suspension, probation or revocation of the right to practice.\(^{38}\)

According to section 15.14 of the Oklahoma Accountancy Act (OAA), complaints against CPAs may include fraud or deceit in obtaining a certificate, license, or permit; dishonesty, fraud, or gross negligence in accounting or financially related matters; a conviction of a felony or misdemeanor; failure to comply with professional standards; or a violation of the OAA.\(^{39}\) For a CPA who has violated any of the above rules, the Board may use one or more of the following penalties: revoke or suspend the license, certificate or permit; reprimand or put on probation; limit scope of practice; deny renewal of a permit; require CPE; put on probation; require peer reviews; and assess a fine not to exceed $10,000.\(^{40}\)

Professional violations can be evaluated against set criteria, such as Generally Accepted Auditing Standards (GAAS), Generally Accepted Accounting Principles (GAAP), Public Company Accounting Oversight Board (PCAOB), and independence rules. Violations due to acts discreditable to the profession, but not directly related to the practice of accounting, cannot easily be assessed. While efforts to increase uniformity of licensing as well as mobility of CPAs between states are ongoing, little discussion has occurred with respect to a uniform description of what acts are considered discreditable to the profession. Since original passage of the Uniform Accountancy Act (UAA) of 1984, the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) have both encouraged the state boards to increase uniformity in all aspect of the accountancy code.

IV. AICPA Code of Professional Conduct

While the codes of the state boards differ in their interpretation of whether an act outside the practice of accounting should be subject to punishment, uniform adoption of the UAA would standardize disciplinary proceedings. Without the adoption of the UAA, the AICPA provides some standardization. Membership in the AICPA is voluntary, but approximately seventy-five percent of all CPAs are members. AICPA members must abide by the seven sections of the Institute’s Code of Professional Conduct. Section 50 of the Code, Paragraph 1 indicates that:

\begin{itemize}
  \item Conspiracy to commit customs fraud, espionage, health care fraud
  \item Fraud, and offenses against the U.S.
  \item Hate crimes
  \item Indecency with a child younger than 17
  \item Obstruction of criminal investigation
  \item Sexual abuse of a child
  \item Sexual conduct with a minor
  \item Stealing merchandise from a department store
  \item Theft
  \item Transporting hazardous waste to an unpermitted facility
  \item Wire fraud
\end{itemize}

As of April 2007, twenty-four CPAs were disciplined by the AICPA.\(^{43}\) Infringements include Rule 201, General Standards—Professional Competence, Rule 202 Compliance with Standards, and the Securities Act of 1934 violations, reflecting acts that are related to the practice of accounting. One CPA’s AICPA membership was revoked due to a Class A misdemeanor.

V. The Uniform Accountancy Act

The NASBA and the AICPA developed the UAA as a model bill to regulate the practice of public accounting. The UAA was originally adopted in 1992, and has undergone three revisions, with the latest in 2005.\(^{44}\) While many states have adopted portions of the UAA, no state has adopted the UAA in its entirety.

The fourth edition of the UAA, as released in December 2005, introduces numerous changes including a revision of the definition of good moral character and a list of actions that are grounds

\(^{36}\) Tex. occ. code § 901.502 (2006).
\(^{37}\) Id. § 901.501 (2006).
\(^{38}\) V.A.C. ¶ 54.1-403 (2006).
\(^{40}\) Id.

\(^{41}\) AICPA Code of Professional Conduct, § 50.01.
\(^{42}\) Id. ¶ 2.
\(^{44}\) Uniform Accountancy Act, 4th Ed. (2005) at p. UAA-i.
for discipline. Section 5 of the UAA states that the CPA certificate should only be “granted to persons of good moral character” and further defines the term as follows:

Good moral character for purposes of this section means the propensity to provide professional services in a fair, honest, and open manner. The Board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the Board of lack of good moral character is supported by clear and convincing evidence.

Section 10 of the UAA outlines the issues that may be grounds for discipline. Paragraph (10) allows disciplinary action for “[a]ny conduct reflecting adversely upon the licensee’s fitness to perform services while a licensee.” A comment added as explanation to Section 10 states:

Paragraph (10) [is] a catch-all provision which is phrased in terms of conduct reflecting adversely on the licensee’s fitness to perform services rather than the broader and vaguer conventional phrase, “conduct discreditable to the accounting profession.” This narrower provision is intended to avoid problems of vagueness and overbreadth. A similar change is involved in the requirement of “good moral character” in section 5(b).

Based on the comments in Section 10, Paragraph (10), the adoption of the UAA would restrict the state boards of accountancy to disciplining CPAs for acts related to the practice of accounting. Had the UAA been adopted in Washington, the State Board would not have had grounds for disciplining CPAs for acts related to the practice of accounting.

VI. REVIEW OF THE CODE OF CONDUCT OF THE OKLAHOMA, VIRGINIA, AND TEXAS BOARDS OF ACCOUNTANCY: DO OTHER STATES AGREE WITH WASHINGTON?

A. OKLAHOMA

The Oklahoma Accountancy Board’s rules specifically require a showing of “dishonesty, fraud or gross negligence” in accountancy or “financially related activities.” While this may sound similar to the requirements of the Washington Board, the Oklahoma Board specifically defines “in accountancy” as within “the profession or practice of accounting.” This specificity, along with the requirement of gross negligence, would require a heightened burden in any Oklahoma Accountancy Board disciplinary proceeding. Negligence, as illustrated in the related Washington State code, requires a much lower proof than gross negligence. Gross negligence requires a showing of the failure to use even the slightest amount of care, showing recklessness or willful disregard.

B. VIRGINIA

The Virginia Board of Accountancy requires the discreditable activity to be in the “performance of services.” Therefore, Virginia CPAs enjoy similar heightened requirements for a finding of punishable activity. However, diligent disciplinary boards will undoubtedly attempt to find court interpretations of “services” to include any employment activity. If so, Greenen would have been subject to disciplinary action in Virginia as well.

Virginia also provides enforcement actions against a CPA for any conduct reflecting adversely on the CPA’s fitness to perform services, including “fiscal dishonesty of any kind.” In Virginia the courts would be left to determine whether misleading statements by Greenen, which could easily be seen as fiscal dishonesty, would be enough to cause lack of fitness of Greenen to perform services for clients as a CPA.

C. TEXAS

Compared to Washington, the Texas Board of Public Accountancy also has a very specific statutory code. The Texas Public Accountancy Code provides a very narrow definition of “practice of public accountancy.” The CPA must expressly be using accounting, attestig, or auditing skills. In Texas, like Oklahoma, the CPA must also be found to be acting fraudulently, dishonestly, or with gross negligence in performance of services as a CPA. However, Texas, like Virginia, also recognizes the duty of CPAs to refrain from committing acts discreditable to the profession. If these acts negatively impact upon the public’s trust in the profession, they are considered discreditable, regardless of whether they are related to the practice of accounting. Furthermore, Texas also allows its Board to consider rulings in other jurisdictions in making such decisions.

VII. CONCLUSION

State boards of accountancy continue to work diligently to rebuild and maintain the integrity of the accounting profession. The profession recognizes a need to reprimand unprofessional or unethical behavior while acting as an accountant, but the same line is blurred when it concerns non-accounting related activities. Whether CPAs should be disciplined for acts discreditable to the profession, but unrelated to the performance of accounting services, is subject to debate. Even the individual state boards have different statutory language.

Washington maintains that CPAs shall be held to a higher standard which requires the CPAs to avoid any acts discreditable to the profession, including the misrepresentation of facts under any circumstances. Other states, such as Oklahoma and Virginia, have more precise statutory language which requires that the discreditable act must be while actually practicing accounting. Each state falls into one of the three broad categories: 1) the state board has the power to discipline the CPA whether or not the discreditable act was within an actual accounting activity; 2) the state board has the power to discipline the CPA only when the discreditable act was within an actual accounting activity; or 3) the state board has the power to discipline the CPA based upon the interpretation of the facts of the case.

48 Id. § 5(c), p. UAA-5-1.
49 Id. § 5(b), p. UAA-5-1.
50 Id. § 5(b), p. UAA-5-1.
51 Id. § 5(b), p. UAA-5-1.
52 Id. § 5(b), p. UAA-5-1.
54 Id. § 5.21-72(4)(b) (2004).
55 Tex. OCC. Code § 901.003(b)(2006).
56 Id. § 901.502(2)(b)(2006).
The accounting profession is in the process of increasing uniformity of licensing CPAs. Adoption of the UAA would standardize the licensing of CPAs and enhance mobility.\textsuperscript{57} The implementation of the UAA would also address the issue raised in Greenen. Since the UAA defines discreditable acts applying to CPAs only while acting within accounting, it is unlikely that the Washington State Board would have prevailed.
