

**A Report to the
Washington State
Board of Accountancy**

**PERFORMANCE REVIEW
PROJECT**

July 2010

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I. EXECUTIVE SUMMARY

A. Summary Conclusion

The Performance Review Project has revealed that the Washington Board of Accountancy is run properly and capably by the Executive Director and its staff with the guidance of its Board, and operates in full compliance with all applicable laws. The recommendations proposed in this report are intended to provide the agency with proposed “best practices” to assist the Agency in operating more efficiently and effectively in carrying out its purposes of regulating its Licensees and protecting the public, as well as to minimize the Agency’s exposure to potential claims of unfairness or bias.

B. Records Management

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Overall records management procedures and controls are sound and appropriately designed. Some weaknesses that should be addressed are the priority destruction of old investigation files and other records past their retention time pursuant to the Washington State Board of Accountancy’s current records retention schedule. In addition, the development of a comprehensive records inventory system, use of an e-mail management software program, and the electronic imaging of certain records (i.e., completed investigation files) will ensure more reliable organization, retention and retrieval of records that are routinely used by Agency staff and requested by the public.

C. Public Records Requests

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Public records requests are handled properly and in full compliance with the Public Records Act. Responses to requesters are prompt,

professional, courteous and complete. Current procedures are comprehensive overall and are being followed by staff; however, the procedures should receive legal review. Other recommendations in this area focus on bolstering the processes already in place to further attain best practices.

D. Quality Assurance Review Program

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The Quality Assurance Review Program is well documented and operating effectively but requires excessive Washington State Board of Accountancy staff and Licensee volunteer resources. The state-wide review of Licensee's work being submitted to the public could be more effectively achieved through mandatory peer review for Licensees.

Based upon these factors, it is recommended that the current Quality Assurance Review Program be transitioned out and replaced with mandatory peer review. This change will allow the Washington State Board of Accountancy to direct staff and volunteer resources toward more mission critical matters.

Detailed testing of a judgmental sample of Quality Assurance Review files demonstrated that most procedures were being complied with except for the documentation of required final reviews and approvals.

E. Investigations

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The investigation process is staffed with highly experienced personnel allowing the Washington State Board of Accountancy to achieve better than satisfactory results; however, the overall investigation process lacks documented detail of current policies and procedures. Detailed testing of a

statistical sample of investigation files demonstrated that the policies and procedures which were represented as established were frequently not complied with.

Policies, procedures and work programs should be developed to ensure consistent results. Outdated policies and procedures should be retired.

The Washington State Board of Accountancy should establish a subcommittee, the Investigations Committee, comprised of seven to nine Licensees. The proposed Investigations Committee would be empowered to oversee the investigation process, to interview Licensees when deemed necessary, to negotiate sanctions with Licensees when deemed necessary, and to make recommendations to the Washington State Board of Accountancy regarding appropriate actions in investigation matters.

Additional internal resources or greater utilization of independent contractors is needed to bring the current backlog of open investigation files to an acceptable level.

F. Informal Adjudications

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The Washington State Board of Accountancy pursues informal adjudication of complaints through a Stipulated Agreement and Order process in accordance with the directive of the Administrative Procedures Act to attempt informal settlement in disciplinary enforcement cases. The process should continue to be used under the guidance and direction of the proposed Investigations Committee. The Board should consider eliminating the use of e-mail voting to approve Stipulated Agreements and Orders and instead deliberate in person or through technological means when

considering the voting on proposed Stipulated Agreements and Orders. The disciplinary guidelines being used by the Washington State Board of Accountancy for administrative and non-administrative violations should be reviewed and revised as necessary to offer more meaningful guidance in determining appropriate discipline.¹

G. Formal Hearings

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The Washington State Board of Accountancy's process for formal adjudicative proceedings is in compliance with the Administrative Procedures Act. The Board's staff properly prepares all necessary documents and notices related to formal hearings, and Board members receive adequate training and assistance from their assigned attorneys in conducting pre-hearing conferences, settlement conferences, and formal hearings. The proposed Investigations Committee should involve the Assistant Attorney General Prosecutor in the earlier stages of those matters that are complex and/or involve public harm, to better develop the case for a potential hearing or to develop appropriate settlement parameters based on the conduct at issue.

H. Adherence to Policies and Procedures

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The Washington State Board of Accountancy's Board members and staff substantially adhere to policies and procedures that are currently in place and do not intentionally engage in any activities that are fundamentally unfair, biased or prejudiced against any member of the regulated community or the public. All staff properly avoid *ex parte* communications and the

¹ These guidelines also apply to the Washington State Board of Accountancy's formal hearings adjudication.

release of confidential information; however, no written policy guides them in this area. It is recommended that steps be taken to institute a level of independent review on certain matters to further insulate the Washington State Board of Accountancy from any potential claims of bias or unfairness. In this regard, any complaints directed at the Washington State Board of Accountancy's investigators should be reviewed by the proposed Investigations Committee with a recommendation to the Executive Director. Additionally, any public contracts that may involve a potential interest of an employee of the Washington State Board of Accountancy should be submitted for review by the Executive Ethics Committee.

II. INTRODUCTION

A. Background

The Washington State Board of Accountancy (WBOA or Agency) is the duly authorized state agency that regulates the practice of public accountancy, Certified Public Accountants (CPAs) and CPA firms in the state of Washington. The mission of the WBOA is to:

...promote the dependability of information which is used for guidance in financial transactions or for accounting or for assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental; and ... [t]o protect the public interest...

RCW 18.04.015. The primary functions of the WBOA are to: (1) license qualified individuals and firms to practice public accountancy; (2) investigate and adjudicate complaints against licensed CPAs and CPA firms; (3) ensure the ongoing competence of its Licensees through required continuing education and Quality Assurance Review (QAR) or approved peer review; and (4) enjoin the unlicensed practice of public accountancy

and the unauthorized use of the CPA designation, all in accordance with the Public Accountancy Act (PAA), Revised Code of Washington (RCW) 18.04 *et seq.*

The Board is made up of nine members appointed by the Governor. Each member of the Board serves a staggered three-year term. Six members must be CPAs, licensed continuously in the State for the previous ten years. The remaining three members of the Board are public members who must be “qualified to judge whether the qualifications, activities and professional practice of those regulated...conform to standards that protect the public interest.” Additionally, one of the public members must be qualified to represent the interest of clients of CPAs and CPA firms licensed by the Board. *See* RCW 18.04.035.

The WBOA is overseen by an Executive Director (ED) who must be a Licensee in good standing. The ED is appointed by and serves at the pleasure of the Governor. RCW 18.04.045. The ED is responsible for employing all necessary and appropriate personnel to carry out the purposes of the WBOA. *Id.* Currently, the WBOA has nine staff members in addition to the ED and uses several volunteers and contracted consultants to carry out its duties. See Current Organization Chart attached at Exhibit 1.

This Performance Review Project (PRP) was approved by a vote of the Board on October 22, 2009, and was let by public contract. The project was initiated by the Board to comprehensively and independently review all of its processes and procedures. This review was also due in part to several years of complex litigation between the Board and one of its Licensees who challenged the Board’s handling of several Public Record Requests (PRRs)

and its investigation and adjudication procedures.² The purpose of the PRP was to engage a qualified independent consultant(s) to “perform a review of the Agency and Board policies, procedures, roles and responsibilities.” See the Board’s Minutes of October 22, 2009. The project is to be completed between May 6 and December 31, 2010.

Throughout this report, key terms and abbreviations are used for ease of reference. See Key Terms set forth in Exhibit 2.

B. Scope and Methodology

The objectives of the PRP were to evaluate the adequacy and effectiveness of the WBOA statutes, rules, policies and related procedures and overall observance by the Board members and the WBOA staff of the same by performing the following:

- Identifying and evaluating policies and procedures for public record retention, maintenance, retrieval and destruction;
- Assessing the procedures for promptly responding to PRRs including identifying, retrieving, clarifying, redacting and/or withholding confidential information and providing records for inspection and/or copying;
- Evaluating the effectiveness of the Board’s QAR Program for monitoring Licensees’ compliance with professional standards in the areas of audit, compilation, review and other attestation services;

² From approximately December 2007 through October 2009, D. Edson Clark filed nine separate lawsuits against the Board alleging public records violations (related to 15 public records requests he filed), challenging the legality of a stipulated settlement agreement he entered into with the WBOA for unprofessional conduct, and various other civil and tort claims. Mr. Clark also lodged complaints against various staff members with the Board and various other governmental agencies. These matters were finally resolved by a mediated settlement agreement between the Board and Mr. Clark effective October 21, 2009.

- Evaluating all aspects of the investigation and disposition of complaints of unprofessional conduct against Licensees and unlicensed practitioners, including the disposition of complaints by informal adjudication (Stipulated Agreements and Orders (SAOs), Respondent Contracts or Administrative Notices of Non-Compliance) and formal hearing proceedings; and
- Assessing the adherence of the Board and its staff to statutes, rules, and policies during the course of investigations, negotiated orders, administrative hearings and general Agency operations.

Extensive interviews were conducted with the ED, each staff member of the WBOA, the Board Chairman and other selected Board members, the QAR Committee co-chair, and the assigned Assistant Attorneys General (AAGs) to the Board and their immediate supervisor.

A comprehensive review was made of all existing Board policies and the WBOA procedures. In-person reviews were conducted of the following files, generally covering the period of January 1, 2007 to March 30, 2010: (1) the majority of PRRs received by the Board; (2) all completed and pending formal hearing cases; and (3) a review of 11 judgmentally selected QAR files which received a grade of “unacceptable” from the 2007, 2008 and 2009 QAR cycles. In addition, 54 investigation files that were opened and closed during the period of January 1, 2007 through March 30, 2010 were randomly selected for review, in order to develop a statistically valid sample to ascertain the overall compliance with investigation key controls and procedures. Finally, all Board policies, Agency procedures and practices were reviewed against applicable Washington statutes, rules and case law, including the Open Public Meetings Act (OPMA), the Public

Records Act (PRA), the Administrative Procedures Act (APA), the Ethics in Public Service Act (Ethics Act), the Appearance of Fairness Doctrine (Fairness Doctrine) and the Public Accountancy Act (PAA).

III. PUBLIC RECORD KEEPING; PUBLIC RECORD RETENTION AND DATA RETRIEVAL PROCESS

A. Records Management—Retention and Destruction

1. Applicable Statutes, Rules and Policies

- RCW 40.14.010—Preservation and Destruction of Public Records
- Administrative Policy #28—Records Management
- General Records Retention Schedules—Office of the Secretary of State—Division of Archives and Records Management
- Unique Records Retention Schedule for the WBOA (Unique Schedule)

2. Current Process or Practice

The WBOA has a designated Records Officer in accordance with RCW 40.14.040. The Records Officer has the fundamental responsibility of developing a comprehensive records management program. This program should meet the following goals on behalf of the Agency: (1) fulfill legal mandates and responsibilities; (2) store records in the most efficient and cost-effective manner; and (3) assure access, protection and security of the documentary history of government. RCW 40.14.040.

The WBOA follows an approved Unique Schedule most recently updated on February 12, 2010. The Unique Schedule covers the following series of records: (1) QAR Files—No Probable Cause; (2) QAR Files—

Probable Cause; (3) Renewal Correspondence; (4) Uniform CPA Exam; (5) CPA Files; (6) Continuing Professional Education (CPE) Records; (7) Board Orders; (8) Revenue Report; (9) CPA Violations; (10) CPA License Validations; and (11) CPA Firm Files. For all other types of records, the WBOA follows the Secretary of State's General Records Retention Schedule.

The Records Officer reviews the Unique Schedule once a year and when there is a process change. The Records Officer proposes changes to the Agency's Unique Schedule and submits them to the ED for approval.

The Secretary of State's Office provides monthly meetings and regular training courses that the WBOA's Records Officer routinely attends.

The Records Officer maintains chronological binders of destruction logs within the office. The destruction logs include an internal destruction log that the Records Officer uses to track the destruction of certain files that are stored on-site, and a separate destruction log of notifications from the Washington State Records Center for records stored off-site. The Records Officer reviews the planned destruction reports from the State Records Center and either allows the records to be destroyed as planned, or suspends destruction if a record relates to an ongoing case, audit, a PRR, or a litigation hold.

The WBOA staff is further guided by Administrative Policy #28—Records Management. This policy sets forth the general guidelines and processes for records management within the Agency and accurately summarizes the current procedures the Records Officer follows. In relevant part, the policy: (1) requires all employees to receive approval from the Records Officer before records can be destroyed; (2) sets forth the general requirement that the Records Officer provide ongoing training and assistance

to staff and Board members on records retention requirements; (3) requires the Records Officer to annually review the retention schedules to ensure they are current and complete; and (4) mandates the random review of employees' records to ensure compliance with the Agency's records retention schedule and policy.

The Records Officer has recently begun training staff on retention requirements for e-mail and what records are considered a "transitory record" or "draft" that need not be retained. The records retention schedules have been provided to all staff and Board members.

3. Analysis/Comments

The records management policies, procedures and schedules for the WBOA are sound and effective and are being followed by staff. The Records Officer has a good understanding of the applicable retention and destruction schedules for all the types of records maintained by the WBOA. The Records Officer completes regular training in the area of records management and attends a monthly meeting for all state records officers.

The Records Officer timely reviews and regularly updates the records retention schedules. In addition, the Records Officer routinely goes through the office approximately every six months to determine if records are up for destruction. However, overall current records destruction can lag behind a year or longer due to the Records Officer having to approve every record destruction request for each staff member. Additionally, the Agency had a previous practice of never deleting any e-mail records and a records retention schedule for investigation files set at 25 years. Such practices have resulted in a backlog of records that needs to be properly retained or destroyed under current retention schedules.

The WBOA generally maintains the majority of its records in a paper format. The Agency does not scan paper records for records retention purposes at this time.

There are electronic folders kept for certain matters (i.e., investigation files, QAR files, PRRs, etc.). These folders include any electronic records received or created by the Agency related to that matter. There may also be a paper file associated with the same matter.

For example, an electronic investigation folder may contain Word documents such as the inquiry to the CPA, or CPA firm, who is the subject of investigation, acknowledgement of the complaint, the Consulting Board Member (CBM) memorandum and scanned excerpts from the paper file (i.e., portions of the CPA's response or other relevant documents that were provided).

A PRR electronic folder may contain a scanned copy of the request, Word documents prepared by staff, such as the five-day acknowledgment letter, 15 day notices for privacy concerns to third parties, invoices and records transmittals to the requester and a redaction/withholding index that is prepared in an Excel spreadsheet format.

The electronic folders do not consistently contain any associated e-mail records created or received by staff. Investigations staff have recently begun saving e-mail records involving investigations to a specific drive and have done away with separate drives on their computers for various investigations.

In addition to these electronic folders, both the investigation and public records matters will also generally have a paper file associated with them. The records maintained in the electronic folder and the paper file, for any given matter, do not completely duplicate each other. Therefore,

Agency staff is required to search both electronic and paper records when determining what records the WBOA maintains on any particular matter.

In order to determine what records the Agency maintains on a particular Licensee or firm, staff relies primarily on the CPAWare database. The CPAWare database lists the investigation case ID numbers for the Licensee and the firm they work for, the status of the case, and a chronological listing of process steps from the opening of a file to its current status or closure. However, the CPAWare database does not contain all investigation files nor all documents related to any particular investigation. The database generally contains files back to 1990. Older investigation files are inventoried on index cards.

The Agency's current records retention schedule became effective in February 2010 and provides that investigation files are kept for six years from the date of Board action (i.e., dismissal or entry of a Board disciplinary order). Previously, the WBOA maintained investigation files for 25 years.

There is no comprehensive inventory numbering system for all records organized by particular Licensee or firm. The WBOA does maintain a master list of its files that are sent to the State Records Center for storage. The list is organized by records series and contains the Agency box number and disposition dates. According to the staff, investigation files in the CPAWare database reference the Agency box number for location purposes.

The WBOA is expanding its use of electronic systems for such functions as licensing and renewals. These changes will create a new series of electronic records that will need to be maintained in accordance with the Agency's approved retention schedule. In addition, the Agency is in the process of assessing an e-mail management system that is available through the Department of Information Services. This system will permit staff to file

and archive their e-mail according to its record category. The e-mail management system will then automatically retain and destroy the records based on the programmed retention/destruction schedules.

4. Recommendations

a) Training. The Records Officer should continue to receive appropriate training and make the attendance of monthly meetings with other state records officers a priority. In order to ensure all other staff and Board members are adequately aware of and updated in proper records management, it is recommended that current policies and procedures be revised to require annual training. This training can be provided by the Records Officer and/or the assigned AAG Advisor. In addition, brief in-service instruction should be provided by the Records Officer throughout the year on major changes to the Agency's records management processes or when the records retention schedules are updated.

b) Records Inventory. It is recommended that a comprehensive inventory system for the Agency's electronic and paper records be created to capture the existence of all records in one database. While it may be necessary to have separate electronic and paper records on any given matter, it is vital that their existence and location be readily known by the Records Officer and the Public Records Officer so that searches and retrievals of records can be accomplished in a timely and reliable manner. At present, searches for records on any particular Licensee or firm require the concerted effort of all staff to find any paper files, electronic folders on various computer drives and e-mail records. Moreover, the CPAWare database at this time cannot be relied upon to inform staff of all records that exist or where they are located.

The ED began an initiative in this regard in 2009 and asked the IT Director to come up with some ideas to develop a technologically-based system to inventory, identify and search the Agency's records. It is recommended that this project be resurrected and that staff continue to pursue the exploration of other shared services or support they can receive from other government agencies in this regard.

c) Electronic Records. The Records Officer and the IT Director should continue acquiring knowledge in this area and implement changes to the records retention schedules and policies for the electronic records generated by new online processes. In addition, electronic imaging of records for storage and retrieval purposes should be studied to determine if it is cost-effective, especially for records series that are required to be maintained for long periods of time (i.e., Board orders kept 25 years), or for records that are routinely the subject of PRRs. It is recommended that such an initiative could be started with the electronic imaging of investigation files once the investigation is complete. This process would bring together all paper and electronic records for each particular case and provide one comprehensive scanned file that can be easily retained and retrieved for records management and responding to PRRs once a file is open to the public.

d) E-mail Records. It is recommended that the Agency proceed with the implementation of the e-mail management system available through the Department of Information Services. Additionally, staff should be provided comprehensive training on how to properly categorize, file, retain and destroy e-mail under this system. Training is especially important since the maintenance of these records is the individual

staff member's responsibility. Moreover, Agency policy requires staff to also maintain the e-mail records of Board members that relate to official business. In the event an e-mail management system is not used, staff will need comprehensive training and written procedures on how to categorize, archive, retain and destroy the Agency's and the Board members' e-mail records in accordance with the WBOA's retention schedules.

e) Staff Destruction of Records. It is recommended that in addition to e-mail records, staff be permitted to destroy routine records that have reached their retention period under particular guidelines. The Records Officer should request a report from each staff member of the types of records they create or receive in carrying out their duties. The Records Officer should then identify those routine records that staff, in accordance with the records retention schedules, can destroy on their own. A reporting system can be put into place for each employee to log destruction of certain identified records as they are destroyed. This system would remove the requirement for the Records Officer to approve every routine destruction request, with the goal of making overall destruction of records more timely. The Records Officer would continue to approve all non-routine destruction requests for significant records series (i.e., investigation files, licensing files, etc.).

f) Old Investigation Files and E-Mail Records. It is recommended that all investigation files and e-mail records that are beyond their destruction date be destroyed in compliance with the revised records retention schedule. In light of the updated retention schedules, it is strongly recommended that the Agency make the destruction of these old records a priority. Maintaining records beyond their retention period creates an

additional burden on the Agency to search and produce those records in response to a PRR and also increases the likelihood for error in locating and retrieving such records.

g) Miscellaneous. It is recommended that the official copy of all Board member materials be retained by the WBOA. Records management policies should require that Board members return their copies of materials to staff for destruction at the conclusion of every Board meeting, or when the particular matter is finally concluded.³ Only the official copy of Board materials maintained by the WBOA should be used for purposes of responding to any PRR.

B. Public Records Requests—General Requirements and Initial Receipt Procedures

1. Applicable Statutes, Rules and Policies

- RCW 18.04.405—WBOA Confidential Information
- RCW 42.56—Public Records Act
- WAC 4-25-520—WBOA Available Records Index
- WAC 4-25-530—Fee Schedule
- Board Policy 2000-2 Public Inquiries
- Public Records Requests Procedures
- “Requesting Public Records”—WBOA website

2. Statutory Background

The Public Records Act was enacted by initiative to provide the people with broad rights of access to public records. The PRA declares that it must be “liberally construed” to promote the public policy of open

³ An exemption may be provided for general reference materials kept by Board members that do not pertain to any specific investigation or disciplinary matter.

government. RCW 42.56.030. This mandate is limited only by the precise, specific and limited exemptions of the PRA. *Id. Progressive Animal Welfare Soc’y. v. Univ. of Wash.*, 125 Wash.2d 243, 258, 884 P.2d 592 (1994). Exemptions under the PRA are to be construed narrowly. *Hearst Corp. v. Hoppe*, 90 Wash.2d 123, 128, 580 P.2d 246 (1978).

As a state agency, the WBOA is subject to the PRA and must make its “public records” promptly available for inspection and/or copying. The definition of a public record contains three elements. RCW 42.56.010(2). First, the record must be a “writing” which is broadly defined in RCW 42.56.010(3) to include the recording of any form of communication or representation including image or sound. Second, the writing must relate to the conduct of government or the performance of any governmental or proprietary function. Third, the writing must be prepared, owned, used, or retained by a state or local agency regardless of physical form or characteristic. *See Yacobellis v. City of Bellingham*, 55 Wash.App. 706, 711, 780 P.2d 272 (1989).

Under the PRA, agencies are charged with the responsibility to “adopt and enforce reasonable rules and regulations...to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency.” RCW 42.56.100. In addition, agencies “shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information.” *Id.*

The PRA requires “prompt” responses. An agency, within five business days of receiving a PRR, must: (1) provide the record; (2) provide an internet address and link on the Agency’s website to the specific records requested, except if the requester informs the Agency that he/she cannot

access the records through the internet, then the Agency must provide copies of the record or allow the requester to view copies on an Agency computer; (3) acknowledge receipt of the request and provide a reasonable estimate of the time the Agency will require to respond to the request; or (4) deny the request. RCW 42.56.520 (as amended, effective June 10, 2010).

3. Current Process or Practice

The WBOA has several procedures and policies in place to guide its compliance with the PRA. The WBOA's administrative rule, Washington Administrative Code (WAC) 4-25-520, lists the public records that the Agency maintains in accordance with RCW 42.56.070. In addition, the WBOA's website notifies the public of the records that would typically be exempt from disclosure. See "Requesting Public Records" on the WBOA's website.

The ED acts as the Public Records Officer and works primarily with the Board Clerk/Executive Assistant (Assistant) on all PRRs. The ED and the Assistant follow the "Procedures for Public Records Requests" (rev. December 21, 2009) in processing all PRRs. The Assistant regularly attends meetings and trainings sponsored by the Washington Association of Public Records Officers.

The WBOA receives approximately 56 PRRs annually per information contained in the Request for Proposal. According to the Public Records Requests Tracking Logs for 2007-2010, the following approximate number and types of requests were received:

YEAR	LIST OF CPAS	SAO REQUESTS	CASE SPECIFIC REQUESTS	BOARD INFORMATION (minutes agendas, polices, procedures)	TOTAL
2007	38	10	12		60
2008	50	12	29		91
2009	53	9	35	2	99
2010- year-to date	19	4	10	1	34

The majority of PRRs are either for the list of successful CPA exam candidates or for Stipulated Agreements and Orders (SAOs) in a particular matter or for a specified time period. Both of these types of requests are typically completed within the initial five-day period. Requests for entire license and/or investigation files on particular Licensees or firms may take more time than the initial five-day period depending on how voluminous the files are.

All PRRs are logged and the date received is noted. However, the Agency did not start assigning PRR numbers until 2010.

In compliance with the PRA, the WBOA accepts PRRs in any format (i.e., mail, e-mail, etc.), including verbal requests that are then confirmed in writing to document the records being requested.

Once logged, the ED and the Assistant consult on the request and determine if a 15 calendar day advance written notice is appropriate to send to the subject of the request (usually a Licensee) or any other third party. This notice informs the recipient that the WBOA may be disclosing personal information in response to a PRR. This letter notification complies with RCW 42.56.520 and notifies the recipient of his/her right to seek a court injunction to possibly enjoin the disclosure of certain information. If no

action is taken by the recipient within the 15-day period, the Agency proceeds to provide the requested records.

If a PRR cannot be completed within the initial five-day period, the WBOA staff determines a “reasonable time estimate” for obtaining the records and performing any necessary review and redactions. The WBOA procedures note that the “reasonable time estimate” should take into consideration: (1) the volume of the request; (2) Agency resources; (3) holidays; and (4) other requests by the same individual.

During the processing of a PRR, assigned staff regularly corresponds with the requester and uses sample response letters set forth in the Public Records Requests Procedures. In the event a PRR is complex or unclear, the WBOA staff may consult with the assigned AAG Advisor and/or seek clarification from the requester. The procedures allow staff to request and obtain clarification either in writing or over the phone.

The WBOA also has a separate policy in place that details how requests for information are to be handled by staff. Policy 2000-2—Public Inquiries provides guidance to staff on handling informational requests from Licensees and the general public that are not requests for actual records. This policy is in line with case law under the PRA that draws an important distinction between a request for information and a request for the records themselves.

The PRA does not require agencies to research or explain public records, but only to make those records accessible to the public. *Bonamy v. City of Seattle*, 92 Wash.App. 403, 960 P.2d 447, 451 (1998); *Limstrom v. Ladenburg*, 136 Wash.2d 595, 604 n.3, 963 P.2d 869 (1998).

The Agency also makes several public records available on its website. Public records available on the WBOA’s website include: Board

agendas, Board meeting minutes, Board policies, list of licensed CPAs and licensed CPA firms, whether disciplinary action has been taken against a particular Licensee or firm and a summary of any Board disciplinary orders issued by year. The WBOA's website does not contain the actual Board orders or settlement agreements issued against particular Licensees. In addition, the website's current Licensee search function does not produce the name of any Licensee that has been suspended or revoked when a name search is conducted.

4. Analysis/Comments

The WBOA's current administrative rules, procedures and policies regarding the handling of PRRs overall are found to be very good and in compliance with the PRA. The Public Records Officer and the Assistant both have an extensive working knowledge of the requirements of the PRA and make the handling of PRRs a top priority within the office. The main guiding written procedure on processing PRRs, revised in December of 2009, is a good compilation of what appears to be process, legal advice and sample form letters. However, this document has not been submitted for legal review by the assigned AAG.

The intake and logging process for PRRs has evolved for the better over time. The Agency did not begin assigning a PRR tracking number to each request until 2010. Previously, the WBOA logged the date received and used that and the requester's name as the identifier for PRRs from individual requesters.

Per a review of a representative selection of PRRs received by the Agency from 2007 to the present, the majority of requests were found to have been processed in a timely and complete manner. In addition, correspondence sent by Agency staff to requesters was found to be

professional, courteous, complete and timely. Within the five-day statutory period, appropriate correspondence was sent to requesters to acknowledge receipt of their request and provide records, request clarification of their request, or deny their request in accordance with the PRA.

Denials of PRRs typically occur in two situations: (1) when a request for the current list of successful CPA candidates is received by an unapproved organization; or (2) when a request is made for an investigation file in an open case. The Agency provides an appropriate denial response or, in the case of a request for the CPA list, appropriate assistance to the requester to possibly become a recognized organization which would allow it to receive the CPA list.

The WBOA staff correctly declines to create records it does not have. However, in such circumstances, the file review revealed that the Agency does provide alternatives to the requester to assist them in obtaining the records they are seeking. For example, a request was received for a database of companies that have purchased the CPA list. This is not a record that exists. The WBOA staff informed the requester it could alternatively provide copies of each request made during a specific time period. Such “full assistance” is required by the PRA and the Agency complies with this mandate.

The WBOA provides very detailed withholding indexes to requesters that indicate which records are withheld in their entirety and which records merely have portions redacted. The index provides the statutory authority for each such redaction or withholding and describes the redacted/withheld record(s) in detail or provides an identifying number index for large requests. These procedures are in compliance with RCW 42.56.210, which requires agencies to provide the specific exemption authorizing the

withholding or redaction of the record and a brief explanation of how the exemption applies to the record redacted/withheld. In a recent public records litigation matter, the Agency's redactions and withholdings of responsive public records were submitted to an *in camera* review by the court. The court determined that the Agency's redactions and the records that were withheld in their entirety were appropriate and in compliance with the PRA.

Representative files regarding voluminous records requests were also reviewed. These files contained correspondence referencing reasonable time estimates and summaries for large requests being completed in installments. The WBOA staff properly indexed and provided records as they became available and documented the items and requested pre-payment before providing the records.

The WBOA properly invoices and charges for copying costs in compliance with the PRA and WAC 4-25-530.

5. Recommendations

While the WBOA's overall procedures are very good, the following recommendations are made to further strengthen the processes already in place:

a) Public Record Request Form. It is recommended that the WBOA develop a PRR Form that can be obtained and filled out on the Agency's website. Although most PRRs are in writing and are generally clear, a PRR form can assist the public in obtaining records and provide additional guidance and instruction in submitting a request. For example, the form can ask the requester to indicate whether they want to inspect or copy the requested records. In addition, the form can also explain how costs are assessed and that an installment payment may be required in certain

situations. A draft PRR form has been developed for possible adoption by the Board. See Public Records Request Form attached as Exhibit 3.

b) Public Records Request Procedures. It is recommended that the following actions/revisions be taken on these procedures:

(1) The procedures should be submitted to the assigned AAG for legal review. Because properly handling PRRs is an area of great potential liability for the Agency, legal review of the processes being used and the exemptions being applied is critical.

(2) The procedures should be updated to include the revised language in RCW 42.56.520 regarding the five-day response directing a requester to records available on the Agency's website.

(3) The procedures should contain a documented internal procedure for review of denials of requests in compliance with RCW 42.56.520. The Agency needs to designate who will conduct the review. The Agency may wish to consider the written procedures used by the Office of Administrative Hearings in WAC 10-04-080 in this regard.

(4) The procedures need to be completed with respect to requests that are "abandoned" by the requester by not submitting a clarification of request, not making the required payment, or failing to pick up records. Staff is finalizing procedures in this area and it is recommended that the Agency consult the Attorney General's Model Rules in this regard. When a request is determined to be abandoned, the procedures should require that the files/records be returned to their appropriate storage location

where they are once again subject to the regular retention/destruction schedule. In addition, notification to the requester should indicate that any monies paid for copying costs will not be refunded in the event of an abandoned request.

(5) The procedures should include required legal review for all voluminous or multi-item requests to assist Agency staff in interpreting the request, determining whether clarification is necessary, and determining whether the Agency's reasonable time estimate and/or installment plan will likely meet the statutory requirements and be defensible if subjected to a legal challenge.

(6) Procedures for modified requests are recommended. Any time a pending request is modified by a requester, a confirming letter should be sent documenting the modification. Any applicable reasonable time estimate should be reviewed for necessary changes and a note of the modification should be included in the PRR log.

(7) It is further recommended that when a PRR is submitted that contains both a request for records and a request for information, that they be handled separately by two separate responses. For example, the requester can be notified that the Agency is processing his/her request for public records and that the request for information will be handled by the Public Records Officer in a separate response. This separation places the requester on notice about the distinction between PRRs (which have applicable statutory deadlines and requirements) versus requests for information that the Agency can choose to respond to in their discretion.

c) Training. Both the Assistant and the Records Officer regularly attend training on records management and public records. However, it was generally acknowledged that other Board staff and the Board members only receive periodic training in these areas. It is recommended that all staff and Board members receive an initial training course in records retention and the PRA upon employment/appointment. Thereafter, it is recommended that annual “refreshers” be provided by the AAG Advisor that address recent legislative changes, relevant case law, etc. Such refresher training could occur at an appropriate Board meeting or, in the alternative, through written memorandums provided by the assigned attorney at the Board’s direction.

The Records Officer, Public Records Officer and Assistant receive ongoing updates from the assigned AAG Advisor on privacy issues, exemptions and other process-related matters as the PRA is further interpreted by Washington courts. It is recommended that the Agency request a standing meeting of key staff with the AAG Advisor to be scheduled every six months to discuss PRR developments.

It is expected that ongoing training will facilitate the updating of Agency procedures and maintain a level of competency and compliance by staff and Board members. It is noteworthy that recent case law describing how penalties are determined by a court in assessing public records violations cites proper training as a mitigating factor that would decrease the penalty amount and, conversely, the lack of training as an aggravating factor that would increase the penalty amount. *See Yousofian v. Office of Ron Sims*, 168 Wash.2d 444, 229 P.3d 735, 747-48 (2010).

d) Logging in PRRs. The process change this year of assigning a PRR number to each request was a good improvement. This enables the Agency to track the request and accurately identify it in correspondence with the requester as well as internally with Agency staff during processing. An even more exact identifier would be helpful. For example, a file number like 2010-0615-1 would indicate that the request was received in 2010, on June 15 and was the first one received that day. This identifier will not only assist in tracking requests throughout processing, but can aid in accurately compiling information on the number of requests received in any given year.

While the PRR log contains information about communications with the requester and some general processing notes, it does not clearly track the initial five-day response required by RCW 42.56.520. It was noted by the Assistant that she often informally tracks this information elsewhere while completing a PRR. A better practice would be to comprehensively track all actions taken on a PRR in the log. For example, the log should consistently track when the five-day period is up for each request and which of the four responses was provided: (1) records provided; (2) requester referred to the WBOA website for records; (3) reasonable time estimate provided; or (4) denial. In addition, the log should track such actions as when clarification requests are sent out and due, when 15-day letters are used and when the response is due, and the details of providing records for an installment or voluminous request.

e) General Correspondence. The WBOA correspondence contains appropriate alerts that the Agency is subject to the PRA and gives notice to individuals that any information they submit to the

Board may be subject to disclosure as a public record. The advisory notice refers to the “Public Disclosure Act.” This reference should be updated in accordance with RCW 42.56.020 to the “Public Records Act.”

f) ED’s Proposed Rule Changes to WAC 4-25-520–“Draft Comprehensive Rule Revisions”–April 2010. The recommended rules are found to be accurate with respect to staff procedures and in compliance with the PRA. It is suggested that section (1) “Hours for inspection of records” be modified to read that an inspection appointment may be made with the Public Records Officer or his/her designee. Although it is the current practice for the Public Records Officer to attend inspection requests so that questions can be answered about the records, this is not a requirement of the PRA. As previously discussed, there is no requirement that an Agency “explain” its public records to a requester. Therefore, other staff members may carry out this responsibility to ensure the records are not damaged, altered or removed during the inspection. It is not recommended that questions or discussion take place during the inspection process. Any questions or requests for information should be handled outside the inspection process and directed to the Public Records Officer or the Assistant for response. Moreover, having other trained staff carry out this function will make the Agency’s records more readily available for inspection.

g) Potential Legislative or Other Changes. The Board may want to consider pursuing some legislative changes to obtain recognized exemption under the PRA to exempt dates of birth, home addresses and home phone numbers. This information is recognized by most other states as a legitimate privacy interest and/or personally

identifying information that would not be available to the public. It is anticipated that if passed, this would significantly simplify the Board's procedures in processing PRRs and would likely eliminate the need for most of the 15-day notification letters the Agency currently sends out.

The Board may also want to pursue legislation that would exempt confidential investigation files that are closed as a result of no findings of unprofessional conduct. Currently, the PRA provides that open investigation files, and the records they contain, of state agencies vested with the responsibility to discipline members of any profession are exempt from public inspection and copying. *See* RCW 42.56.240. However, once an investigation is complete, the file becomes open to the public. Fundamental fairness in the investigation process is furthered by such investigation files not being disclosed to the public when a complaint of unprofessional conduct is unfounded as such release may needlessly damage the professional reputation of a Licensee and the accounting profession. Moreover, pursuing an exemption to the PRA in this regard would be in line with other states and would complement the recommendation below to publish cases of unprofessional conduct resulting in Board disciplinary orders on the Board's website.

In addition, the Agency may wish to seek clarification from the State Archivist on the definition of what constitutes an e-mail record that needs to be retained. If an e-mail record need only be retained by the primary senders and recipients (those names appearing in the "To" and "Sent" lines), all "secondary" copies sent in the "cc" and "bcc" lines could be deleted. This would clarify some inconsistent staff practices in handling "secondary" e-mail and reduce a lot of duplicate reproductions of the same e-mail in

response to a request and also eliminate the need to ask the requester if they want such records.

h) Website. Pursuant to the recent changes to RCW 42.56.520 of the PRA, the legislature is encouraging agencies to make commonly requested records available on their websites. The legislature further encourages members of the public with computer access to obtain records online to preserve taxpayer resources.

One of the most commonly requested records of the WBOA are Board disciplinary orders. It is recommended that these records be made available on the WBOA's website by linking them to the Licensee's name and/or firm's name. In addition, it is recommended that the Agency take steps to correct its website so that when a Licensee is suspended or revoked, their name appears along with the corresponding Board order when a member of the public does a name search.

These changes are not only consistent with amended RCW 42.56.520, but would also eliminate a significant number of PRRs that Agency staff will need to process. Most importantly, publishing the disciplinary orders of the Board will add a higher level of protection for citizens by making the most important public information readily accessible on the WBOA website.

C. Public Records Requests—Records Identification and Retrieval

1. Applicable Statutes, Rules and Policies

- RCW 18.04.405—WBOA Confidential Information
- RCW 42.56—Public Records Act
- WAC 4-25-520—WBOA Available Records Index
- WAC 4-25-530—Fee Schedule (copies of records)

- Board Policy 2000-2–Public Inquiries
- Public Records Requests Procedures
- “Requesting Public Records”–WBOA website

2. Statutory Background

The PRA requires that public records “shall be available for inspection and copying and agencies shall, upon request for identifiable public records, make them promptly available...” RCW 42.56.080. While there is no official format for a valid PRA request, “a party seeking documents must, at a minimum, (1) provide notice that the request is made pursuant to the [PRA] and (2) identify the documents with reasonable clarity to allow the Agency to locate them.” *Hangartner v. City of Seattle*, 151 Wash.2d 439, 447-48, 90 P.3d 26 (2004). Upon a request for identifiable public records pursuant to RCW 42.56.080, the Agency must follow an adequate process to locate and retrieve all responsive records.

“The adequacy of the agency’s search is judged by a standard of reasonableness, construing the facts in the light most favorable to the requestor.” *Neighborhood Alliance of Spokane County v. County of Spokane*, 153 Wash.App. 241, 257, 224 P.3d 775 (2009) quoting *Citizens Comm’n on Human Rights v. Food and Drug Admin.*, 45 F.3d 1325, 1328 (9th Cir. 1995). An agency fulfills its obligation under the PRA if it can demonstrate beyond a material doubt that its search was “reasonably calculated to uncover all relevant documents.” *Neighborhood Alliance of Spokane County*, 153 Wash.App. at 257 quoting *Weisberg v. United States Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). Moreover, the Agency must show that it “made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to

produce the information requested.” *Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). Moreover, if an Agency has reason to know that certain places may contain responsive documents, it is obligated to search barring an undue burden. *Neighborhood Alliance of Spokane County*, 153 Wash.App. at 259 citing *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 327 (D.C. Cir. 1999).

3. Current Process or Practice

Upon receipt and logging of a PRR, the Assistant determines if the request is sufficiently clear to process. Per the Public Records Request Procedures, if the request is clear and concerns records related to regulated individuals or firms, including violation records, a search is conducted of the CPAWare database and information contained in the database is reviewed to identify any responsive records. The Records Officer is consulted to determine the location of any identified records/files and to make arrangements for retrieval if the records are off-site. In addition, an “all staff” notification is sent out to Agency staff via e-mail advising them of the PRR and instructing them to search for any “paper, electronic files and/or e-mail” that may be responsive to the request. This notification also directs staff to “hold” any responsive records during the pendency of the PRR. The notification may also be sent to Board members depending on the nature of the request. The Assistant completes the search for all responsive records based on the information in the CPAWare database, responses from staff and any other “obvious leads uncovered during the search.”

4. Analysis/Comments

The WBOA’s process of identifying and retrieving records in response to a PRR is adequately described in its procedures; however, there

are some Agency practices that make the retrieval process burdensome and unreliable in some circumstances.

First, as discussed in Section III.A, the Agency maintains separate electronic folders, paper files and e-mail records for various matters. Because the existence and location of these records is not organized in any comprehensive database or inventory system, the Assistant must identify and search several locations for responsive records, in addition to relying on staff to also perform searches of their offices and their computers, in response to any PRR.

The comprehensive file review revealed that some past litigated PRR matters resulted in Agency violations of the PRA because not all responsive closed investigative files were listed in the Agency's database. Moreover, in one instance, other responsive records were discovered after the PRR had been completed. This failure occurred for two reasons: (1) the initial request was interpreted too narrowly to only include the "investigative file" when the requester also asked for "all documents related thereto"; and (2) some investigation records (investigator notes) were not kept with the file nor was their existence known.

Second, as discussed in Section III. A., the Agency should assess the feasibility of scanning all paper and electronic investigation records into one comprehensive file when an investigation is completed. All "original" records could be scanned and placed in the master electronic file to be retained and destroyed accordingly. The benefit to this process would be that there would only be one file that would need to be produced in response to a PRR. During the pendency of the investigation, it would not matter that paper and electronic files both are being used since generally these records are not available for public inspection/copying until the investigation is

completed. In addition, the electronic files could be maintained at the WBOA office during their entire retention cycle. The process of electronically scanning the investigation files for purposes of records retention would necessitate approval by the Division of Archives and Records Management.

Third, the e-mail notifications to all staff to search for responsive “paper, electronic and e-mail records” should be centralized to one staff member in the event the e-mail management software is used. While such “all staff” search requests generally work within a small Agency like the WBOA, a centralized approach to retrieving responsive records, especially electronic records, is a more reliable and efficient process. For example, if the Agency pursues the implementation of electronic e-mail management software, the IT Director or the Assistant could perform this function based on a specific search query that would be documented in the PRR file. In addition, a centralized process would assist in limiting potential testimony during any legal challenge of a PRR since only one staff person would be involved in retrieving responsive e-mail records.

Finally, the Agency should consider segregating confidential records (i.e., attorney/client, attorney work product, deliberative process) within the files. Moving these and other identifiable confidential records that would be withheld in their entirety, or require redaction, into a separate area of the file would further facilitate the prompt inspection and copying of the public portions of the file.

5. Recommendations

a) Records Inventory. Develop a records inventory control system or revise the current CPAWare database if possible to capture

the existence and location of all paper and electronic records maintained on each Licensee and firm.

b) Scan Investigation Files for Retention. Consider retention of only an electronic master file for all closed investigation files. This file would contain all scanned records from any related paper investigation files, which can then be destroyed.

c) Centralized E-mail Searches. Centralize the search and retrieval of e-mail in response to a PRR to one staff member.

d) Segregate Files. Segregate confidential records contained in the Agency's files to facilitate inspection and copying of the open portions of the file in response to a PRR. The open records can be readily provided while the Agency is obtaining legal review, completing redactions, or notifying third parties about other portions of the file that may contain exempt or private information.

IV. QUALITY ASSURANCE REVIEW PROGRAM

A. QAR Program

1. Applicable Statutes, Rules and Policies

- RCW 18.04.025–Definitions
- RCW 18.04.045–Board Officers and Staff–Powers and Duties
- RCW 18.04.055–Board Rules
- WAC 4-25-820–What Are the Requirements for Participating in Quality Assurance Review?
- WBOA Policy Number 2000-3 (Revised July 27, 2007)–QAR Program

- WBOA Delegation of Authority dated January 27, 2007
- WBOA Delegation of Authority dated July 27, 2006
- WBOA QAR Manual

2. Current Process or Practice

The WBOA requires that each CPA firm licensed in the state of Washington participate in its Quality Assurance Review (QAR) Program once every three years. Each firm is assigned to a specific cycle to ensure that all firms are included.

The WBOA has an all volunteer committee, currently consisting of 11 CPAs, which is responsible for overseeing the QAR Program and assisting in the completion of the review of reports submitted by firms as further discussed below. The Board also has a designated QAR co-chair who does not serve on the QAR Committee but is ultimately responsible, along with the ED, for the results of the QAR Program.

The QAR Manager ensures that QAR Status Forms are mailed out in early January to each firm included in the applicable cycle. These forms are due back to the WBOA no later than April 30. The form requires each firm to indicate if they are required to participate in the QAR Program or if they are exempt from participation. A firm is exempt if: (1) it has participated in an approved peer review program within the last three years; or (2) it has not performed any audits, reviews, compilations or attestation work in the last three years. In the event a firm does not respond to the Status Form request, the firm is referred to the investigation staff for enforcement action.

Firms that indicate they are exempt from the QAR Program because they participated in an approved peer review program within the last three years must submit a copy of their most recent peer review report, letter of comments, if any, response to the letter of comments, if any, and the letter of acceptance from the peer review sponsoring organization. All documents submitted by firms claiming a peer review exemption are forwarded to the Agency's investigation staff for review and determination as to whether further action is required.

Firms that are not exempt from the current QAR Program must submit one example of each type of report (audit, review, compilation, agreed-upon procedures, forecast, internal control, performance audit and projection) prepared within the last 12 months preceding the date of the Status Form request or within the three-year period, if no such reports were issued in the last 12 months. *See* WAC 4-25-820. These reports are then gathered and kept for the QAR Review Session which is held in June of each year.

The QAR Review Session normally consists of approximately 25 volunteer CPAs and spans two days. Additionally, the WBOA holds a three-hour training session in May for all volunteer CPAs participating in the QAR Review Session.

In the QAR Review Session, each report selected for review is reviewed and graded by three different CPAs. The first CPA reviewer uses pre-approved standardized checklists to review the selected report and attachments for appropriateness as to form and content. The reviewer then grades the report as acceptable, acceptable with comments or unacceptable. The second reviewer or "Team Captain" then reviews the report and attachments using the same checklists used by the first reviewer. The Team Captain then agrees with the grade assigned by the first reviewer or assigns

another grade. A third and final review is performed by a QAR Committee member. The QAR Committee member then agrees with the grade assigned by the Team Captain or assigns another grade. The QAR Committee member's grade is final and supersedes any previous grade.

Subsequent to the QAR Review Session, each firm that received a final grade of acceptable receives a letter from the WBOA notifying the firm of the same. Each firm that received a final grade of acceptable with comments receives a letter notifying the firm of the results of the review with an attached "Potential Deficiency List" which describes the comments from the QAR Review Session. These files are then closed.

Each firm that received a final grade of unacceptable receive a letter from the WBOA with an attached "Potential Deficiency List" which summarizes the comments that resulted in the unacceptable grade. These firms are asked to respond and agree or disagree with the comments. If a firm agrees with the comments, the file is held for a final review by the QAR Committee. If a firm disagrees with the comments, the objections are taken back to the original QAR Committee reviewer to determine if there should be any changes in the comments and/or final grade based upon the firm's response.

A meeting of the QAR Committee is scheduled to review the responses received from firms that received unacceptable grades. This meeting generally lasts a full day and results in the QAR Committee recommending sanctions that are believed to be appropriate for each firm receiving a final grade of unacceptable for the first time. If a firm's final grade is unacceptable and that firm has received an unacceptable grade in a previous QAR cycle, the file is immediately referred to the investigation staff for enforcement action.

The QAR Committee’s recommended sanctions and the QAR Review Session file for firms with first time unacceptable grades are then reviewed and approval by the ED and the Board’s QAR co-chair. A Respondent Contract is sent to each such firm detailing sanctions, which can include recommended additional CPE, pre-issuance reviews of future reports, a field review of a firm’s practice by investigation staff or contract investigator, and/or inclusion in the next QAR cycle. A firm has the opportunity to accept the Respondent Contract as offered or request a meeting to discuss the same.

Once a Respondent Contract is finalized, the QAR Manager follows up to obtain documentation that the sanctions have been satisfied in a timely manner. The QAR Manager maintains electronic spreadsheets for each QAR cycle to monitor the compliance of all firms which entered into a Respondent Contract.

The 2007, 2008 and 2009 QAR cycles produced the following results:

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Firms in Cycle	660	522	781
Peer Review Exemption	(224)	(181)	(244)
Limited Scope Exception	(305)	(212)	(378)
No Response Received	<u>(6)</u>	<u>(0)</u>	<u>(12)</u>
Total Firms Submitting Reports for Review	<u>125</u>	<u>129</u>	<u>147</u>
Total Firms Receiving a Grade of Unacceptable	<u>31</u>	<u>28</u>	<u>40</u>

3. Analysis/Comments

The QAR Program is well documented and the policies are well defined. The QAR Manager is knowledgeable of her position and appears to diligently perform the tasks necessary to ensure that the QAR Program is successful.

In order to ascertain that the procedures established for the QAR Program were being performed properly, a judgmental selection was made of 11 QAR files with reports graded as unacceptable from the 2007, 2008 and 2009 cycles. This judgmental selection was made from electronic spreadsheets maintained by the QAR Manager. These spreadsheets indicate the file numbers of the firms that received unacceptable grades on their reports, the dates the Respondent Contracts were mailed to the firms, and the dates the Respondent Contracts were accepted by the firms, or alternative actions taken if Respondent Contracts were not entered into by the firms, e.g., in one matter the firm agreed to retire its license. The selection of 11 files represented approximately 11 percent of all files graded as unacceptable during the 2007, 2008 and 2009 QAR cycles.

After the judgmental file selection was made, a list of key controls over the QAR Program was developed from a review of the applicable statutes, rules and policies (as denoted above), other documentation provided by the WBOA and the results of interviews conducted with staff. The key controls and the results of the testing of those controls are summarized in Exhibit 4.

The testing indicated that the majority of the controls were generally functioning as intended with the exception of: (1) the final review by the QAR Committee of the firms' responses to Potential Deficiency Lists for

reports graded as unacceptable; and (2) the ED's and Board QAR co-chair's approval of sanctions recommended by the QAR Committee. During interviews with the ED, the QAR Manager and QAR Committee co-chair, it was represented that these controls were functioning at all times; however, the interviewees agreed that the files contained a lack of written documentation regarding the same. It should be noted that the only other key control that was in compliance less than 80% of the time was the use of appropriate checklists in the review of the reports and related attachments. This control was not functioning in three of the 11 files reviewed from the 2007 QAR cycle. The files from the 2008 and 2009 QAR cycles were 100% in compliance with this key control.

As was previously stated, the QAR Program seems to be functioning well. The issue that needs to be reviewed by the WBOA is the effectiveness of this process given the results that are achieved and the amount of volunteer and staff time required. The QAR table above shows that there were 99 firms in the last three years that received some type of training and oversight from the QAR Program. While the types of matters noted in our review of the 11 files were definitely departures from authoritative standards recognized in the WBOA's rules, the types of matters noted would generally not be considered significantly harmful to the public.

As described in Section V, the WBOA needs additional resources to more efficiently carry out its investigation functions. As such, it is recommended that the resources currently devoted to the QAR Program be redirected to investigations, if possible, and that other viable options available to the WBOA be implemented to ensure the quality of Licensees' audits, reviews, compilations and attestation engagements.

4. Recommendations

a) QAR Program Transition. The Board should transition out of the QAR Program in its current form. The Board should adopt rules (or amend WAC 4-25-820) to require any Licensee who performs audits, reviews, full disclosure compilations, or any attestation services to provide a peer review report to the Board every three years. Peer review reports should be required to be prepared by a team approved by the AICPA peer review program or another team pre-approved by the WBOA.

Licensees that only perform non-disclosure compilations should be required to notify the Board every three years that this is the only level of attest service being performed. The Board should select a limited sample of these self-reporting Licensees through a systematic selection process and require them to submit reports for review by investigation staff or contract investigators. A nominal fee could be assessed to all Licensees in this group to assist in defraying the cost of the reviews to be performed.

The adopted procedures should also set forth the process of the Board to request reports from Licensees when there is information of potential substandard work. The Board's current QAR co-chair should remain responsible for overview non-disclosure compilations selected for review on a systematic or judgmental basis.

b) Dissolution of the QAR Committee. If the QAR Program is transitioned as recommended above, the current QAR Committee should be dissolved. Current QAR Committee volunteers may make excellent volunteers in other areas of the WBOA's activities where such resources are needed.

c) Current QAR Program Policies Should Remain.

The Board's current policies for the QAR Program should largely survive the transition phase while being restructured to place firms in a rotating three year cycle. Current policies should also be utilized for those non-disclosure compilations selected for review on a systematic or judgmental basis, except for certain changes recommended in Subsection d) below.

d) Changes to Current QAR Program Policies.

Regardless of whether the recommendation to transition out of the current QAR Program is implemented, the Board's current policies for the QAR Program should be revised to include the following recommendations:

(1) A work program should be developed that will be kept in each QAR file. This work program should identify the significant controls that are in place and each key control step should be individually signed off and dated by the person completing the same; and

(2) Any instance of non-compliance with the work program should be documented and approved in writing by the QAR Committee co-chair.

V. INVESTIGATION AND DISPOSITION OF COMPLAINTS

A. Statutory Background

The WBOA's functions are both executive and judicial in nature. The WBOA carries out its executive police power in investigating complaints, either initiated by the public or on its own motion, regarding allegations of unprofessional conduct. The Board then acts in a judicial capacity by adjudicating complaints through stipulated agreements and by presiding over

formal evidentiary hearings. Through either process, the Board ultimately determines violations and orders appropriate disciplinary sanctions.

Longstanding state and federal case law establish that the combination of investigatory, prosecutory and adjudicatory functions in one agency do not violate due process. *Nationscapital Mortgage Corp. v. State of Wash. Dep't of Fin. Inst.*, 133 Wash.App. 723, 765, 137 P.3d 78 (2006); *Wash. State Med. Disciplinary Bd. v. Johnston*, 99 Wash.2d 466, 479-480, 663 P.2d 457 (1983) (the mere combination of adjudicative and investigative powers in one agency, without more, would not be viewed by a reasonably prudent and disinterested observer as denying any party a fair, impartial and neutral hearing). Fundamental fairness of the proceedings, starting with the investigation process, is paramount to ensure that a court will not disturb the administrative decisions of the Board. In this regard, the Board is governed by the Administrative Procedures Act (APA), RCW 34.05, the Appearance of Fairness Doctrine (Fairness Doctrine), RCW 42.36 and the Model Rules of Procedure (MRP), WAC 10-08, adopted by WAC 4-25-540.

Washington courts recognize that an individual's interest in a professional license is profound and represents a property interest to which due process protections apply. *Johnston*, 99 Wash.2d at 474; *Ritter v. Bd. of Comm'rs of Adams County Pub. Hosp. Dist. No. 1*, 96 Wash.2d 503, 510-11, 637 P.2d 940 (1981). The U.S. Supreme Court stated that procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendments. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893 (1976). Primary among the safeguards of procedural due process are proper notice, the opportunity to be heard and an adequate standard of proof. "The function of a standard of

proof...is to instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.” *Addington v. Texas*, 441 U.S. 418, 423, 99 S. Ct. 1804 (1979), quoting *In re Winship*, 397 U.S. 358, 370, 90 S. Ct. 1068 (1970). The Washington Supreme Court recently determined that the minimal constitutional standard of proof in a professional disciplinary hearing is clear, cogent and convincing evidence. See *Ongom v. State Dep’t of Health*, 159 Wash.2d 132, 148 P.3d 1029 (2006); *Nguyen v. State Dep’t of Health Med. Quality Assurance Comm’n*, 144 Wash.2d 516, 29 P.3d 689 (2001).

In addition to the procedural requirements of the APA, the “Appearance of Fairness Doctrine” provides additional protection because it requires the Agency not only act fairly but do so with the appearance of fairness. See *Smith v. Mount*, 45 Wash.App. 623, 626, 726 P.2d 474 (1986). However, merely combining investigative and adjudicative functions is insufficient to invoke the doctrine without also demonstrating bias. *Johnston*, 99 Wash.2d at 479. Courts have applied the doctrine to agency proceedings when: (1) an agency has employed procedures that created the appearance of unfairness; and (2) when one or more acting members of the decision-making body have an apparent conflict of interest creating an appearance of unfairness or partiality. *Faghih v. Wash. State Dep’t of Health Dental Quality Assurance Comm’n*, 148 Wash.App. 836, 842-843, 202 P.3d 962 (2009). The test is whether “a disinterested person having been apprised of the totality of a Board member’s personal interest in a matter being acted upon, [would] be reasonably justified in thinking that partiality may exist.” *Swift v. Island County*, 87 Wash.2d 348, 361, 552 P.2d 175 (1976).

All of these requirements must be satisfied in order to preserve the neutrality and efficacy of the Board's adjudicatory process, from the investigation stage, through the SAO or formal hearing stage, to the entry of the final Board decision.

B. Investigation Process

1. Applicable Statutes, Rules and Policies

- RCW 18.04.045–Board–Officers and Staff–Powers and Duties
- RCW 18.04.295–Actions Against CPA License
- RCW 34.05.088–Enforcement of Agency Subpoena
- WAC 4-25-910–What Are the Bases for the Board to Impose Discipline?
- WBOA Policy Number 2004-1, dated October 24, 2004 (Last Revised October 17, 2008)–Sanction and Penalty Guidelines
- WBOA Delegation of Authority to Executive Director, dated October 17, 2008
- WBOA Delegation of Authority to Deputy Director or Assistant Director of Investigations, dated October 17, 2008
- WBOA Delegation of Authority to Executive Director, dated April 28, 2006
- WBOA Administrative Policy # 25, dated December 7, 2005–External Investigations

- WBOA Investigations Unit Deskbook Procedures and Template Original Publication October 2004, Version 1.1 Approved February 2005
- Investigative Process Discussion Outline prepared by the Executive Director, dated March 9, 2009
- 2006 Regulatory / Hearing & Legal Processes with Investigation Outlines prepared by the Executive Director, dated March 11, 2006
- Complaint / Investigation Process provided by the Deputy Director (Last Revised on January 14, 2008)

2. Current Process or Practice

The WBOA's investigation process is primarily staffed by the Deputy Director (DD) and the ED. The benefit of experienced staff members is that the individuals handling the investigation process have a significant background and knowledge in Washington Statutes, the WBOA Rules and the various sources of authoritative professional literature with which Licensees must comply in accordance with WAC 4-25-631. The knowledge and background of the DD and ED were apparent during the interviews and file review procedures conducted during the Performance Review Project (PRP).

The WBOA's investigation process breaks down into two distinct types of matters. Those that are deemed delegated to the ED for resolution with the approval of a single Board member (administrative cases) and those that require approval by the full Board (non-administrative cases).

Administrative Cases

Matters which the ED may resolve with the concurrence of one Board member are detailed in the Board's Delegations of Authority dated April 28, 2006 and October 17, 2008. These two Delegations of Authority are nearly identical and generally result in the same powers being delegated to the ED. These delegations give the ED the authority to settle, after obtaining the concurrence of a single Board member, certain enforcement actions with a Respondent through the issuance of Administrative Notices of Noncompliance. The Delegations of Authority specify the following types of administrative violations which the ED may adjudicate in this manner:

- a) Noncommercial uses of the CPA title on business cards, resumes or other applications for employment;
- b) First time misuses of the title of CPA or CPA-Inactive;
- c) First time failures, under certain circumstances, to obtain or renew a firm license by a resident or non-resident firm;
- d) First time failures to timely notify the WBOA of a change in addresses, change in firm name, change in firm ownership or change in managing Licensee;
- e) First time failures by a nonresident CPA to obtain or renew practice privileges;
- f) First time CPE deficiencies not exceeding 16 hours;

g) First time misunderstandings of courses qualifying for ethics CPE requirement; and

h) Other first time failures including failures to meet CPE documentation requirements upon audit, uses of titles likely to be confused with CPA and failures to deliver original client records.

The Delegations of Authority contain specific administrative sanctions for each of these delegated matters. The administrative sanctions vary for each matter but can include a specific fine or range of fines, cost recovery, applicable fees and other proof of completion of deficiency.

In these delegated administrative matters, the information leading to the investigation is reviewed by the DD or the staff reporting to him. If the investigation staff deems a violation(s) (hereinafter “violations”) has occurred, a file is opened and the Respondent is contacted by letter, which provides the Respondent 20 days to respond to the alleged violations. Most Respondents concur with the violations. After the response is received the WBOA staff primarily engages in assisting the Respondent in correcting the violations in a timely manner and agreeing upon appropriate remediation or sanctions.

Once the investigation process is complete, the investigation staff prepares a Consulting Board Member (CBM) memorandum⁴ which is reviewed and approved by the ED. The ED then selects a CBM. The CBM memorandum is sent to the selected CBM for approval. After receipt of the CBM’s approval, an Administrative Notice of Noncompliance is prepared and sent to the Respondent for signature. Upon receipt of the executed

⁴ The Consulting Board Member memorandum identifies the Respondent, summarizes the matter(s) under investigation, discusses any limiting or aggravating factors and suggests proposed sanctions.

Administrative Notice of Noncompliance, the Board Clerk/Executive Assistant (Assistant) monitors the file for proper completion of the sanctions imposed. Once the sanctions are fulfilled, the file is closed.

Non-Administrative Cases

Non-administrative cases, which are cases that allege substantive unprofessional conduct, begin when the complaint or information generating the investigation is received by the DD. The DD determines whether or not an investigation file should be opened and obtains the approval of the ED. Once an investigation file is opened, the Respondent is notified of the complaint and given 20 days to respond. Once the Respondent's response is received, additional investigation procedures are performed as deemed necessary. These additional procedures may include, but are not limited to, the following:

- (1) Interviewing the Respondent, the complainant and/or potential witnesses;
- (2) Requesting additional documents from the Respondent and/or the complainant;
- (3) Performing a field review of the Respondent's operations; and
- (4) Reviewing other Washington state agencies' or other state accountancy boards' databases for relevant information regarding the Respondent.

After the completion of the investigation process, the ED reviews the investigation file and determines if the evidence obtained support unprofessional conduct violations. If no violations exist, the ED can direct the investigation staff to close the file without the approval of a CBM or the

Board. If the ED determines that violations have occurred, he confers with the DD and develops recommended sanctions. Once the recommended sanctions are agreed to by the ED, a CBM is selected. A CBM memorandum is prepared by the investigation staff, approved by the ED and sent to the CBM for approval. Upon approval of the CBM memorandum, the ED and/or DD contact the Respondent to inform him/her of the recommended sanctions and negotiate the sanctions, if necessary. If the sanctions are modified from those originally approved by the CBM, the CBM's approval of such changes is obtained.

Once the sanctions are agreed upon, the Assistant prepares a Stipulated Agreement and Order (SAO). The SAO is then sent to the Respondent for signature. Upon receipt of the executed SAO, the SAO and any necessary background information is presented to the Board for approval. The Board's consideration and vote on the SAO takes place via e-mail. (The SAO process is more fully discussed in Section V. C.).

If the SAO is approved by a majority vote of the Board, it is signed by the Board Chair and sent to the Respondent. The Assistant then monitors the SAO for proper completion of any sanctions imposed. Once the sanctions are fulfilled, the file is closed.

In the event the Respondent and the Board cannot come to an agreement through the SAO process, a Statement of Charges (SOC) is prepared and a public hearing process ensues. (This process is described in Section V. D.)

3. Analysis/Comments

On October 17, 2008, the Board delegated the majority of its statutory investigative and settlement authority, subject to ultimate Board approval, to the ED. Under this Delegation of Authority, the ED was "...authorized to

delegate this authority, or any part of this authority, to the DD or other investigation personnel if the ED is recused or otherwise unavailable to fulfill this responsibility.”

Also, on October 17, 2008, the Board delegated significant investigative and settlement authority to the DD and the Assistant Director of Investigations under the direction of the ED, provided that settlements agreed to with Respondents by the DD (with the direction of the ED) were not binding unless approved by a CBM in administrative cases or the Board in non-administrative cases.

These Delegations of Authority minimize the Board’s role in the investigative and settlement processes and provide the ED, DD, and other investigation staff, with the ability to carry out the investigative and settlement processes of the Agency with minimal oversight. Centralization of the Board’s authority in the WBOA staff may be cost effective and efficient but this centralization of authority without oversight by the Board presents significant opportunities for Licensees to claim bias, lack of transparency and lack of fairness in the handling of any particular investigation matter regardless of proper handling by the WBOA staff.

Review of the WBOA’s investigation files revealed some instances where files were opened in error.⁵ In these cases, the files were opened by the investigation staff without the approval of the DD or ED. While the opening of the file appears to have been within the staff’s delegated authority, supervisory approval to open an investigation file would have provided a control that could have assisted in minimizing or eliminating these occurrences.

⁵ For example, files were opened in situations where the Board lacked jurisdiction over the conduct of a Licensee, and in matters where other WBOA procedures should have been followed that would not have resulted in the opening of an investigation file.

In other cases, the ED unilaterally closed investigation files when he determined there were mitigating circumstances. Although the ED's documentation of the mitigating circumstances in the file appeared to be reasonable, the lack of vetting these decisions with the full Board could raise issues of bias, lack of transparency and lack of fairness from Licensees whose files were not closed due to mitigating circumstances.

Moreover, the ED is involved in the investigation process, recommends sanctions and then negotiates those sanctions with the Respondent. This combination of functions could give rise to a perception of a conflict allowing the Respondent to legally challenge the Board's ultimate decision.

Interviews of the WBOA staff confirmed their awareness that there is no current well-documented standardized process for the performance of investigations or the consistent use of key controls to ensure that investigations are properly handled in accordance with the Board's directions and expectations.

The WBOA has published two lengthy documents that set forth investigation procedures. These documents are Administrative Policy #25, dated December 7, 2005, and the Investigations Unit Desk Book, as approved in February 2005. These documents were provided by the WBOA staff at the outset of the PRP in response to a request for all current written policies and procedures of the Board. Based upon interviews of the ED and the DD, neither of these documents have been used for several years. The remainder of the provided policies related to Delegations of Authority and sanction guidelines rather than required investigation process. As such, the WBOA does not have a documented investigation process at this time. Best practices dictate that processes must be documented and sustainable, and

relying on the experience of a particular employee or group of employees is not a substitute for documented processes that fulfill the Agency's investigative mission.

Statistical Sample of Cases

The Request for Proposal related to this PRP required "... a review of a statistically valid sample of completed investigations." To address this requirement, the WBOA was asked to submit a list of all investigations performed for the last three years with a brief description of the investigation and the action taken. The WBOA staff provided a list of 376 investigation matters that were opened between January 11, 2007 and March 15, 2010. Of these matters, 251 of the files had been closed as of the end of April 2010. Based upon the requirement for a statistically valid sample of closed investigations, a sample was selected using the parameters of a 90% confidence level and a 10% error rate. These parameters required that 54 closed investigation files be randomly selected for testing. A random number generator was used and resulted in 54 different files being selected and reviewed in detail.

After the random file selection was made, a list of key controls over the investigation process was developed based upon a review of the applicable statutes, rules and policies (as denoted above), review of other documentation provided by the WBOA staff, and the results of interviews conducted with staff. The identified key controls and the results of the testing of those controls are summarized in Exhibit 5.

After completion of the statistical testing of the random selection of completed investigation files, one should be able to conclude, with a 90% confidence level, that if a key control was found to be in compliance 87% of

the time, that the actual compliance rate for the whole population is between 77% and 97%.⁶

In Exhibit 5, the percentage of compliance of a key control was calculated in two ways. First, the percentage of compliance was calculated as if an “N/A” answer was a “Yes” answer (in essence concluding that if the WBOA’s procedures state a Board vote is not required, then this control was not out of compliance) and, secondly, the percentage of compliance was calculated by excluding the “N/A” answers from the divisor (i.e., the number of “Yes” answers divided by the number of “Yes” and “No” answers). As noted in Exhibit 5, these two sets of compliance percentages are not materially different with two exceptions. The key controls of: (1) the Executive Director approving revisions to SAOs / Respondent Contracts / Administrative Notices of Noncompliance; and (2) the CBM approving revisions to SAOs / Respondent Contracts / Administrative Notices of Noncompliance, had materially different compliance percentages under the two calculation methods. The reason for the material measurement differences on these key controls is not related to any difference in procedures. The material measurement difference results from the significant majority of files not having revisions to the SAOs / Respondent Contracts / Administrative Notices of Noncompliance thereby generating an “N/A” response. This resulted in a much higher ratio of “N/A” answers thereby greatly decreasing the divisor.

⁶ One of the unknown issues at the time the engagement was planned and the statistical selections were made is that the WBOA has two separate investigative processes with similar but different key controls. An example of these differences in key controls is in administrative matters, where no Board vote is needed to implement sanctions, while non-administrative matters need a majority of the Board voting to approve sanctions. As a result of the timing of the discovery of these separate and distinct processes, it was determined that a recalculation of two statistically valid samples (one for administrative matters and one for non-administrative matters) would not significantly benefit the overall quality of the findings and would not be cost effective.

In testing the investigation files and concluding whether a key control was in compliance, a “No” determination was made if compliance with the key control was not documented in the investigation file by the individual responsible for the control. For example, a notation in an e-mail from investigation staff to the CBM assigned to a file stating “Rick [Sweeney, the Executive Director] asked I send this case to you for your consideration as a consulting board member” was not considered proof that the key control of the CBM memorandum being approved by the ED was complied with.

During follow-up interviews, the WBOA investigation staff questioned this determination and as further evidence provided printouts of the case history for various investigation files from the CPAWare database. These printouts indicated that the Assistant or an investigation staff member entered a note on a specific date that: (1) the ED reviewed and approved the CBM memorandum, and/or (2) the CBM approved the CBM memorandum. However, this additional evidence cannot be used to conclude that the key controls were complied with. Without some physical evidence such as manual or e-mail sign-offs indicating the ED’s and CBM’s approval of the CBM memorandum, the key control was deemed not to be in compliance.

Staff interviews confirm that the WBOA had a full-time investigator and a part-time investigator until March 1, 2010. On that date, the WBOA’s full-time investigator voluntarily ceased employment. On March 16, 2010, the WBOA’s part-time investigator was moved into a full-time position and was named the WBOA’s DD. Other than the conversion of the part-time investigator to a full-time DD position, no additional resources have been applied to the investigation process. The reduction from a 1.5 full-time investigator equivalents to 1.0 full-time investigator equivalents in March

2010, is problematic as the investigation process was back logged at the time of the full-time investigator's resignation on March 1, 2010.

The WBOA staff provided a list of all investigation files opened from January 11, 2007 through March 15, 2010. This list included 376 files and provided a brief description of the subject matter of each file and the status of each investigation. A review of the detailed information provided by the WBOA indicated that 125 of these files were still open as of April 2010. More specifically, the information indicated that 12 of the 142 investigation files opened during 2007 were still open as of April 2010, and 23 out of 93 investigation files opened during 2008, were still open as of April 2010.

The DD provided information which showed that as of June 30, 2010, the WBOA had 152 open investigation files. Of these files, 30 were opened in June 2010, 15 files were in the process of being actively investigated, 12 were with the Washington Attorney General's Office, and two files were on hold. The remaining 93 files had all investigative proceedings completed with 19 files pending negotiations of the SAO with the Respondent and 74 files awaiting the completion or approval of a CBM memorandum, the completion or approval of an SAO, or the approval for closure of the file.

The Assistant is responsible for monitoring the sanctions imposed against Respondents as a result of an enforcement action. During our review, it was noted that the Assistant is considerably backlogged in completing the monitoring on these cases. An electronic follow-up list maintained by the Assistant which included open items for all investigation files detailed more than 130 items that were overdue.

In the previously discussed review of the randomly selected investigation files, one file had no evidence of monitoring of completion of sanctions. Subsequently, the WBOA investigation staff provided proof that

those sanctions were fulfilled on November 25, 2009, and that the evidence was located in a “to-be-filed” area some seven months after the evidence was received.

4. Recommendations

a) Establish an Investigations Committee. It is recommended that the Board establish a subcommittee consisting of seven to nine Licensees that will oversee the Agency’s investigations and the WBOA investigation staff and contract investigators. This proposed subcommittee (Investigations Committee) will report directly to the Board and should be responsible for all investigation functions including, but not limited to, the following:

(1) Opening a non-administrative investigation file;

(2) Providing direction to the Agency’s assigned investigator and assigning a consulting Committee member to each non-administrative investigation matter;

(3) Approving requests for the issuance of Board subpoenas in investigation matters;

(4) Recommending appropriate disciplinary sanctions to be proposed to the Respondent for settlement of non-administrative matters;

(5) Approving the staff’s recommendation to close any investigation matter in administrative cases;

(6) Approving the recommendation to the Board to close any investigation matter in non-administrative case;

(7) Conducting interviews of Respondents under investigation, as deemed necessary;

(8) Establishing recommended sanctions for SAOs and negotiate, as necessary, with the Respondent, recommended sanctions for SAOs prior to referral to the Board for final approval; and

(9) Negotiating with the Respondent, as necessary, the Board's preapproved sanctions in administrative matters.

b) Investigation Work Plans Should Be Adopted.

The Agency should adopt a standardized work plan for each specific type of investigation (administrative and non-administrative). The work plan should be adhered to for each investigation performed. Any deviation from the work plan should be pre-approved by the proposed Investigations Committee.

c) Work Programs Should Be Maintained in Investigation Files. The Agency should develop a work program that will be kept in each investigation file. This work program would identify and track compliance with the significant controls that are in place for the investigation process as described in the work plan. Each key control step should be individually signed off and dated by the person completing it.

d) Outdated Investigation Policies and Procedures Should be Formally Retired. The Agency should review its current written policies and procedures and delete references to policies and procedures that are no longer being followed. Specific examples of documents no longer being utilized by the Agency's staff are "Administrative Policy #25" and "Investigation's Unit Desk Book Procedures and Templates (Version 1.1)."

e) Additional Resources Should be Allocated to the Investigation Process. The Agency should consider hiring an additional investigator or outsourcing more complex and time consuming investigations to contract investigators to ensure that numerous administrative or less complex investigations do not become stale due to a lack of resources.

f) Licensees Should Be Responsible for Properly Completing Required Pre-issuance Reviews. The Agency should cease performing pre-issuance reviews for Licensees. If the Board issues sanctions that require a pre-issuance review of a Licensee's work product by an independent CPA, the Licensee should be responsible for contracting with a CPA, acceptable to the proposed Investigations Committee, and the pre-issuer should provide a written statement to the Agency confirming the satisfactory completion of the review. This recommendation will free up the Agency's investigation resources and will ensure that the Board is not exposing itself to unnecessary risks.

g) The Ability to Investigate Should Be Clarified in Existing Statutes and/or Rules. The Board's authority to investigate Licensees based upon information received through a complaint or on its own initiative should be reviewed at the statutory level. While RCW 18.04.045(7) discusses the Board's ability to conduct investigations, the Agency may wish to further clarify this statute to more directly state the Board's investigation authority. In this regard, it is noted that the ED has begun a proposed rule rewrite that includes the Board's investigation process. It is also recommended that this proposed rule or an acceptable

alternative proposed rule be promptly reviewed and approved by the Board and submitted for formal approval through the State’s rulemaking process.

C. Informal Adjudication—Stipulated Agreement and Orders Process

1. Applicable Statutes, Rules and Policies

- RCW 18.04 Public Accountancy Act *et seq.*
- RCW 34.05 Administrative Procedure Act *et seq.*
- RCW 42.36 Appearance of Fairness Doctrine *et seq.*
- RCW 42.52 Ethics in Public Service *et seq.*
- WAC 4-25 *et seq.*
- WAC 10-08 Model Rules of Procedure *et seq.*

2. Current Process or Practice

Both the Administrative Procedures Act (APA) and the Model Rules of Procedure (MRP) strongly encourage agencies to establish rules and procedures for resolving matters through informal settlement. RCW 34.05.060; WAC 10-08-230. All non-administrative cases before the WBOA are attempted to be settled informally by entering into a Stipulated Agreement and Order (SAO). The Board has specific authority to enter into SAOs pursuant to the Public Accountancy Act (PAA) and has delegated such authority to the ED subject to the concurrence of and final approval by the Board. RCW 18.04.045; Delegation of Authority, dated October 17, 2008.

The informal adjudication process begins once the investigation of a matter is complete. Upon completion of the investigation, a proposed SAO is drafted.

The SAO sets forth the procedural posture of the case, and the proposed stipulated facts and conclusions of law. The SAO will describe and reference the particular violations of the PAA and/or Board rules by the Respondent, and includes the proposed terms of settlement in the form of an agreed order.

The SAO is sent with a letter from the ED, which generally notifies the Respondent that there is a case against him/her, that there appears to be sufficient evidence to impose discipline against the Respondent, and that the Board may be willing to settle the case based on the terms set forth in the SAO enclosed with the letter. The letter also sets forth the various options available to the Respondent as follows: (1) to settle the matter informally based on the terms contained in the enclosed SAO; (2) to propose a counteroffer of settlement; or (3) to reject the SAO and request a hearing before the Board.

The letter states that if the Respondent agrees to the terms of the SAO, it will not be binding until it has been signed by the Respondent and it has been approved by the Board. In the alternative, the letter also notifies the Respondent that if he/she chooses to request a hearing before the Board, the ED will prepare a Statement of Charges (SOC) and schedule the hearing.

The Respondent is given 20 days to respond to the letter and is also notified of the actual date by which the Board must receive the response. The 20-day response period is consistent with the APA, which requires agencies to allow at least 20 days for a Respondent to apply for an adjudicative proceeding, from the time notice is given of the opportunity to file such application. *See* RCW 34.05.413. The letter and the SAO, together satisfy procedural due process requirements as the Respondent is provided

with proper notice of potential charges against him/her, and the opportunity to request a hearing before the Board.

In some cases, the SAO process may involve negotiations between the ED and the Respondent by mail, telephone conferences, or in-person meetings. If a counter proposal is made to a SAO, or if the ED opted to contact a Respondent prior to sending a SAO, the CBM would be involved with the ED throughout such negotiations, with the CBM agreeing to any newly proposed terms for a SAO. If the ED and CBM are unable to reach an agreement for settlement with a Respondent at any point throughout this process, or the Respondent chooses not to negotiate a settlement and requests a hearing, the ED will prepare a SOC and the formal administrative hearing process will begin (this process is discussed in the next section). If the ED and CBM are able to agree with a Respondent as to the terms of a proposed SAO, the SAO is then presented to the Board members for approval.

When a SAO is agreed to in form by the Respondent, the CBM, the investigator, and the ED, it is presented to the Board for consideration via e-mail communications from the Board Clerk/Executive Assistant (Assistant). The e-mail communication goes out to all Board members, with the exception of the CBM who is recused, and includes a copy of the proposed SAO and a copy of the CBM memorandum prepared by the investigator. Each Board member is asked to vote whether they “accept” or “reject” the proposed SAO and send their e-mail vote back solely to the Assistant. The Assistant then tallies the e-mail votes, and if the SAO is passed by a majority vote of the Board, the SAO is forwarded in hard copy form, to the Chairman for signature.

During the course of consideration of a proposed SAO, Board members may ask questions via e-mail directed to the Assistant or the AAG Advisor. All questions and responses from staff are forwarded by the Assistant to all Board members. In addition, any Board member may request to view the investigation file, and the same opportunity is offered to all Board members. The Board handles all approvals of SAOs through this e-mail voting process.

3. Analysis/Comments

The WBOA's informal adjudication process is in compliance with the goal of the APA and the MRP. Both the APA and the MRP strongly encourage the informal settlement of matters, and the WBOA does attempt and accomplishes informal settlement of most of its cases through the SAO process. RCW 34.05.060; WAC 10-08-230. However, some practices used throughout the informal SAO process should be reviewed as they could subject the Board to challenges under the Appearance of Fairness Doctrine (Fairness Doctrine).

In this regard, the practice of the ED, or an investigator negotiating the proposed SAO with the Respondent, without any oversight is of potential risk. Correspondence contained in the investigation files indicate that Respondents have the opportunity to negotiate the terms of the proposed settlement. In most of the reviewed files, it appeared that Respondents' counterproposals were submitted in writing to the WBOA. The ED and CBM then made the determination as to whether the counterproposal was acceptable and would submit it to the Board for consideration. Based on interviews with the WBOA's staff and ED, and upon a review of the Agency's files, it appears that Respondents have consistently been treated fairly during such settlement negotiations. However, the practice of one

staff member meeting with a Respondent to negotiate a settlement can increase the WBOA's exposure to claims that the WBOA acted unfairly, and can set up a "he said/she said" scenario that may compromise the Board's ultimate decision.

The e-mail voting process that the Board employs to consider and vote on SAOs appears to comply with the letter of the Open Public Meetings Act (OPMA), and the APA, but it raises several questions as to whether it is the best practice the Board should be using to carry out its deliberations in disciplinary matters.

It is clear that the OPMA does not apply to the disciplinary proceedings of the Board:

This chapter shall not apply to:

(1) The proceedings concerned with the formal issuance of an order granting, suspending, revoking, or denying any license, permit, or certificate to engage in any business, occupation, or profession or to any disciplinary proceedings involving a member of such business, occupation, or profession, or to receive a license for a sports activity or to operate any mechanical device or motor vehicle where a license or registration is necessary; or

...

(3) Matters governed by chapter 34.05 RCW, the Administrative Procedure Act; or...

RCW 42.30.140.

These exceptions make the OPMA essentially inapplicable to any "licensing" or "disciplinary" proceedings of the Board concerning its Licensees. Moreover, exception (3) of RCW 42.30.140 exempts adjudicatory proceedings governed by the APA. "Disciplinary proceedings

are not subject to the OPMA's disclosure requirements, suggesting a certain pall or privacy cast upon agency disciplinary deliberations." *Clausing v. State*, 90 Wash.App. 863, 872, 955 P.2d 394 (1998).

Based on these exemptions, even if the e-mail voting process could be considered a "meeting" and the questions and answers facilitated through staff were considered "deliberations" or "discussions" under the OPMA, the exemption provided in RCW 42.30.140 makes the OPMA inapplicable to these "deliberations" and the Board's "formal issuance" of SAOs.

However, although the Board's e-mail voting process may comply with applicable statutes, some Board members have expressed concerns over the limited information they obtain and their lack of opportunity to fully engage in simultaneous deliberation with each other via the e-mail system.

The e-mail voting system was implemented largely for efficiency purposes due to the Board members, who are volunteers serving part-time, only meeting once a quarter. Waiting to act on proposed SAOs until a quarterly Board meeting delayed the entry of orders and added a great deal of time to the Board's meetings.

In light of these issues, it is recommended that the Board convene meetings through other technological methods such as video conferencing or telephone conference calls to consider and vote on proposed SAOs.

To begin the process, each Board member should be provided a summary of the CBM memorandum and a copy of the SAO. Next, it is recommended that a telephone conference meeting or video conference call be held by the Board to deliberate and vote together on the proposed SAOs. Necessary WBOA staff may be present to facilitate the process.

Although not legally required, the elimination of the e-mail voting system would ensure that all Board members fully participate in

deliberations that are simultaneous and meaningful. The added benefits over the e-mail voting system are that Board members will be able to fully discuss each proposed SAO with each other, ask questions about the investigation, provide comments, engage in full deliberations, and collectively discuss and apply the disciplinary guidelines in order to reach the best collective decision.

4. Recommendations

Overall, the current practices of the WBOA with regard to the informal adjudicative proceedings are in compliance with the APA and the MRP; however, it is recommended that certain practices be reviewed and modified to further eliminate any possible claims of unfairness or bias of the Board's procedures.

a) Investigations Committee. As discussed in Section V., the proposed Investigations Committee should be an integral part of the SAO process. The Investigations Committee will select a consulting Committee member who will assist the investigator. The Investigations Committee will also review the CBM memorandum and proposed SAO and either approve or make other recommendations regarding the proposed sanctions in non-administrative matters. The recommended SAO will ultimately be subject to Board approval. The proposed Investigations Committee will provide appropriate oversight of the Board's investigation process and the SAO process under the Board's direction.

b) Eliminate Private Negotiations. It is recommended that WBOA staff not engage in private communications regarding settlement negotiations of a SAO with a Respondent without oversight from the Investigations Committee or the assigned consulting Committee member. It

is also recommended that any approved conversations with a Respondent take place in the presence of another staff member or that such conversations be audio-taped, with full, prior disclosure to the Respondent that the communications are being recorded.

c) Consider Eliminating the Use of E-mail Voting.

The Board should consider conducting the deliberation and voting on SAOs in person through telephone conference meetings instead of through e-mail voting. Simultaneous deliberation will encourage the full and complete exchange of information and opinions regarding each case and the proposed sanctions.

d) Assistance of AAGs.

The WBOA and the Board members should consider seeking assistance of the AAGs earlier in the investigation and SAO process in those matters that are complex, will likely proceed to a formal hearing, or when a Respondent seems non-cooperative or hostile. This will ensure better preparation of the case for any potential settlement or formal adjudicative proceedings.

e) Review of Forms.

The form SAO and the accompanying letter being utilized by the WBOA appear to be consistent with the requirements of the APA and the MRP, especially as to content and information provided. It is recommended that the forms be reviewed from time to time by the AAGs to ensure continued compliance with all applicable laws, as they may be amended.

D. Formal Adjudication—Administrative Hearing Process

1. Applicable Statutes, Rules and Policies

- RCW 18.04 Public Accountancy Act *et seq.*
- RCW 34.05 Administrative Procedures Act *et seq.*
- RCW 42.36 Appearance of Fairness Doctrine *et seq.*
- RCW 42.52 Ethics in Public Service *et seq.*
- WAC 4-25 *et seq.*
- WAC 10-08 Model Rules of Procedure.

2. Current Process or Practice

a) Notice of Charges—Formal Adjudicative Proceedings. Formal adjudicative proceedings are governed by the APA, as set forth in RCW 34.05.413 through 34.05.476 and the MRP, WAC 10-08. The practices employed by the WBOA for formal hearings are consistent with the APA and the MRP.

The formal hearing process is initiated when either a Respondent rejects the proposal to resolve a case through a consented SAO process, or when the Respondent fails to respond to a complaint or other inquiry from the WBOA during the investigation process. Thereafter, the WBOA begins the process by formally charging the Respondent in a Statement of Charges (SOC).

The SOC sets forth the procedural and factual background of the case, cites the alleged violations of unprofessional conduct by the Respondent (including a copy of the rules alleged to be violated by the Respondent), and the possible sanctions that may be imposed against the Respondent for the

alleged violations. The SOC also further states that it serves as notice to the Respondent of the charges against him/her as required by law, that the Respondent has the opportunity to defend against the charges, and that if the Respondent fails to defend against the charges, a default proceeding will ensue. In a default proceeding, the ED will seek an order to be entered against the Respondent imposing sanctions, fines, and restitution for investigation and legal costs, as well as to injured parties, as provided by law.

The ED prepares the SOC and has the assigned CBM review and approve it. The SOC is next presented to the AAG Prosecutor for his/her review and approval.

The SOC is then served on the Respondent. The SOC is accompanied by a proposed SAO in another attempt to informally settle the matter. If the Respondent expresses an interest in negotiating a settlement, the AAG Prosecutor will engage in negotiations with the Respondent and a SAO may result that will be presented to the Board for approval and final resolution of the matter. If not, the matter will continue through the formal hearing process.

The SOC provides notice to the Respondent that he/she is being charged with the specific charges of unprofessional conduct set forth in the SOC and further notifies the Respondent that he/she has 20 days to file a response. The actual due date of the response is clearly set forth in the letter which is sent with the SOC.

A Notice of Opportunity to Defend and an Answer to the SOC are also enclosed for use by the Respondent. The Answer to the SOC document notifies the Respondent on the process of how to respond to the SOC. It asks the Respondent to circle and initial their election to request a hearing on

the matter or not. The Respondent may choose: (1) to admit to some or all of the charges; (2) not contest to some or all of the charges; or (3) deny some or all of the charges. The Respondent may also choose to attach a sworn statement.

The Answer to the SOC also states that if the Respondent desires a hearing on the allegations set forth in the SOC, the Respondent must complete and return the form to the WBOA within 20 days after the date of service. The APA requires that a Respondent be provided with a minimum of 20 days within which to apply for an adjudicative proceeding from the time that notice is given. RCW 34.05.413.

Finally, the Answer to the SOC notifies the Respondent that failure to respond within the 20-day time frame will constitute a default and waiver of the right to a hearing and will allow the WBOA to proceed to resolve the case by default order. *See* RCW 34.05.440.

All documents sent by the WBOA to the Respondent (the SOC, cover letter, Notice of Opportunity to Defend and the Answer to the SOC) are consistent with the APA and provide proper notice of the charges being filed against the Respondent, the formal adjudicative process, the rights of the Respondent to request a hearing, and the default procedures should the Respondent fail to respond to the SOC.

These documents also provide references to applicable statutes and rules which further set forth the Respondent's rights and the consequences for failure to respond within applicable deadlines.

b) Prehearing Matters. If the Respondent chooses to request a formal hearing and timely returns the Answer to the SOC, the ED prepares a Motion for Prehearing Conference. The Chair of the Board will act as the presiding officer of the hearing unless the Chair has acted as the

CBM in the case, or is disqualified due to a conflict of interest or other cause. *See* RCW 34.05.425.

The Respondent is notified of the time and place of a prehearing conference, at least seven days in advance of the date. Both the APA and the MRP allow for prehearing conferences to be held telephonically; however, the WBOA generally conducts them in person. RCW 34.05.431; WAC 10-08-130. Generally, the presiding officer, the AAG Prosecutor, the AAG Advisor, and the Respondent and his or her attorney if represented, will attend the prehearing conference.

At the prehearing conference, the presiding officer and the parties schedule a date for the hearing as well as dates for the submission and exchange of witness lists and exhibits. The AAG Advisor will also inform the Respondent and his/her attorney of the procedures for the hearing, which are generally governed by the APA. In addition, the parties may discuss any other procedural matters and may discuss possible settlement. These procedures are consistent with the APA and the MRP, which provide that the presiding officer may direct the parties to participate in a prehearing conference to consider a variety of matters, including, simplification of issues, necessity or desirability of amending pleadings, the possibility of obtaining stipulations, admissions of fact and admissions of genuineness of documents, witnesses, procedural matters, distributions of written testimony and exhibits, etc. *See* RCW 34.05.431; WAC 10-08-130.

Neither the ED nor the CBM are involved in the prehearing conference, and neither of them is permitted to discuss the case with the Board members. In addition, the AAG Prosecutor may not discuss the case with the Board members. This prohibition on *ex parte* communications is

required by the APA. *See* RCW 34.05.455 and 34.05.458. Under the APA, a person who has served as an investigator, prosecutor, or advocate in the pre-adjudicative stage may not serve as a presiding officer in the same proceeding. RCW 34.05.458. Furthermore, the presiding officer is not permitted to communicate with other employees or consultants of the agency who have participated in the proceeding in any manner or who engaged in any investigation or prosecutorial function in the same or factually related case. RCW 34.05.455.

c) Notice of Hearing. After the prehearing conference, a Pre-Hearing Conference Order and Notice of Hearing (Notice of Hearing) is issued by the presiding officer and sent to the Respondent, his/her attorney (if represented), the AAG Prosecutor, the AAG Advisor and the ED. According to the MRP, the Notice of Hearing must be served on the Respondent no less than seven days before the date set for the hearing. WAC 10-08-040. A copy of the SOC is also sent with the Notice of Hearing. The Notice of Hearing includes: (1) a brief summary of what was discussed and agreed to at the prehearing conference; (2) the hearing date, time and location; (3) the charges against the Respondent (as set forth in the enclosed SOC); (4) a schedule and applicable deadlines for submitting motions, requests for discovery, witness and exhibits lists; (5) deadlines for submission of prehearing statements; (6) the names and addresses of all parties to whom the Notice of Hearing is being given; and (7) notice that a party that fails to attend or participate in the hearing may be held in default in accordance with the APA. The Notice of Hearing also provides information regarding the availability of interpreters and includes an interpreter request form in accordance with the MRP. *See* WAC 10-08-040.

The WBOA's Notice of Hearing complies with the requirements of the APA. *See* RCW 34.05.434.

d) Conduct of Hearing. The presiding officer and the Board members receive guidance and training from the AAG Advisor with regard to the procedures for a formal hearing. The AAG Advisor has provided the Board members with a presentation entitled the "WBOA Disciplinary and Adjudicative Proceedings," which outlines the administrative hearing process. In addition, the AAG Advisor has provided the Board script for the conduct of the hearing.

During the hearing before the Board, the AAG Advisor will advise the Board members and the presiding officer as to the proper conduct of the hearing. The AAG Advisor will advise the presiding officer with regard to hearing procedures and in making evidentiary rulings and other procedural decisions during the hearing.

The case against the Respondent will be presented by the AAG Prosecutor, who will call witnesses, including WBOA staff such as the ED and the assigned investigator, and introduce exhibits and other evidence. The Respondent also has the opportunity to call witnesses and submit exhibits and other evidence. The parties may also present opening statements and closing arguments to the Board.

As required by the APA and the OPMA, the hearing is open to the public, although once the evidentiary portion of the hearing is concluded, the Board may deliberate on the case in a closed session with the AAG Advisor. RCW 34.05.449, RCW 42.30.110; and RCW 42.30.030.

The Board's decision must be based on clear, cogent and convincing evidence to satisfy due process. *Ongom v. Dep't of Health*, 159 Wash.2d

132, 148 P.3d 1020 (2006). The Board will issue a written Final Order with the assistance of the AAG Advisor to ensure compliance with the requirements of the APA and MRP. The Final Order will contain findings of fact, conclusions of law, and an order that sets forth the sanctions against the Respondent. *See* RCW 34.05.461; WAC 10-08-210. The Final Order also contains a statement of the available procedures and time limits for seeking reconsideration or other judicial review as required by the APA. RCW 34.05.461. The Final Order is served on the Respondent as required by the APA. RCW 34.05.461.

e) Brief Adjudicatory Proceedings. The WBOA has adopted formal administrative rules with regard to Brief Adjudicatory Proceedings (BAP). The APA provides that an agency may use BAP if: (1) the use of such proceedings does not violate any provision of law; (2) the protection of the public interest does not require the agency to give notice and an opportunity for non-parties to participate; (3) the matter is entirely within one or more of the categories for which the agency has adopted the sections of the APA applicable to brief adjudicatory proceedings; and (4) the issue and interests involved in the matter do not warrant the use of the procedures for formal adjudicatory proceedings under the APA. RCW 34.05.482. The APA also permits an agency to conduct administrative review of an order resulting from a brief adjudicatory proceeding. RCW 34.05.488.

Under its adopted administrative rules, the WBOA may make certain decisions by BAP. WAC 4-25-540. The types of decisions to which the brief adjudicatory proceedings apply are: (1) staff denials of initial individual license applications, renewals, or applications for reinstatement;

(2) staff denials of CPA-Inactive certificate renewals or applications for reinstatement; (3) staff denials of practice privilege reinstatements; (4) staff denials of initial resident non-licensee firm owner registration applications, renewals, or applications or requests for reinstatement; (5) staff denials of initial firm license applications, renewals and amendments; (6) staff denials of exam applications; and (7) proposed suspensions as a result of a determination by a lending agency of nonpayment or default on a federally or state-guaranteed student loan or service conditional scholarship. WAC 4-25-540.

Once an initial determination is made by staff for any of the aforementioned BAP eligible violations, the matter is sent to the ED, who acts as the presiding officer, for review. The ED consults with a Board member and then renders an order either upholding or overturning the decision of the WBOA staff member. The decision is then mailed to the Respondent who has 30 days from when the decision is posted in the mail to request an appeal. WAC 4-25-540. A Respondent may appeal the order by requesting the appeal orally or in writing to the Board's vice-chair or his designee within 21 days after the order is posted in the mail. WAC 4-25-540. The Board's vice-chair or designee will consider the appeal and either uphold or overturn the BAP Order. Further administrative review of the decision may be provided under the APA.

3. Analysis/Comments

The WBOA's current practices pertaining to the formal adjudicatory process are in compliance with the APA and the MRP. The WBOA has developed and is using fairly standardized forms for the letter that is sent with the SOC, the SOC, the Answer to the SOC, the Notice of Opportunity to Defend, the letter that is sent to a Respondent notifying him/her of the

scheduling of prehearing conference, the Notice of Hearing, and the Final Order. The standardized forms are in compliance with the requirements of the APA and the MRP. The WBOA is also generally respecting the separation of functions between the investigative/prosecutorial side of the agency and the judicial side of the agency as required by the APA. See RCW 34.05.458.

a) Notice of Charges; Formal Adjudicative Proceedings. The forms used by the WBOA contain the required information as set forth in the APA and MRP. In addition, the process and forms used provides for adequate notice of charges against the Respondent, information as to the Respondent's rights to defend against the charges, and information as to the proper procedure for the Respondent to request a formal hearing for an opportunity to defend against the charges.

The files reviewed generally reflect that each SOC: (1) is sent with a proposed SAO to continue with attempts to settle the matters informally; (2) contains the factual and procedural background of the case against the Respondent and the alleged violations by the Respondent; (3) contains the possible remedies and sanctions that may be imposed against the Respondent; (4) informs the Respondent of his/her opportunity to defend against the charges; (5) provides the deadline by which the Respondent must request a hearing; and (6) explains the consequences of the failure to request a hearing on the SOC in a timely manner. In the files reviewed, all SOCs were sent with an explanatory cover letter and other enclosed documents including the Answer to the SOC, and the Notice of Opportunity to Defend.

b) Prehearing Matters. A review of the files also revealed that the WBOA follows a formal practice for requesting the

appointment of a presiding officer that meets the statutory requirements and the conduct of a prehearing conference. Notes contained in the files from the prehearing conferences showed a thorough consideration of the various issues for facilitating the disposition of the proceedings. The issues addressed were generally consistent with the statutory guidance provided in the MRP and addressed procedural matters, possible witnesses, use of discovery, depositions, exhibits, and other matters, including a description of the adjudicatory process. *See* WAC 10-08-130. The files also indicated that the prehearing conferences were audio-taped for an accurate record and account of the discussions had. Also, as required by the MRP, in each of the cases reviewed, the presiding officer issued an order reciting the actions taken at the prehearing conference, and documenting any agreements or stipulations reached by the parties at the conference. *See* WAC 10-08-130.

c) Notice of Hearing. The form of Notice of Hearing used by the WBOA meets all of the statutory requirements as to content. Each of the Notices of Hearing contained in the files reviewed included: (1) the date, time and location of hearing; (2) the names and addresses of all parties to whom the notice is being given; (3) the mailing address and telephone number of the office designated to represent the agency in the proceeding; (4) the official file number for the case; (5) the name, title, address, and telephone number of the presiding officer; (6) the legal authority and jurisdiction under which the hearing is to be held; (7) references to the statutes and rules involved; (8) a statement of the matters asserted by the Agency (accomplished by attaching the SOC); and (9) a statement that informs the parties that failure to attend or participate may result in a default against such party. RCW 34.05.434. Notices of Hearing

are properly served on Respondents and are provided not less than seven days prior to the hearing date in accordance with WAC 10-08-040.

d) Conduct of Hearing. The files also indicate that the AAG Advisor provides guidance and training to the Board members and the presiding officer in preparation for a formal hearing.

e) Final Order. The Final Orders contained in the files reviewed, which included one Final Order and one Default Order, also reveal that the WBOA is complying with the requirements of the APA and the MRP with regard to the content of the Final Orders. Generally, the Final Orders contain a procedural history, findings of fact, conclusions of law, and the order issued by the Board, as well as a notice to the parties setting forth the available procedures and time limits for seeking reconsideration or requesting that a default be vacated, as required by the APA. *See* RCW 34.05.461. The files also indicate that the Final Orders were formally served on the Respondents, as required by the APA. RCW 34.05.461.

f) Brief Adjudicatory Proceedings. The rules adopted by the WBOA with regard to BAPs and the matters to which they apply are consistent with the APA. The types of decisions issued in BAPs are generally administrative types of decisions and not those that would require more formal procedures for the protection of the public. Furthermore, the WBOA's procedures for administrative review of orders entered by BAP comply with the provisions of the APA.

4. Recommendations

Overall, the WBOA is handling the formal adjudicative proceedings process consistently and in compliance with the APA and the MRP. Improvements should be considered in some areas to further strengthen the Board's procedures.

a) Expanded Assistance of AAGs. The Board members should consider seeking more assistance of the AAG Prosecutor earlier in the investigation process in complex cases or when it appears a Respondent seems non-cooperative or hostile. Participation by the AAG Prosecutor at the proposed Investigations Committee level when requested will likely improve the process should the matter proceed to settlement at a prehearing conference or proceed to an actual hearing. In this regard, the AAG Prosecutor will have gained more exposure to the unprofessional conduct at issue, how the conduct was determined by the Investigations Committee members and the assigned investigator, and what would constitute appropriate settlement parameters.

b) Training. The AAG Advisor should continue training the Board members and the presiding officer prior to all hearings. The WBOA conducted three formal hearings during the time period covered by this PRP. The infrequency of such hearings necessitates that all the Board members, and particularly the presiding officer, be properly refreshed on the proper procedures before each hearing. Per interviews with the Board members, the AAG Advisor diligently prepares the Board and the presiding officer in this regard. It is recommended that the training materials and the script be periodically reviewed by the AAG Advisor for legal compliance and overall effectiveness.

c) Review of Forms. The forms that are being utilized by the WBOA throughout the formal adjudicative process appear to comply with all requirements of the APA and the MRP, especially as to content and information provided. It is recommended that the forms be reviewed periodically by the AAGs to ensure continued compliance with all applicable laws.

E. Disciplinary Guidelines

1. Applicable Statutes, Rules and Policies

- RCW 18.04 Public Accountancy Act *et seq.*
- RCW 34.05 Administrative Procedures Act *et seq.*
- WAC Chapter 4-25 *et seq.*

2. Current Process or Practice

Pursuant to the Public Accountancy Act (PAA), the Board has the power to: (1) revoke, suspend, or refuse to issue or renew, or reinstate a license or certificate; and (2) impose a fine in an amount not to exceed \$30,000 plus the Board's investigation and legal costs against a CPA, a certificate holder, a Licensee, a licensed firm, an applicant, a non-CPA violating the provisions of the PAA prohibiting non-CPAs from using the CPA designation, or a non-licensee holding an ownership interest in a licensed firm. RCW 18.04.295. The Board may also impose full restitution to injured parties, conditions precedent to renewal of a certificate or a license, or prohibit a non-licensee from holding an ownership interest in a licensed firm for violations of the PAA.

The Board has adopted three policies that provide disciplinary guidance. One of these policies relates to actions taken by the ED when a Licensee receives an unacceptable grade in a review undertaken as part of

the QAR Review Session, the second policy relates to cases conducted at the administrative violation level (i.e., late renewals, improper use of the CPA designation, insufficient continuing professional education hours, etc.), and, the third policy relates to cases conducted at the non-administrative level dealing with more significant unprofessional conduct that are adjudicated through the SAO process or a formal hearing. In connection with these policies, the Board adopted Policy 200-3 for Licensees receiving an unacceptable grade under the QAR Program, the “Sanctions and Penalty Guidelines” for non-administrative cases (Policy 2004-1, effective October 29, 2004), and Appendix A attached to the Board’s Delegation of Authority of October 2008⁷ for administrative cases.

The Board’s Policy 200-3 gives the ED the authority to enter into Respondent Contracts related to remedial sanctions resulting from findings obtained during the QAR Review Session. The Board’s Delegation of Authority of October 2008, gives the ED, with the concurrence of one Board member, the authority to issue Administrative Notices of Noncompliance to impose enforcement actions, including monetary sanctions, in accordance with guidelines set forth in Appendix A of the Delegation of Authority. The Respondent Contracts or Administrative Notice of Noncompliance may include one or any combination of actions deemed appropriate by the Board, including field review, independent practitioner review, continuing education, participation in the annual QAR review for the upcoming year, and submission of specific reports in the subsequent period for review.

The guidelines set forth in Appendix A are being referred to regularly by the ED and other staff members for guidance in issuing appropriate sanctions for administrative violations. Generally, the sanctions

⁷ Appendix A was also attached to a prior Delegation of Authority in April 2006.

recommended in Appendix A are very specific for the violations listed and provide limited discretion in their application. In addition, the guidance for Respondent Contracts used in QAR matters is also consistently being used.

In contrast, the Sanction and Penalty Guidelines for non-administrative cases offer a broad range of possible sanctions and penalties for each type of unprofessional conduct, from fines to revocation. The weakness identified by the WBOA staff and the Board members with regard to the broad ranges provided is that they offer very little meaningful guidance as to what is appropriate discipline for the conduct at issue in any particular case.

For non-administrative cases, the ED and the WBOA staff are more likely to rely on the list of mitigating and aggravating factors set forth in Section III of the Sanction and Penalty Guidelines than on the specific range of penalties provided. In addition, staff and the ED may refer to past cases with similar violations for guidance.

3. Analysis/Comments

We find that with respect to administrative violation cases, Appendix A has been helpful to the staff and Board members in providing guidance for appropriate actions. Appendix A provides a detailed list of the potential administrative violations and the specific sanctions and penalties that apply. We also find that the Board approve actions for Respondent Contracts have offered effective guidance.

For non-administrative cases, where substantive unprofessional conduct is at issue, the Sanction and Penalty Guidelines also provide a specific list of violations. However, each violation presents a wide range of disciplinary options from a nominal fine to suspension or revocation. While it is imperative that the Agency have significant discretion to order

appropriate discipline on a case-by-case basis based on the specific facts involved in each matter, the WBOA staff and the Board members have expressed a desire for more specific guidance in arriving at the appropriate penalty in any particular case.

4. Recommendations

It is recommended that the Board review and update Appendix A to the 2008 Delegation for all administrative cases as necessary.

It is further recommended that the Sanctions and Penalty Guidelines for non-administrative (substantive unprofessional conduct) cases be reviewed by a committee created by the Board. This project may include a review of the Board's orders issued over a representative period of time and a comparison to the guidelines and the discipline actually entered. It is recommended that the Board maintain guidelines that provide for a range of sanctions and penalties for a variety of unprofessional conduct; however, the guidelines should more clearly factor in mitigating and aggravating factors to guide the Board in determining when harsher penalties versus more lenient penalties would be appropriately ordered. It is also recommended that the guidelines clearly state that they are merely guidelines and that the ultimate discipline the Board enters is based on the specific facts of each case and the weighing of any applicable aggravating and mitigating factors. Finally, any revised policy/guidelines should be submitted to the appropriate AAG for review and compliance with the law.

VI. ADHERENCE TO POLICIES AND PROCEDURES

A. Records Management and Public Records Requests

The WBOA staff is in compliance with all current WBOA policies and procedures with respect to Records Management and handling PRRs.

As more fully set forth in the recommendations above, the areas to focus on include: (1) implementing more regular training for staff and Board members; (2) destroying old investigation files and e-mails records that are beyond their retention period; (3) continuing efforts to improve overall records management in the area of e-mail and developing or refining a comprehensive database of the agency's records; and (4) considering the placement of more complete disciplinary information on the Agency's website to better inform and protect the public.

B. QAR and Investigations

The QAR Program and QAR Review Session are well documented by detailed policies and procedures. Detailed testing of a judgmental sample of 11 files with unacceptable grades from the 2007 to 2009 QAR cycles demonstrated that procedures were largely being complied with except for the required final review and approval processes related to the development of the Respondent Contract, see Exhibit 4. During interviews of the WBOA staff and the Licensee volunteer QAR Committee co-chair, these individuals represented that these procedural exceptions were documentation failures and not performance failures.

The WBOA has outdated policies and an outdated manual detailing approved investigation processes. The WBOA staff represented that these policies and the manual were not being utilized and that there was no adequate documentation of current policies and procedures. The statistically selected sample of 54 investigation files were tested based upon the WBOA staff represented key controls during the test period, 2007 to 2009. The testing revealed that many of these controls were not being adhered to consistently, see Exhibit 5. Recommendations in Section V include the

development of current work plans for each specific type of investigation and the retirement of outdated policies and manuals.

C. Adjudications—Informal and Formal Proceedings

1. Informal Adjudication—Stipulated and Agreed Order (SAO Process)

The WBOA's current practices in settling matters informally through the SAO process is in compliance with the APA and the MRP. All staff members involved are adhering to the practices currently in place. The SAO process should continue to be adhered to under the guidance and oversight of the proposed Investigations Committee. Furthermore, all SAOs are properly submitted to the Board members for consideration and approval. However, the Board should eliminate the e-mail voting system and adopt a system where the Board deliberates and approves SAOs simultaneously through in person meetings or technological means.

2. Formal Adjudication—Administrative Hearing Process

The WBOA follows the APA and the MRP for conduct of its formal hearings and all preliminary steps leading up to those hearings including the issuance of SOCs, the form and content of the notices of hearing, the conduct and goals of the prehearing conferences, etc. The Board does not conduct many formal hearings. When they do, the Board members adhere to proper procedures and conduct their hearings in accordance with the law.

The Board has adopted written rules for Brief Adjudicatory Proceedings (BAPs) that are consistent with what is provided in the APA for such proceedings. In all areas of adjudicative proceedings, the WBOA staff and the Board members are consistently applying and adhering to sound and adequate practices and rules. Some areas where improvement may be made

include (1) providing more information about the administrative hearing process to Respondents to ensure that they are well-informed about their rights, the process, and their available options; (2) seeking regular review of forms currently in use to ensure continued compliance with the law; and (3) seeking more assistance from the AAGs throughout the investigation and administrative hearing process in complex cases.

D. Disciplinary Guidelines

The WBOA has developed guidelines for recommended sanctions and penalties for its administrative cases and non-administrative cases. The WBOA staff and Board members are generally adhering to and consistently referring to Policy 2004-1, Appendix A for administrative violation cases and to Policy 2000-3 for the proposed actions for Respondent Contracts. However, neither the WBOA staff nor the Board members generally refer to or rely on the Sanction and Penalty Guidelines for non-administrative cases (i.e., cases involving substantive unprofessional conduct). The weakness identified by some WBOA staff and Board members is that the Sanction and Penalty Guidelines provide for a broad range of possible sanctions and penalties for many different types of misconduct, but do not offer meaningful guidance as to how to determine which of the sanctions and penalties in the recommended range would be appropriate in a particular case. As discussed in more detail in Section V. E., the Board should consider conducting a thorough review of these guidelines and revise them as necessary in order to offer more guidance and ability for staff and the Board to confidently determine appropriate sanctions and penalties under various circumstances.

E. Handling Conflicts of Interest and Complaints Against Staff

1. Complaints Against Staff

The WBOA Board members and the ED are both appointed by and serve at the pleasure of the Governor. RCW 18.04.035 and 18.04.04. As such, neither the Board nor the ED exercises any oversight or supervision of each other—that authority is vested with the Governor. The ED has the authority to employ such personnel as is “deemed appropriate for carrying out the purposes of this chapter,” and inherent in that right would be the responsibility to supervise that staff. RCW 18.04.045(5).

The members of the Board, the ED and all WBOA staff members are subject to the Ethics Act. RCW 42.52. RCW 42.52.020 provides:

No state officer or state employee may have any interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer’s or state employee’s official duties.

In addition, RCW 42.52.030 provides in relevant part:

(1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest,...

The Ethics Act creates the Executive Ethics Board (EEB) which is charged with enforcing the Ethics Act and its rules with “respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.” RCW 42.52.350 and 42.52.360. In carrying out its statutory duties, the EEB may: (1) investigate, hear and determine complaints by any person or on its own motion; (2) impose sanctions including reprimands and monetary penalties; and (3) recommend to the appropriate authorities, suspension, removal from position, prosecution, or other appropriate remedy. RCW 42.52.360.

In the recent past, complaints were filed with the Agency against the ED and investigation staff members regarding the official conduct of their duties. It was determined that the complaints made against the ED and the investigators as licensed CPAs could not be reviewed by the Board for any unprofessional conduct in accordance with RCW 18.04.350(11) which provides: “Nothing in this chapter prohibits any act of or the use of any words by a public official or a public employee in the performance of his or her duties.” The Board’s legal advisors concluded that the Board has no power to investigate or discipline the ED for official conduct. Moreover, the ED exercises control and oversight of Agency staff.

Against this backdrop, the ED reviewed the complaints made against investigation staff members. The ED forwarded the complaint made against him to the Governor and to the EEB for review. The EEB dismissed the complaint on May 5, 2010, finding that it was unfounded and no conflicts of interest existed.⁸

⁸ The Executive Director also forwarded the complaint and an extensive response to the AICPA, a professional organization that the Executive Director voluntarily belongs.

While the Board and the ED fully complied with relevant state statutes in handling these recent complaints, it is suggested that any future complaints against investigation staff be submitted to the proposed Investigations Committee for review and recommendation. The Investigations Committee would initially determine if the complaint is founded or unfounded and provide a recommendation to the ED. This process would provide a level of review of the investigator's conduct outside that solely of the ED and further insulate the investigation process from any claims of bias or prejudice.

2. Conflicts of Interest, Bias or Prejudice

A judge or administrative agency is presumed not to be biased, and a person alleging bias as grounds for disqualification must make an affirmative showing to that effect. *Faghih v. Wash. State Dep't of Health Dental Quality Assurance Comm'n*, 148 Wash.App. at 842. In addition to avoiding statutory conflicts of interest, Board members and the WBOA staff are also required to avoid any appearance of impropriety or unfairness in carrying out their official duties. In this regard, the Fairness Doctrine (discussed in Section V) requires staff engaged in quasi-judicial proceedings to avoid *ex parte* communications and any other activity that can create the appearance of unfairness.

With respect to *ex parte* communications, the Board members, the WBOA staff and their assigned AAGs strictly adhere to screening practices that prevent Board members from discussing pending cases with Agency investigators and assigned prosecutors. The assigned CBM is the only member that interacts with the ED and the investigator while the investigation is ongoing. The CBM then recuses himself/herself from acting as a member of the Board on that particular matter. While these practices

comply with state statute, they are not included in any currently used Board policy or staff procedure. It is recommended that a Board policy and corresponding staff procedure be developed in this regard that would also apply to the recommended Investigations Committee. The policy should cover *ex parte* communications, screening and maintaining the confidentiality of pending investigations and adjudications of complaints. The assigned AAG Advisor should assist in the legal review of the drafted policy.

In reviewing other matters, it was learned that the WBOA has a contract with the firm of Brink & Sadler. One current owner of the firm participates in the Agency's QAR process as the QAR Committee co-chair and the WBOA's DD was a previous partner in this firm. During interviews, Mr. Sadler represented that he has retired and has no ongoing financial interest in the firm. Mr. Sadler's status with the Brink & Sadler firm is known to the Board and the ED and has been reviewed and approved by both. Although the contract being held by the firm of Brink & Sadler may not constitute a statutory conflict of interest, it may raise the appearance of bias, financial interest, or unfairness in the eyes of the regulated community. It is recommended that the contract in the context of Mr. Sadler's position with the WBOA and the current owner's participation as the QAR Committee co-chair be subjected to review by the EEB pursuant to RCW 42.52.120.

VII. CONCLUSION

This Performance Review Project was approved by the Washington State Board of Accountancy on October 22, 2009, and performed in accordance with the Request for Proposal issued on or about March 5, 2010.

This report contains specific analysis and recommendations on the areas reviewed to meet the purposes of the PRP, which were to independently review the adequacy, observance and practical effectiveness of the Board's policies and procedures in the areas of: records management, PRRs, investigations, QAR Program, informal and formal complaint adjudications, and overall adherence by Board members and staff to proper procedures in carrying out their respective duties.

Overall, it is concluded that the Washington State Board of Accountancy operates exceptionally well and in accordance with all applicable laws. The recommendations made throughout this report are founded on the principles of "best practices" that we believe will make the Agency function even more effectively in performing its ultimate mission of regulating its professional Licensees and protecting the public.

We have reviewed all the information contained in this report with the ED, Board Chairman, key Board members, the QAR Committee co-chair, and Agency staff. We appreciate the excellent cooperation provided by the Board, executive management and staff throughout this process.

**ZWILLINGER GREEK ZWILLINGER
& KNECHT PC**

By:



Gary R. Zwillinger
Felecia A. Rotellini
2425 E. Camelback Road, Suite 600
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EXHIBIT 1

Washington State Board of Accountancy Current Organizational Chart

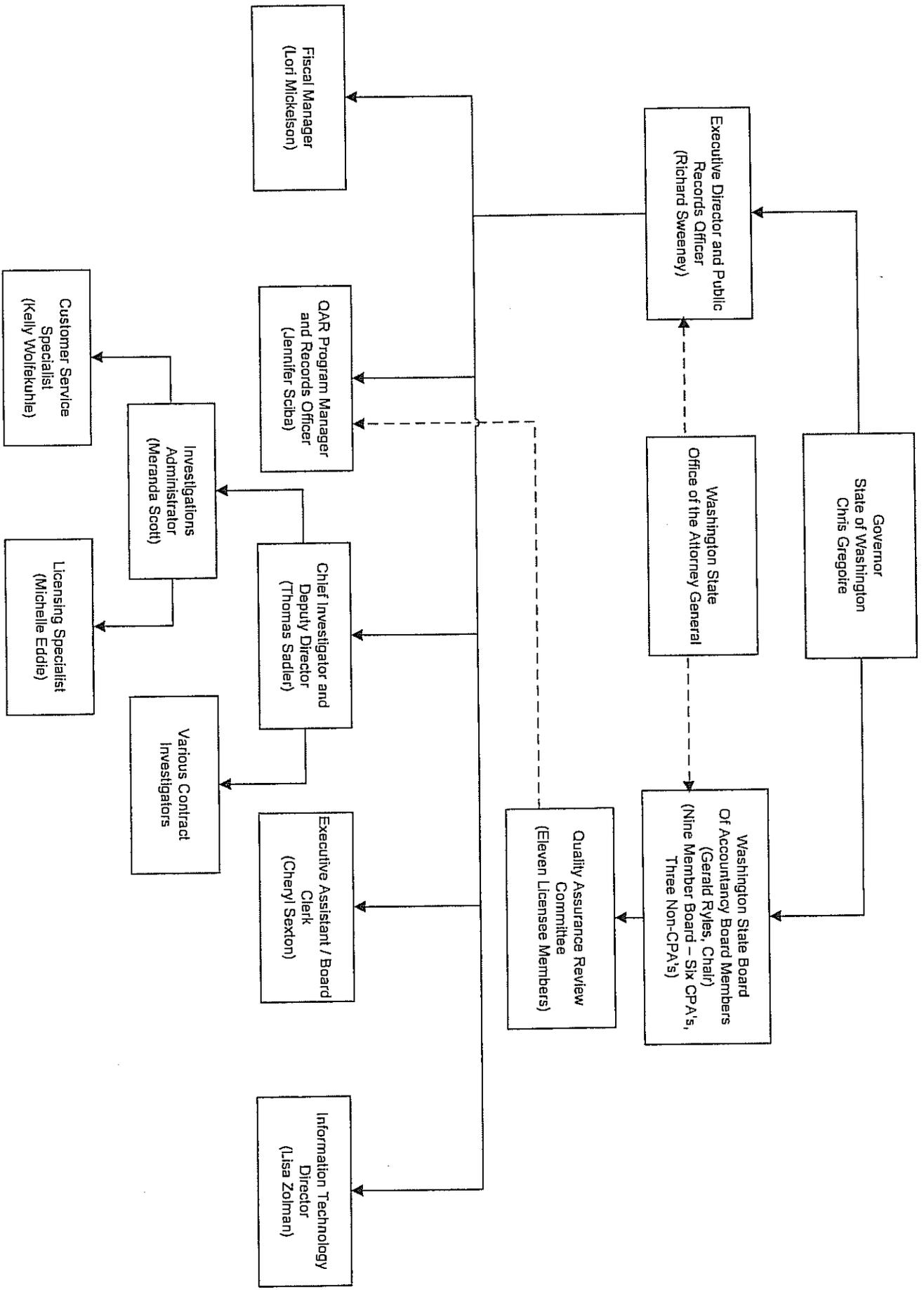


EXHIBIT 2

KEY TERMS

Agency - Washington State Board of Accountancy

AAG - Assistant Attorney General

AG - Attorney General

APA - Administrative Procedures Act

Assistant - Board Clerk/Executive Assistant

BAP - Brief Adjudicatory Proceedings

Board - nine members appointed by the Governor who act as the Board of the WBOA.

CBM - Consulting Board Member

CPA - Certified Public Accountant

CPE - Continuing Professional Education

DD - Deputy Director

ED - Executive Director

EEB - Executive Ethics Board

Ethics Act - Ethics in Public Service Act

Fairness Doctrine - Appearance of Fairness Doctrine

MRP - Model Rules of Procedure

OPMA - Open Public Meetings Act

PAA - Public Accountancy Act

PRA - Public Records Act

KEY TERMS

PRP - Performance Review Project

PRR - Public Records Request

QAR - Quality Assurance Review

RCW - Revised Code of Washington

SAO - Stipulated Agreement and Order

SOC - Statement of Charges

Unique Schedule - Unique Records Retention Schedule for the WBOA

WAC - Washington Administrative Code

WBOA - Washington State Board of Accountancy

EXHIBIT 3

Washington State Board of Accountancy
REQUEST FOR PUBLIC RECORDS

Name of Requester:

Address:

City, State, Zip:

Email Address:

Phone Number:

I prefer to receive these records in the following format (select one):

- Electronic Copies - CD/DVD/Scanned Documents (costs apply).
- Paper Copies - Fifteen (\$0.15) cents per page for requests that exceed 50 pages.
- Inspection by appointment (no charge).

**An invoice will be sent to you once the records have been collected.
Records will be provided upon receipt of all applicable charges.**

***Note: Voluminous requests** – The Public Records Officer may require the requester to deposit a sum equal to ten percent of the estimated cost prior to duplication of large requests for records. In the event that a deposit is required, Board staff will notify the requester of the necessity of the deposit. If the actual duplication and deposit fees are less than the amount deposited by the requester, Board staff will return the sum in excess of the actual amount to the requester.

Please describe the records you are requesting and any additional information that will assist us in locating this information for you as quickly as possible. Failure to provide information sufficient to identify records may cause delay.

Method by which I would like to receive the records I requested:

- Mailed to me (additional postage charges will apply).
- Notify me and I will pick up.
- E-mailed to me (if records are too large to e-mail, staff will contact you to make other arrangements).

I understand/certify that:

- Any lists of individuals obtained through this request for public records will not be used for commercial purposes pursuant to RCW 42.56.070(9).
- Requested records may be redacted in accordance with RCW 42.56 or other applicable statutes.

Signature

Date

EXHIBIT 4

Washington Board of Accountancy
 Summarization of Test of Judgementally Selected Sample
 of QAR Files

Key Control	# of Negative Answers	Percentage of Files in Compliance
Appropriate checklist used	3	72.73%
1st review documented (reviewer)	1	90.91%
2nd review documented (team captain)	2	81.82%
3rd review documented (QARC member)	1	90.91%
Reasons for unacceptable grade documented	1	90.91%
First time QAR failure		
Results sent to firm for comments	1	90.91%
Firm response to comments received	0	100.00%
QARC review of firm comments	4	63.64%
QARC assign final grade	4	63.64%
Sanctions appropriate with guidance	0	100.00%
Sanctions approved by ED	6	45.45%
Sanctions approved by QARC board member	9	18.18%
Notification of firm results	0	100.00%
Firm agrees to sanctions	1	90.91%
Completion of sanctions documented	2	81.82%

Washington Board of Accountancy
 Summarization of Test of Judgementally Selected Sample
 of QAR Files

Key Control	QAR File No.	20070148	20070029	20070411	20080428
Appropriate checklist used		Y	Y	Y	Y
1st review documented (reviewer)		Y	Y	Y	Y
2nd review documented (team captain)		Y	Y	Y	Y
3rd review documented (QARC member)		Y	Y	Y	Y
Reasons for unacceptable grade documented		Y	Y	Y	Y
First time QAR failure					
Results sent to firm for comments		Y	Y	Y	Y
Firm response to comments received		Y	Y	Y	Y
QARC review of firm comments		N	N	N	Y
QARC assign final grade		N	N	N	Y
Sanctions appropriate with guidance		Y	Y	Y	Y
Sanctions approved by ED		Y	N	Y	Y
Sanctions approved by QARC board member		N	N	N	Y
Notification of firm results		Y	Y	Y	Y
Firm agrees to sanctions		Y	Y	Y	Y
Completion of sanctions documented		Y	Y	Y	Y

Washington Board of Accountancy
 Summarization of Test of Judgementally Selected Sample
 of QAR Files

Key Control	QAR File No. 20080115	20080286	20090299	20090520
Appropriate checklist used	Y	Y	Y	N
1st review documented (reviewer)	Y	Y	Y	Y
2nd review documented (team captain)	N	Y	Y	Y
3rd review documented (QARC member)	Y	Y	Y	Y
Reasons for unacceptable grade documented	Y	Y	Y	Y
First time QAR failure				
Results sent to firm for comments	Y	Y	Y	Y
Firm response to comments received	Y	Y	Y	Y
QARC review of firm comments	Y	Y	Y	Y
QARC assign final grade	Y	Y	Y	Y
Sanctions appropriate with guidance	Y	Y	Y	Y
Sanctions approved by ED	Y	Y	N	N
Sanctions approved by QARC board member	N	Y	N	N
Notification of firm results	Y	Y	Y	Y
Firm agrees to sanctions	Y	Y	Y	Y
Completion of sanctions documented	Y	Y	Y	Y

Washington Board of Accountancy
Summarization of Test of Judgementally Selected Sample
of QAR Files

Key Control	QAR File No. (2nd)	20090681	20090679	20070402
Appropriate checklist used		Y	N	N
1st review documented (reviewer)		Y	Y	N
2nd review documented (team captain)		Y*	Y	N
3rd review documented (QARC member)		Y	Y	N
Reasons for unacceptable grade documented		Y	Y	N
First time QAR failure				
Results sent to firm for comments		Y	Y	N
Firm response to comments received		Y	Y	Y
QARC review of firm comments		Y	Y	N
QARC assign final grade		Y	Y	N
Sanctions appropriate with guidance		Y	Y	Y
Sanctions approved by ED		N	N	N
Sanctions approved by QARC board member		N	N	N
Notification of firm results		Y	Y	Y
Firm agrees to sanctions		Y	Y	N
Completion of sanctions documented		Y.	N	N

EXHIBIT 5

Washington State Board of Accountancy
 Summarization of Test of Randomly Selected Sample
 Of Investigative Files

Key Control	# of Negative Answers	# of N/A Answers	Percentage of Compliance with Control Assuming N/A = Yes	Percentage of Compliance with Control Assuming N/A's Omitted
Documentation of complaint leading to opening of investigation	1	0	98.15%	98.15%
Documentation of approval by ED to open investigation for non-administrative	6	20	88.89%	82.35%
20 day letter to respondent asking for response to allegations	2	19	96.30%	94.29%
Response to 20 day letter received	0	21	100.00%	100.00%
Proposed sanctions in accordance with 2004-1/Administrative Notice Delegations	15	8	72.22%	67.39%
CBM memorandum approved by ED	20	5	62.96%	59.18%
CBM memorandum approved by CBM	7	5	87.04%	85.71%
Proposed SAO/Contract/Administrative Notice to respondent	1	13	98.15%	97.56%
Proposed SAO/Contract/Administrative Notice received from respondent	2	14	96.30%	95.00%
ED approves revisions to SAO/Contract/Administrative Notice	3	40	94.44%	78.57%
CBM approves revisions to SAO/Contract/Administrative Notice	7	41	87.04%	46.15%
SAO/Contract/Administrative Notice/Investigation Closure approved by at least at least five Board members	5	19	90.74%	85.71%
Fully executed SAO/Contract/Administrative Notice in file	1	16	98.15%	97.37%
Document fulfillment of sanctions imposed	6	18	88.89%	83.33%

Washington State Board of Accountancy
 Summarization of Testing on Randomly Selected Sample
 Of Investigative Files

	File No.	2007.042	2007.051	2007.055	2007.057	2007.060	2007.065	2007.066	2007.067
	Investigator	N/A	Sage	Sage	Sadler	Sadler	Sage	Sadler	Sadler
	Type of Sanction	OAR	Y	Y	N	CPE	CPE	N	Y
Documentation of complaint leading to opening of investigation		Y	Y	Y	Y	Y	Y	Y	Y
Documentation of approval by ED to open investigation for non-administrative		Y	Y	N/A	Y	Y	Y	Y	Y
20 day letter to respondent asking for response to allegations		Y	Y	Y	N/A	Y	N/A	Y	N/A
Response to 20 day letter received		Y	Y	Y	N/A	Y	N/A	Y	N/A
Proposed sanctions in accordance with 2004-1/Administrative Notice Delegations		N	Y	Y	N	Y	Y	N/A	N/A
CBM memorandum approved by ED		Y	N	N	N	N	N	N/A	N/A
CBM memorandum approved by CBM		Y	Y	Y	N	Y	Y	N/A	N/A
Proposed SAO/Contract/Administrative Notice to respondent		Y	Y	Y	N	Y	Y	N/A	N/A
Proposed SAO/Contract/Administrative Notice received from respondent		Y	Y	Y	N	Y	Y	N/A	N/A
ED approves revisions to SAO/Contract/Administrative Notice		Y	N/A	Y	N	N	N/A	N/A	N/A
CBM approves revisions to SAO/Contract/Administrative Notice		N	N/A	N	N	N	N/A	N/A	N/A
SAO/Contract/Administrative Notice/Investigation Closure approved by at least at least five Board members		Y	Y	N/A	N	Y	N	N/A	N/A
Fully executed SAO/Contract/Administrative Notice in file		Y	Y	Y	N	Y	Y	N/A	N/A
Document fulfillment of sanctions imposed		Y	Y	Y	N	Y	Y	N/A	N/A

Washington State Board of Accountancy
 Summarization of Testing on Randomly Selected Sample
 Of Investigative Files

	File No.	2007.068	2007.072	2007.079	2007.082	2007.084	2007.088	2007.090	2007.104
Investigator	N/A	Sage	Bren	N/A	Bren	Bren	Bren	Bren	Bren
Type of Sanction	CPE	N	N	Y	Y	Y	N	Y	Y
Documentation of complaint leading to opening of investigation	Y	Y	N	Y	Y	Y	Y	Y	Y
Documentation of approval by ED to open investigation for non-administrative	Y	N	N	Y	N/A	Y	Y	Y	Y
20 day letter to respondent asking for response to allegations	N/A	N/A	Y	N/A	Y	Y	Y	Y	Y
Response to 20 day letter received	N/A	N/A	Y	N/A	Y	Y	Y	Y	Y
Proposed sanctions in accordance with 2004-1/Administrative Notice Delegations	Y	Y	N	Y	N/A	N	N/A	Y	Y
CBM memorandum approved by ED	N	N	N	Y	N/A	N	Y	Y	Y
CBM memorandum approved by CBM	Y	Y	Y	N	N/A	Y	Y	Y	Y
Proposed SAO/Contract/Administrative Notice to respondent	Y	Y	Y	Y	N/A	Y	N/A	Y	Y
Proposed SAO/Contract/Administrative Notice received from respondent	Y	Y	Y	Y	N/A	Y	N/A	Y	Y
ED approves revisions to SAO/Contract/Administrative Notice	N/A	N/A	Y	N/A	N/A	Y	N/A	N/A	N/A
CBM approves revisions to SAO/Contract/Administrative Notice	N/A	N/A	Y	N/A	N/A	Y	N/A	N/A	N/A
SAO/Contract/Administrative Notice/Investigation Closure approved by at least at least five Board members	Y	Y	Y	N/A	N/A	N/A	Y	N/A	N/A
Fully executed SAO/Contract/Administrative Notice in file	Y	Y	Y	Y	N/A	Y	N/A	Y	Y
Document fulfillment of sanctions imposed	Y	Y	Y	Y	N/A	Y	N/A	Y	Y

Washington State Board of Accountancy
 Summarization of Testing on Randomly Selected Sample
 Of Investigative Files

	File No.	2007.113	2007.125	2007.136	2007.139	2008.003	2008.008	2008.021	2008.026
Investigator		Bren	Bren	Sadler	Bren	Sadler	Bren	Bren	Bren
Type of Sanction		Y	QAR	N	Y	QAR	Y	Y	CPE
Documentation of complaint leading to opening of investigation		Y	Y	Y	Y	Y	Y	Y	Y
Documentation of approval by ED to open investigation for non-administrative		Y	N/A	N	N/A	N/A	Y	N/A	Y
20 day letter to respondent asking for response to allegations		Y	Y	N/A	N	Y	Y	N/A	N/A
Response to 20 day letter received		Y	Y	N/A	N/A	Y	Y	N/A	N/A
Proposed sanctions in accordance with 2004-1/Administrative Notice Delegations		Y	Y	N/A	Y	N	Y	N	Y
CBM memorandum approved by ED		Y	Y	Y	Y	Y	Y	Y	Y
CBM memorandum approved by CBM		Y	Y	Y	Y	Y	Y	Y	Y
Proposed SAO/Contract/Administrative Notice to respondent		Y	Y	N/A	Y	Y	Y	Y	Y
Proposed SAO/Contract/Administrative Notice received from respondent		Y	Y	N/A	Y	Y	Y	Y	Y
ED approves revisions to SAO/Contract/Administrative Notice		N/A	N/A	N/A	N/A	N	Y	N/A	Y
CBM approves revisions to SAO/Contract/Administrative Notice		N/A	N/A	N/A	N/A	N	Y	N/A	Y
SAO/Contract/Administrative Notice/Investigation Closure approved by at least at least five Board members		N/A	Y	Y	Y	Y	Y	N/A	Y
Fully executed SAO/Contract/Administrative Notice in file		Y	Y	N/A	Y	Y	Y	Y	Y
Document fulfillment of sanctions imposed		Y	Y	N/A	Y	N/A	Y	Y	N

Washington State Board of Accountancy
 Summarization of Testing on Randomly Selected Sample
 Of Investigative Files

File No.	2008.030	2008.034	2008.035	2008.046	2008.053	2008.059	2008.062	2008.065
Investigator	Sadler	Bren	Bren	Bren	Bren	Bren	Sadler	Sadler
Type of Sanction	N	QAR	N	Y	N	Y	Y	QAR
Documentation of complaint leading to opening of investigation	Y	Y	Y	Y	Y	Y	Y	Y
Documentation of approval by ED to open investigation for non-administrative	N	Y	Y	N/A	N	N/A	Y	N/A
20 day letter to respondent asking for response to allegations	Y	N/A	Y	Y	N	Y	Y	Y
Response to 20 day letter received	Y	N/A	Y	Y	N/A	Y	Y	Y
Proposed sanctions in accordance with 2004-1/Administrative Notice Delegations	Y	N/A	N/A	Y	Y	Y	Y	Y
CBM memorandum approved by ED	Y	N/A	Y	N/A	Y	Y	Y	N
CBM memorandum approved by CBM	Y	N/A	Y	Y	Y	Y	N	Y
Proposed SAO/Contract/Administrative Notice to respondent	Y	Y	N/A	N/A	Y	Y	Y	N/A
Proposed SAO/Contract/Administrative Notice received from respondent	Y	Y	N/A	N/A	N	Y	Y	N/A
ED approves revisions to SAO/Contract/Administrative Notice	Y	Y	N/A	N/A	N/A	N/A	Y	N/A
CBM approves revisions to SAO/Contract/Administrative Notice	N	N/A	N/A	N/A	N/A	N/A	N	N/A
SAO/Contract/Administrative Notice/Investigation Closure approved by at least at least five Board members	Y	N/A	N	N/A	N/A	Y	Y	Y
Fully executed SAO/Contract/Administrative Notice in file	Y	Y	N/A	N/A	N/A	Y	Y	N/A
Document fulfillment of sanctions imposed	N	Y	N/A	N/A	N/A	Y	Y	N/A

Washington State Board of Accountancy
 Summarization of Testing on Randomly Selected Sample
 Of Investigative Files

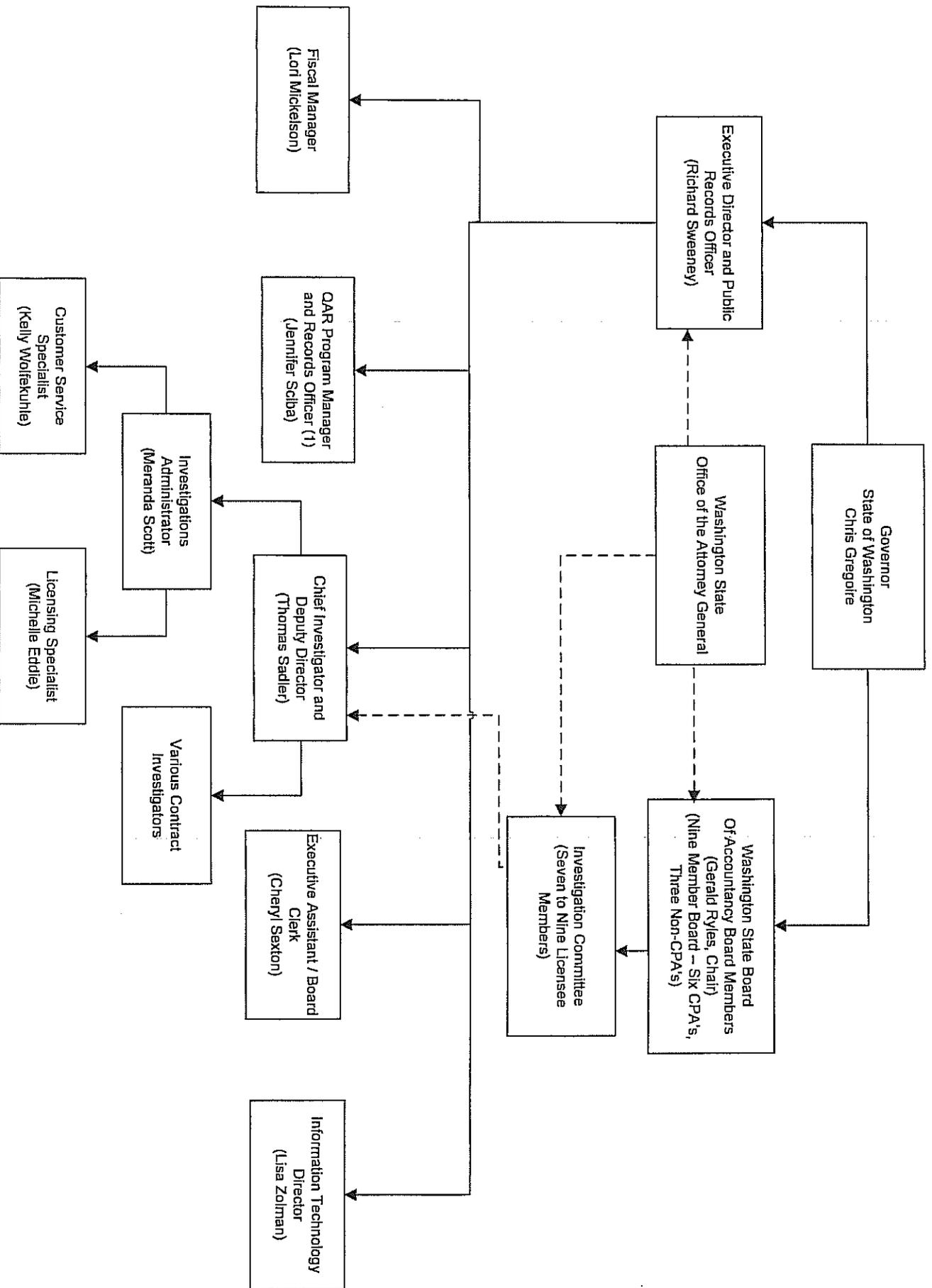
File No.	2008.091	2008.094	2009.009	2009.010	2009.011	2009.014	2009.023	2009.042
Investigator	Sadler	Bren	Sadler	Sadler	Sadler	Sadler	Bren	Sadler
Type of Sanction	CPE	Y	N	Y	CPE	N	Y	CPE
Documentation of complaint leading to opening of investigation	Y	Y	Y	Y	Y	Y	Y	Y
Documentation of approval by ED to open investigation for non-administrative	N/A	N/A	Y	Y	N/A	Y	N/A	N/A
20 day letter to respondent asking for response to allegations	N/A	Y	Y	Y	N/A	Y	Y	N/A
Response to 20 day letter received	N/A	Y	Y	Y	N/A	Y	Y	N/A
Proposed sanctions in accordance with 2004-1/Administrative Notice Delegations	N	Y	N/A	N	N	Y	Y	N
CBM memorandum approved by EO	N	Y	N	N	N	N	N	Y
CBM memorandum approved by CBM	Y	Y	Y	N	N	Y	Y	N
Proposed SAO/Contract/Administrative Notice to respondent	N/A	Y	N/A	Y	N/A	Y	Y	Y
Proposed SAO/Contract/Administrative Notice received from respondent	N/A	Y	N/A	Y	N/A	Y	Y	Y
ED approves revisions to SAO/Contract/Administrative Notice	N/A							
CBM approves revisions to SAO/Contract/Administrative Notice	N/A							
SAO/Contract/Administrative Notice/Investigation Closure approved by at least at least five Board members	N/A	Y	Y	N/A	N	Y	Y	Y
Fully executed SAO/Contract/Administrative Notice in file	N/A	Y	N/A	N/A	N/A	Y	Y	Y
Document fulfillment of sanctions imposed	N/A	N	N/A	Y	N/A	N	Y	Y

Washington State Board of Accountancy
 Summarization of Testing on Randomly Selected Sample
 Of Investigative Files

	File No.	2009.044	2009.049	2009.084	2009.102	2009.118	2009.125
	Investigator	Sadler	Sadler	Bren	Sadler	Bren	Bren
	Type of Sanction	CPE	CPE	N	Y	QAR	Y
Documentation of complaint leading to opening of investigation		Y	Y	Y	Y	Y	Y
Documentation of approval by ED to open investigation for non-administrative		N/A	N/A	N/A	Y	N/A	N/A
20 day letter to respondent asking for response to allegations		N/A	N/A	N/A	Y	Y	N/A
Response to 20 day letter received		N/A	N/A	N/A	Y	Y	N/A
Proposed sanctions in accordance with 2004-1/Administrative Notice Delegations		N	Y	Y	N	Y	N
CBM memorandum approved by ED		Y	Y	Y	N	Y	N
CBM memorandum approved by CBM		Y	Y	Y	N	Y	N/A
Proposed SAO/Contract/Administrative Notice to respondent		Y	Y	Y	N/A	Y	N/A
Proposed SAO/Contract/Administrative Notice received from respondent		N/A	Y	Y	N/A	Y	N/A
ED approves revisions to SAO/Contract/Administrative Notice		N/A	N/A	N/A	N/A	N/A	N/A
CBM approves revisions to SAO/Contract/Administrative Notice		N/A	N/A	N/A	N/A	N/A	N/A
SAO/Contract/Administrative Notice/Investigation Closure approved by at least at least five Board members		N/A	Y	Y	N	Y	N/A
Fully executed SAO/Contract/Administrative Notice in file		N/A	N	Y	N/A	Y	N/A
Document fulfillment of sanctions imposed		N/A	N/A	N/A	N/A	Y	N/A

EXHIBIT 6

Washington State Board of Accountancy Proposed Organizational Chart



(1) As noted in Section IV, A, 4, it has been recommended that the board transition out of the QAR Program. If this recommendation is adopted, the WBOA will have the opportunity to assign other job responsibilities to Ms. Sciba.