Accounting Ethics
Ethical Principles & Values for Texas CPAs

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Center of Excellence – Business
Accounting Ethics

- Accounting Ethics is the study of moral values and judgments as applied to professional accountants.

- The professional ethics of Texas CPAs is found in the application of the Rules of Professional Conduct.

- The Rules of Professional Conduct demonstrate the expected virtues to guide a CPA in the morally correct course of action.

- The professional ethics of Texas CPAs is based upon the rules promulgated under the Public Accountancy Act, which directs the Texas State Board of Public Accountancy to promulgate rules of professional conduct "in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public." Rule §501.51
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Ethics Course Objectives

- Encourage Texas CPAs to become educated in CPA professional ethics.
- Convey the intent of the Texas State Board of Public Accountancy and its Rules of Professional Conduct in the licensee's performance of professional accounting services, and not mere technical compliance.
Ethics Course Objectives

- Provide guidance in the application of ethical judgment in interpreting the rules and provide for a clear understanding of the public interest.
- Emphasize the ethical standards of the profession, as described in this section.
- Review and discuss the board's Rules of Professional Conduct and their implications for persons in a variety of practices, including examples.
Application of Ethical Judgment

- This course encourages open discussion of the Rules of Professional Conduct and their implications for persons in a variety of practices. This course will aid Texas CPAs in all areas of practice and employment.

- We will review and apply ethical judgment when interpreting the various standards and rules applicable to the practice of public accountancy within the State of Texas and encourage Texas CPAs to place public interest ahead of self-interest even if it means a loss of job or client. Upon completion of this course, Texas CPAs will understand the intent of the Rules of Professional Conduct in the performance of professional accounting services/work, beyond mere technical compliance with such rules.
Application of Ethical Principles, Values & Ethical Reasoning

- We will review of the implications in a number of different situations in which the Board’s Rules of Professional Conduct need to be analyzed and applied.
- It is expected that a CPA will go beyond mere technical compliance with the rules and will perform services to the highest standards.
- A Texas CPA is expected to apply virtues and values in every situation that goes beyond mere technical compliance with the Rules of Professional Conduct.
The Public Interest

The public interest shall be placed ahead of self-interest, even if it means a loss of job or client. CPAs are expected to achieve and maintain the highest standards of ethical conduct through ethical reasoning and the core values of the profession.
The Rules Serve The Public Interest

The Texas State Board of public Accountancy has an underlying duty to the public to insure that the Rules of Professional Conduct for Texas CPAs are followed and that Texas CPAs maintain a vigorous profession capable of attracting the bright minds essential to best serve the public interest.
Texas State Board of Public Accountancy

The responsibilities of the Texas State Board of Public Accountancy include the following:

- Licensing
- Certification
- Education
- Examination
- Professional Ethics

The board is statutorily empowered to regulate the practice of accountancy in Texas.

The board may adopt rules as necessary to govern its proceedings, perform its duties, regulate the practice of accountancy in Texas, and enforce applicable law.

The board may act directly under its statute and rules or through the executive director or a committee of the board.

Pursuant to the Act, the board is responsible for policy-making decisions and the executive director is responsible for the agency's management decisions and administrative responsibilities.

RULE §505.10
Rules of Professional Conduct

The Rules are applicable to all aspects of the professional accounting work, whether performed by CPAs in client practice or CPAs who are not in client practice.

It is expected that a CPA will go beyond mere technical compliance with the rules and will perform services to the highest standards.

The rules of professional conduct were established to maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public.
Ethics, Values & Virtues

Ethics and ethical decisions are shaped by personal, societal and professional values.

Virtues are the foundation to your core value system, the very essence that make up good character.

When we define virtue, we deem it as objective, an actual quality considered morally good or desirable in a person.

A moral decision is based upon a Moral Theory directing action regarding an ethical dilemma.
Moral Theories

Solving an ethical dilemma requires thinking about the following:

1. The rightness or the wrongness of the act.

2. The outcome of the act in terms of goodness or badness.

Most moral or ethical theories revolve around these two concepts. Guidance may be sought before taking the action or to understand the action taken.

It is better to evaluate an action from an ethical perspective before the action is taken.
Virtue Ethics

Accounting Ethics is the study of moral theories, values and judgments as applied to professional accountants. A CPA has duties and obligations as outlined in the Rules of Professional Conduct, but a CPA should go beyond the rules by expressing good character.

Virtue ethics theory states that good character should become a habit. CPAs with good character are sought out to provide professional services.

Virtuous people will fare better in life according to Aristotle.
Examples of Virtues

Aristotle holds the view that moral virtues are states of character lying at the mean between extremes of excess and deficiency.

*Courage* is a virtue. If taken to excess courage would manifest as recklessness or in deficiency, cowardice.

*Self-control* is a virtue and it is the Golden Mean between insensibility and self-indulgence.

*Honesty* is a virtue and its Golden Mean lies between boastfulness or exaggeration and understatement or self-deprecation.

Moral virtue is a conscious and deliberate choice, and not just following the rules.
Moral Theories

Utilitarianism: the moral worth of an action is determined solely by its utility in providing happiness or pleasure as summed among all people. It is a form of consequentialism.

Consequentialism is based on the concept that the moral worth of an action is determined by its outcome. And that the consequences of one's conduct are the true basis for any judgment about the morality of such conduct. Thus, from a consequentialist standpoint, a morally right act, or failure to act, is one that will produce a good outcome, or consequence. This view may also be expressed as "The ends justify the means".

Look to consequences of all stakeholders.
Moral Theories

Deontological moral systems are characterized by a focus upon adherence to independent moral rules or duties that are typically religious in nature. An action may be proper even if it does not produce a net balance of a greater good for society or the decision maker.

To make the correct moral choices, we have to understand what our moral duties are and what correct rules exist to regulate those duties. When we follow our duty, we are behaving morally. When we fail to follow our duty, we are behaving immorally.

Perhaps the most significant thing to understand about deontological moral systems is that their moral principles are completely separated from any consequences which following those principles might have. Thus, if you have a moral duty not to lie, then lying is always wrong — even if that results in harm to others.

Look to motivation of decision maker rather than the consequences of the decision.
Moral Theories

**Justice & Fairness:** Procedural justice is the method in which resources, or benefits and burdens, are allocated. There are different kinds of justice.

*Distributive justice* refers to the extent to which society's institutions ensure that benefits and burdens are distributed among society's members in ways that are fair and just.

*Retributive justice* refers to the extent to which punishments are fair and just. In general, punishments are held to be just to the extent that they take into account relevant criteria such as the seriousness of the crime and the intent of the criminal.

*Compensatory justice* refers to the extent to which people are fairly compensated for their injuries by those who have injured them.

Justice usually has been used with reference to a standard of rightness, fairness often has been used with regard to an ability to judge without reference to one's feelings or interests.

Fairness means that equals are treated equally and unequal parties are treated in relation to their relative differences: "Individuals should be treated the same, unless they differ in ways that are relevant to the situation in which they are involved." Fairness may be subjective and relative to both society's norms and customs.
Comparison of Moral Theories

**Virtue ethics** focuses on whether a person acting is expressing good character or moral virtues when making a decision. This ethical approach emphasizes the character of the moral agent, rather than rules or consequences, as the key element of ethical thinking.

**Contrast with other Ethical Theories:**

**Consequentialism:** holds that the consequences of a particular act form the basis for any valid moral judgment about that action.

**Deontology:** derives rightness or wrongness from the character of the act itself rather than the outcomes.

The difference between these three approaches to morality tends to lie more in the way moral dilemmas are approached than in the moral conclusions reached.
Comparison of Moral Theories

A consequentialist may argue that lying is wrong because of the negative consequences produced by lying — though a consequentialist may allow that certain foreseeable consequences might make lying acceptable.

A deontologist might argue that lying is *always* wrong, regardless of any potential "good" that might come from lying.

A virtue ethicist, however, would focus less on lying in any particular instance and instead consider what a decision to tell a lie or not tell a lie said about one's character and moral behavior.
Accounting Ethics

Accounting ethics is primarily a field of applied ethics and the study of moral values and judgments as they apply to the practice of accounting. It is an example of professional ethics.

Just like the professionals in the field of medicine or law, an accounting professional also needs to strictly adhere to the ethics that have become a norm in accounting.

The people who receive the services of an accounting professional not only rely on his skill and ability, but also on his professional integrity. People using the service of accounting professionals rely on their professional competency to make decisions and in the process also relies on the ethics followed by them.
Ethical Principles & Values

The rules of conduct are only the beginning because CPAs are expected to achieve and maintain the highest standards of ethical conduct through ethical reasoning and the core values of the profession:

• integrity,
• objectivity, and
• Independence.

These values and ethical principles, in addition to rules of conduct, are to be used in considering any ethical decision.
Integrity and Objectivity

A person in the performance of professional accounting services or professional accounting work shall maintain integrity and objectivity, shall be free of conflicts of interest and shall not knowingly misrepresent facts nor subordinate his or her judgment to others. In tax practice, however, a person may resolve doubt in favor of his client as long as any tax position taken complies with applicable standards such as those set forth in Circular 230 issued by the IRS and the AICPA's SSTSs.

RULE §501.73 (a)
Integrity

.01 Integrity principle. To maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity.

.02 Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.

AICPA Code of Professional Conduct
Integrity

.03 Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and honest difference of opinion; it cannot accommodate deceit or subordination of principle.

AICPA Code of Professional Conduct
Integrity

.04 Integrity is measured in terms of what is right and just. In the absence of specific rules, standards, or guidance or in the face of conflicting opinions, a member should test decisions and deeds by asking: “Am I doing what a person of integrity would do? Have I retained my integrity?” Integrity requires a member to observe both the form and the spirit of technical and ethical standards; circumvention of those standards constitutes subordination of judgment.

.05 Integrity also requires a member to observe the principles of objectivity and independence and of due care. AICPA Code of Professional Conduct
Integrity

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AICPA Code of Professional Conduct
Objectivity

.01 Objectivity and independence principle. A member should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities. A member in public practice should be independent in fact and appearance when providing auditing and other attestation services.

AICPA Code of Professional Conduct
Objectivity

.02 Objectivity is a state of mind, a quality that lends value to a member’s services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member’s objectivity in rendering attestation services.

AICPA Code of Professional Conduct
Objectivity

.03 Members often serve multiple interests in many different capacities and must demonstrate their objectivity in varying circumstances. Members in public practice render attest, tax, and management advisory services. Other members prepare financial statements in the employment of others, perform internal auditing services, and serve in financial and management capacities in industry, education, and government. They also educate and train those who aspire to admission into the profession. Regardless of service or capacity, members should protect the integrity of their work, maintain objectivity, and avoid any subordination of their judgment.

AICPA Code of Professional Conduct
Objectivity

.04 For a member in public practice, the maintenance of objectivity and independence requires a continuing assessment of client relationships and public responsibility. Such a member who provides auditing and other attestation services should be independent in fact and appearance. In providing all other services, a member should maintain objectivity and avoid conflicts of interest.

AICPA Code of Professional Conduct
Objectivity

.05 Although members not in public practice cannot maintain the appearance of independence, they nevertheless have the responsibility to maintain objectivity in rendering professional services. Members employed by others to prepare financial statements or to perform auditing, tax, or consulting services are charged with the same responsibility for objectivity as members in public practice and must be scrupulous in their application of generally accepted accounting principles and candid in all their dealings with members in public practice.

AICPA Code of Professional Conduct
Independence

Certain professional engagements, such as audits, reviews, and other services, require independence. Independence impairments under §501.70 of this chapter (relating to Independence), its interpretations and rulings cannot be eliminated by disclosure and consent.

RULE §501.73 (c)
Independence - RULE §501.70

- A person in the performance of professional accounting services or professional accounting work, including those who are not members of the AICPA, shall conform in fact and in appearance to the independence standards established by the AICPA and the board, and, where applicable, the SEC, the U.S. GAO, the PCAOB and other national or international regulatory or professional standard setting bodies.
Due Care

.01 Due care principle. A member should observe the profession’s technical and ethical standards, strive continually to improve competence and the quality of services, and discharge professional responsibility to the best of the member’s ability.

.02 The quest for excellence is the essence of due care. Due care requires a member to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform professional services to the best of a member’s ability, with concern for the best interest of those for whom the services are performed, and consistent with the profession’s responsibility to the public.

AICPA Code of Professional Conduct
Due Care

.03 Competence is derived from a synthesis of education and experience. It begins with a mastery of the common body of knowledge required for designation as a certified public accountant. The maintenance of competence requires a commitment to learning and professional improvement that must continue throughout a member’s professional life. It is a member’s individual responsibility. In all engagements and in all responsibilities, each member should undertake to achieve a level of competence that will assure that the quality of the member’s services meets the high level of professionalism required by these Principles.

AICPA Code of Professional Conduct
Due Care

.04 Competence represents the attainment and maintenance of a level of understanding and knowledge that enables a member to render services with facility and acumen. It also establishes the limitations of a member’s capabilities by dictating that consultation or referral may be required when a professional engagement exceeds the personal competence of a member or a member’s firm. Each member is responsible for assessing his or her own competence of evaluating whether education, experience, and judgment are adequate for the responsibility to be assumed.

AICPA Code of Professional Conduct
Due Care

.05 Members should be diligent in discharging responsibilities to clients, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards.

.06 Due care requires a member to plan and supervise adequately any professional activity for which he or she is responsible.

AICPA Code of Professional Conduct
A CPA should maintain professional skepticism. If you get an explanation for the situation, think about whether it makes sense. Continue to observe over time to see if the situation plays out as expected.

A CPA should apply professional skepticism throughout any engagement. In an audit, professional skepticism is a component of the auditor’s general duty of care that applies throughout the audit and is an attitude that includes a questioning mind and a critical assessment of the appropriateness and sufficiency of audit evidence.
Elements of Professional Skepticism

The three elements of professional skepticism—auditor attributes, auditor mindset, and auditor actions—permeate the entire audit process and are integral to audit quality according to the PCAOB. Further, these elements of professional skepticism interact dynamically as auditors respond to conditions and pressures that change or arise during the audit. As a result of skeptical judgments made during the planning and performance of the audit, for example, the level of skill and expertise needed, as well as other auditor actions and audit work conducted are likely to change during the audit.

As part of exercising professional skepticism, the standards require ongoing questioning of whether the information and evidence obtained suggests that a material misstatement due to fraud has occurred and the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest.
Independent Judgment

Independent Judgment is supported by a CPA’s Integrity, Objectivity and Professional Skepticism.

A CPA is expected to be both Independent in Mind AND Appearance.

This is to protect the Public Interest and to ensure that Professional Services are professionally provided to clients.
Conflict of Interest

A conflict of interest may occur if a person performs a professional accounting service or professional accounting work for a client or employer and the person has a relationship with another person, entity, product, or service that could, in the person's professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the person's objectivity. If the person believes that the professional accounting service or professional accounting work can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties, then this rule shall not operate to prohibit the performance of the professional accounting service or professional accounting work because of a conflict of interest.

RULE §501.73 (b)
Not Mere Compliance

The spirit and intent of the Rules of Professional Conduct is to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public.

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy.
Ethical Reasoning

Ethical reasoning pertains to the rights and wrongs of human conduct. Each person has standards that are defined by their personal values which come into play when the person faces certain dilemmas or decisions. Commonly, ethical differences occur as a result of individual interpretation of a subject or event.

Following a strong code of conduct provides guidance in determining the outcome of an ethical dilemma.
Model to Apply Ethical Reasoning

1. Identify the facts and the stakeholders regarding the proposed action and any ethical dilemma(s).

2. Rank the stakeholders with their interests while identifying the most important stakeholder interests.

3. Assess the impact of the proposed action on each stakeholder group based upon their interests based upon well-offness, fairness, virtues, and impact on the stakeholders.

4. Are there any constraints limiting the proposed action?

5. Make the decision based upon the fundamental interests of all the stakeholders with a fair balancing where the proposed decision results in more benefits than costs.
Application of Ethical Reasoning

Analysis of an ethical dilemma utilizing the seven steps provided by the American Accounting Association may be helpful:
1. Determine the facts – what, who, where, when, and how;
2. Define the ethical issue(s);
3. Identify major principles, rules and values;
4. Specify the alternatives;
5. Compare values and alternatives, and see if a clear decision emerges;
6. Access the consequences; and
7. Make your decision.
Application of Ethical Principles, Values & Ethical Reasoning

A Texas CPA is expected to apply virtues and values in every situation that goes beyond mere technical compliance with the Rules of Professional Conduct.

The Rules of Professional Conduct are just the start of providing professional accounting services to the public. All of the rules of professional conduct shall apply to and must be observed by a certificate or registration holder engaged in the client practice of public accountancy.
Rules Applied to All Kinds of Professional Services

The rules are intended to have application to all kinds of professional services performed in the practice of public accountancy, including services relating to:

(1) accounting, auditing and other assurance services,
(2) taxation,
(3) financial advisory services,
(4) litigation support,
(5) internal auditing,
(6) forensic accounting, and
(7) management advice and consultation.

Finally, these rules also recognize the duty of certified public accountants to refrain from committing acts discreditable to the profession. These acts, whether or not related to the accountant's practice, impact negatively upon the public's trust in the profession.
Rules of Professional Conduct

These rules of professional conduct were promulgated under the Public Accountancy Act, which directs the Texas State Board of Public Accountancy to promulgate rules of professional conduct "in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public."

RULE §501.51 Preamble and General Principles
Where to find the Rules

The Rule of Professional Conduct are located at


The Public Accountancy Act is found at

https://www.tsbpa.state.tx.us/pdffiles/TSBPAACT.pdf

A link to both is found on the left hand side of the Texas State Board of Public Accountancy's website:

https://www.tsbpa.state.tx.us/
RULES OF PROFESSIONAL CONDUCT

The Rules are broken down as follows:

Subchapter A  General Provisions
Subchapter B  Professional Standards
Subchapter C  Responsibilities to Clients
Subchapter D  Responsibilities to the Public
Subchapter E  Responsibilities to the Board/Profession
Recent Changes to TSBPA Rules

We are going to discuss recent changes in those rules while discussing rules and the discreditable acts. The discreditable acts are an ever-expanding list that each CPA in Texas needs to review.

The TSBPA Rules change on a regular basis and we will discuss the current or pending changes. Recent changes in the rules or proposed changes includes changes to Peer Review matters, and AICPA Ethics Rules.

Other changes are to be addressed in the review of the Rules.
Changes under Texas Senate Bill 228

- Senate Bill 228 amended the Act to remove the Board’s Enforcement Committees from the Open Meetings Act to protect the confidentiality of the Board’s investigations.
- The act also expanded the categories of information not considered confidential communications between CPAs and clients. This included information required to be disclosed by a court order signed by a judge in the following circumstances:
  a. Under a subpoena issued under specified federal laws;
  b. Under a summons or subpoena issued under the Securities Act;
  c. In accordance with requirements of the Public Company Accounting Oversight Board or its successor; or
  d. In the course of a practice review by another CPA or CPA firm for a potential acquisition or merger of one firm with another if both have entered into a nondisclosure agreement with regard to client information shared between the firms.
Proposed Changes to Board Rules

Under Rule §501.93 Responses, the Board is prosing that, in addition to the rule that
A person shall substantively respond in writing, within 30 days, to any communication from the board requesting a response.

The following be added:

It is not a substantive response for a person to simply reply that they do not intend to respond or provide the records or documents requested.
RULE §519.7  Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board

The Board takes any misdemeanor involving intoxication under the influence of alcohol or a controlled substance. The Board added Obstructing Highway or Other Passageway as a reportable misdemeanor.

This sounds like a driving misdemeanor, but it is typically used by a Texas prosecutor as a way to plead down a DWI to a lessor offensive. If you feel like you have an alcohol related problem, there is confidential peer assistance to help you.
Peer Assistance through the Accountants Confidential Assistance Network

CPA candidates and accounting students with alcohol, substance abuse, depression, stress or other mental health issues may be assisted through peer assistance available to Texas CPAs, through the Accountants Confidential Assistance Network (ACAN).

A license to practice accounting may open doors that might otherwise be closed, but it cannot shield a CPA from the three most widespread career killers: *substance abuse, depression, and stress*.

One’s physical and mental health directly influences Client relationships and job functioning. Any impairment of a CPA’s performance ultimately harms the client, the profession, and society.

An estimated 10% of CPAs will experience one or more of these treatable illnesses themselves, and many more will have a colleague or client who does.

ACAN is there to help: [https://www.tscpa.org/advocacy/akan](https://www.tscpa.org/advocacy/akan)
ACAN Contact Information

Accountants Confidential Assistance Network

Offering **CONFIDENTIAL** assistance to CPAs, exam candidates, and accounting students who may have a drug or alcohol dependency problem or mental health issues.

1-866-766-2226

The program is administered by the Texas Society of CPAs and endorsed by the Board.

LEGAL NOTICE: The identity and communications and fact of membership of anyone attending this group are confidential and protected under penalty of law under Chapter 467 of the Texas Health and Safety Code.
Competence
Responsibilities to Clients

(a) A person shall not undertake any engagement for the performance of professional accounting services or professional accounting work which he cannot reasonably expect to complete with due professional competence…

(1) Competence to perform professional accounting services or professional accounting work involves both the technical qualifications of the person and the person's staff and the ability to supervise and evaluate the quality of the work being performed.

RULE §501.74  Competence
(2) If a person is unable to gain sufficient competence to perform professional accounting services or professional accounting work, the person shall suggest to the client the engagement of someone competent to perform the needed professional accounting or professional accounting work service, either independently or as an associate.

RULE §501.74 Competence
Competence

(b) A person shall exercise due professional care in the performance of professional services.

(c) A person shall adequately plan and supervise the performance of professional services.

(d) A person shall obtain and maintain appropriate documentation to afford a reasonable basis for conclusions and recommendations in relation to any professional services performed.

RULE §501.74 Competence
Contingency Fees
Responsibilities to Clients

A person shall not perform for a contingent fee any professional accounting services or professional accounting work for, or receive such a fee from, a client for whom the person performs professional accounting services or professional accounting work requiring independence under §501.70 of this chapter (relating to Independence).

RULE §501.72(a) Contingency Fees
Contingency Fees in Tax Engagements

(b) A person shall not prepare an original or amended federal, state, local or other jurisdiction tax return for a contingent fee for any client during the period in which the person is engaged to perform any of the services referenced by subsection (a) of this section and the period covered by any historical or prospective financial statements involved in any of the referenced services.

Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority.

RULE §501.72(b)
Contingency Fees for Testifying Experts

A person shall not perform an engagement as a testifying accounting expert for a contingent fee. A testifying accounting expert is one that at any time during the proceeding becomes subject to disclosure and discovery under the procedural rules of the forum where the matter for which his services were engaged is pending.

RULE §501.72(c)
Acting Through Others

Responsibilities to Clients

(a) A person shall not permit others including non-CPA owners and employees, to carry out on his behalf, either with or without compensation, acts, which, if carried out by the person, would place him in violation of these rules of professional conduct.

(b) The board shall consider that the conduct of any non-CPA owner or employee in connection with the business of a licensed firm is the conduct of that licensed firm for the purposes of the rules of professional conduct.

RULE §501.77
Withdrawal or Resignation

Responsibilities to Clients

(a) If a person cannot complete an engagement to provide professional accounting services and professional accounting work or employment assignment in a manner that complies with the requirements of this chapter, the person shall withdraw from the engagement or resign from the employment assignment.

(b) If a person withdraws from an engagement or resigns from an employment assignment pursuant to this section, the person shall inform the client or employer of the withdrawal or resignation.

RULE §501.78
Practice of Public Accountancy
Responsibilities to the Public

A person may not engage in the practice of public accountancy unless he holds a valid license or qualifies under a practice privilege. A person may not use the title or designation "certified public accountant," the abbreviation "CPA," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a CPA unless he holds a valid license issued by the board or qualifies under a practice privilege. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued.

RULE §501.80
Practice of Public Accountancy

Responsibilities to the Public

(b) Any licensee of this board in good standing as a CPA or public accountant may use such designation whether or not the licensee is in the client, industry, or government practice of public accountancy. However, a licensee who is not in the client practice of public accountancy may not in any manner, through use of the CPA designation or otherwise, claim or imply independence from his employer or that the licensee is in the client practice of public accountancy.

RULE §501.80
Firm License Requirements

Responsibilities to the Public

A firm, may not provide or offer to provide attest services or use the title "CPA," "CPAs," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm license issued by the board or qualifies under a practice privilege. . . .

(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state.

RULE §501.81
Firm License Requirements

Responsibilities to the Public

(c) A firm is required to hold a license issued by the board and an individual must practice through a firm that holds such a license, if for a client that has its principal office in this state, the individual performs:

(1) a financial statement audit or other engagement that is to be performed in accordance with SAS;
(2) an examination of prospective financial information that is to be performed in accordance with SSAE; or
(3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor.

RULE §501.81
Firm License Requirements - Disclaimer

Responsibilities to the Public

(d) Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer: "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.

(f) On the determination by the board that a person has practiced without a license or through an unlicensed firm in violation of subsection (d) of this section, the person's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

RULE §501.81
Advertising
Responsibilities to the Public

A person shall not use or participate in the use of:

(1) any communication having reference to the person's professional services that contains a false, fraudulent, misleading or deceptive statement or claim; nor
(2) any communication that refers to the person's professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

RULE §501.82
Discreditable Acts

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy.

A discreditable act includes but is not limited to:

(1) fraud or deceit in obtaining a certificate as a CPA or in obtaining registration under the Act or in obtaining a license to practice public accounting;

(2) dishonesty, fraud or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Subchapter J or §901.458 of the Act (relating to Loss of Independence) applicable to a person certified or registered by the board;

(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;

(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm;

(6) cancellation, revocation, suspension or refusal to renew authority to practice as a CPA or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;
Discreditable Acts

A discreditable act includes but is not limited to:

(7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action;

(8) a conviction or final finding of unethical conduct by state or federal agencies or boards, local governments or commissions for violations of laws or rules on ethics by licensees that engage in activities regulated by those entities including but not limited to: the Public Company Accounting Oversight Board, Internal Revenue Service, U.S. Securities and Exchange Commission, U.S. Department of Labor, U.S. General Accounting Office, U.S. Housing and Urban Development, Texas State Auditor, Texas State Treasurer, Texas Securities Board, Texas Department of Insurance, and the Texas Secretary of State;

(9) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(10) fiscal dishonesty or breach of fiduciary responsibility of any type;

(11) failure to comply with a final order of any state or federal court;

(12) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(13) intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;

(14) giving intentional false sworn testimony or perjury in court or in connection with discovery in a court proceeding or in any communication to the board or any other federal or state regulatory or licensing body;

(15) threats of bodily harm or retribution to a client;

(16) public allegations of a lack of mental capacity of a client which cannot be supported in fact;
Discreditable Acts

A discreditable act includes but is not limited to:

(17) voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:
   (A) by permission of the employer;
   (B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");
   (C) pursuant to:
      (i) a court order signed by a judge;
      (ii) a summons under the provisions of:
         (I) the Internal Revenue Code of 1986 and its subsequent amendments;
         (II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments; or
      (iii) a congressional or grand jury subpoena; or
      (iv) applicable federal laws, federal government regulations, including requirements of the PCAOB;
   (D) in an investigation or proceeding by the board;
   (E) in an ethical investigation conducted by a professional organization of CPAs;
   (F) in the course of a peer review under §901.159 of the Act (relating to Peer Review); or
   (G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.
(18) breaching the terms of an agreed consent order entered by the board or violating any Board Order.
Discreditable Acts: *Misdemeanors*

(19) Interpretive Comment: The board has found in §519.7 of this title (relating to Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, or a License) that any crime of moral turpitude directly relates to the practice of *public accountancy*. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.
Discreditable Acts: Misdemeanors

Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision may subject a licensee or certificate holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Licensees and certificate holders are often placed in a position of trust with respect to client funds. The public including the business community relies on the integrity, morality and honesty of licensees and certificate holders in providing professional accounting services or professional accounting work. The board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime relating to integrity, morality and honesty to relate directly to the practice of public accountancy and may subject the licensee or certificate holder to discipline.

The board has determined that the following list of misdemeanor offenses that involve integrity, morality and honesty directly relate to the duties and responsibilities involved in providing professional accounting services or professional accounting work, pursuant to the provisions of Chapter 53 of the Occupations Code:
Discreditable Acts: *Misdemeanors*

(1) dishonesty or fraud:
   
   (A) Unlawful Use of Criminal Instrument;
   (B) Unlawful Access to Stored Communications;
   (C) Illegal Divulgence of Public Communications;
   (D) Burglary of Coin-Operated or Coin Collection Machines;
   (E) Burglary of Vehicles;
   (F) Theft;
   (G) Theft of Service;
   (H) Tampering with Identification Numbers;
   (I) Theft of or Tampering with Multichannel Video or Information Services;
   (J) Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device;
   (K) Sale or Lease of Multichannel Video or Information Services Device;
Discreditable Acts: Misdemeanors

(1) dishonesty or fraud:

(L) Possession, Manufacture, or Distribution of Certain Instruments Used to Commit Retail Theft;

(M) Forgery;

(N) Criminal Simulation;

(O) Trademark Counterfeiting;

(P) Stealing or Receiving Stolen Check or Similar Sight Order;

(Q) False Statement to Obtain Property or Credit or in the Provision of Certain Services;

(R) Hindering Secured Creditors;

(S) Fraudulent Transfer of a Motor Vehicle;

(T) Credit Card Transaction Record Laundering;

(U) Issuance of a Bad Check;

(V) Deceptive Business Practices;

(W) Rigging Publicly Exhibited Contest;

(X) Misapplication of Fiduciary Property or Property of Financial Institution;

(Y) Securing Execution of Document by Deception;

(Z) Fraudulent Destruction, Removal, or Concealment of Writing;

(AA) Simulating Legal Process;

(BB) Refusal to Execute Release of Fraudulent Lien or Claim;

(CC) Fraudulent, Substandard, or Fictitious Degree;

(DD) Breach of Computer Security;

(EE) Unauthorized Use of Telecommunications Service;
Discreditable Acts: *Misdemeanors*

(1) dishonesty or fraud:
(FF) Theft of Telecommunications Service;
(GG) Publication of Telecommunications Access Device;
(HH) Insurance Fraud;
(I) Medicaid Fraud;
(JJ) Coercion of Public Servant or Voter;
(K) Improper Influence;
(LL) Acceptance of Honorarium (by restricted government employees);
(MM) Gift to Public Servant by Person Subject to his Jurisdiction;
(NN) Offering Gift to Public Servant;
(OO) Perjury;
(PP) False Report to Police Officer or Law Enforcement Employee;
(QQ) Tampering with or Fabricating Physical Evidence;
(RR) Tampering with Governmental Record;
(SS) Fraudulent Filing of Financial Statement; (TT) False Identification as Peace Officer;
(UU) Misrepresentation of Property;
(VV) Record of a Fraudulent Court;
(WW) Bail Jumping and Failure to Appear;
(XX) False Alarm or Report;
(YY) Engaging in Organized Criminal Activity; and
(ZZ) Violation of Court Order Enjoining Organized Criminal Activity;
Discreditable Acts: Misdemeanors

(2) moral turpitude:
(A) Public Lewdness;
(B) Indecent Exposure;
(C) Enticing a Child;
(D) Violation of a Protective Order Preventing Offense Caused by Bias or Prejudice;
(E) Failure to Identify;
(F) Hindering Apprehension or Prosecution;
(G) Improper Contact with Victim;
(H) Barratry and Solicitation of Professional Employment;
(I) Unauthorized Practice of Law;
(J) Hindering Proceedings by Disorderly Conduct;
(K) Abuse of Corpse;
(L) Prostitution;
(M) Promotion of Prostitution;
(N) Obscene Display or Distribution;
(O) Obscenity;
(P) Sale, Distribution, or Display of Harmful Material to Minor; and
(Q) Employment Harmful to Children;
Discreditable Acts: *Misdemeanors*

(3) *alcohol abuse or controlled substances*:

(A) Possession of Substance in Penalty Group 3 (less than 28 grams), under the Texas Health and Safety Code;

(B) Possession of Substance in Penalty Group 4 (less than 28 grams), under the Texas Health and Safety Code;

(C) Manufacture, Delivery, or Possession with Intent to Deliver Miscellaneous Substances, under the Texas Health and Safety Code;

(D) Manufacture, Delivery, or Possession of Miscellaneous Substances, under the Texas Health and Safety Code;

(E) Delivery of Marijuana, under the Texas Health and Safety Code;

(F) Possession of Marijuana, under the Texas Health and Safety Code;

(G) Possession or Transport of Certain Chemicals with Intent to Manufacture Controlled Substance (for substance listed in a Schedule but not in a Penalty Group), under the Texas Health and Safety Code;

(H) Possession or Delivery of Drug Paraphernalia, under the Texas Health and Safety Code; and

(I) Any misdemeanor involving intoxication under the influence of alcohol or a controlled substance.
Discreditable Acts: *Misdemeanors*

(4) *physical injury or threats of physical injury to a person:*

(A) Assault;

(B) Deadly Conduct;

(C) Terroristic Threat; and

(D) Leaving a Child in a Vehicle.

(b) A licensee or certificate holder is often placed in a position of trust with respect to client funds; and the public, including the business community relies on the integrity, morality and honesty of licensees and certificate holders in preparing reports and providing professional accounting services or professional accounting work. *The board considers repeated violations of any criminal law to relate directly to a licensee or certificate holder providing professional accounting services or professional accounting work.*

(c) A conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for a violation of any state or federal law that is equivalent to an offense listed in subsection (a)(1) - (4) of this section is considered to directly relate to a licensee or certificate holder providing professional accounting services or professional accounting work and may subject a certificate or registration holder to discipline by the board.
What to do when nothing is on point?
What happens when the rules do not directly cover your situation?
AICPA’s new approach is called the Conceptual Framework and it is to be used when the Rules do not provide direct guidance:

The first step is to Identify threats. Is there a relationship or circumstance that creates a threat or maybe multiple threats to complying with the rules. The existence of a threat does not mean that there is a violation of the rules. Rather, that the significance of the threat has to be evaluated. And that’s the second step.

AICPA Codification Project
What to do when nothing is on point?

The second step is to Evaluate the significance of a threat. In evaluating the significance of an identified threat, you should determine whether a threat is at an acceptable level. A threat is at an acceptable level when a reasonable and informed third party who is aware of the relevant information would be expected to conclude that the threat would not compromise the compliance with the rules. You should consider both qualitative and quantitative factors when evaluating the significance of a threat, including the extent to which existing safeguards already reduce the threat to an acceptable level.

AICPA Codification Project
What to do when nothing is on point?

If you conclude that a reasonable and informed third party who is aware of the relevant information would be expected to conclude that the threat does not compromise you compliance with the rules, the threat is at an acceptable level, and you are not required to evaluate the threat any further under this conceptual framework approach.

However, if you conclude that the threat is not at an acceptable level, then you have to proceed to the next step.

*AICPA Codification Project*
What to do when nothing is on point?

The third step is to identify and apply safeguards. So next you have to identify what safeguards, once applied would eliminate or reduce the threat or threats to an acceptable level. You will have to apply judgment in determining the appropriate safeguards. When identifying appropriate safeguards to apply, keep in mind that one safeguard may eliminate or reduce multiple threats, but in some cases, you may need to apply multiple safeguards to eliminate or reduce one threat to an acceptable level.

AICPA Codification Project
What to do when nothing is on point?

In other cases, an identified threat may be so significant that no safeguards will eliminate the threat or reduce it to an acceptable level, or the maybe you are unable to implement effective safeguards. Under such circumstances, providing the specific professional services would compromise your compliance with the rules, and *you should determine whether to decline or discontinue the professional services or resign from the engagement.*

*AICPA Codification Project*
Red Flags of Client Troubles
Consider Engagement Termination

Red flags: A symptom of fraud is a red flag or any indication or evidence that provides some predication that fraud has or is currently occurring. Predication are the circumstances, if taken as a whole, would lead a reasonable, prudent professional to believe that fraud has occurred, is occurring or will occur.

Common to all frauds is perceived opportunity, perceived pressure and rationalization of fraudulent behavior. The fraud triangle identifies the commonality in all frauds.

The three sides of the Fraud Triangle are

- Perceived opportunity
- Perceived Pressure
- Rationalization

Accountants should be cognizant of most fraud schemes because most fraud could be avoided with basic accounting controls and proper oversight. The Association of Fraud Examiners’ opinion is that most fraudulent schemes could have been avoided altogether with basic accounting controls, audits and proper oversight. Although management is ultimately responsible for fraud deterrence, it is the CPA’s job to educate the client about fraud related issues.
Perceived opportunity

*Perceived opportunity:* The fraudster has to think or believe that he or she has the opportunity to commit fraud and will not get caught.

1. Lack of controls
2. Failure to discipline fraudsters
3. Lack of an audit trail
4. Can’t judge job performance
5. Apathy
6. Lack of information
Perceived Pressure

*Perceived Pressure:* Some studies suggest that 95% of all frauds involve financial or vice related pressures.

1. Greed
2. Bills exceed the means of an employee
3. Unexpected losses
4. Drug usage
5. Excessive alcohol
6. Gambling
7. Personal losses or unexpected financial needs
8. Expensive extramarital relationships
9. Shopping addition
10. Get even with employer
11. Appear successful
Rationalization

*Rationalization*: There are numerous rationalizations people use to justified or explained in a seemingly rational or logical manner the commission of fraud.

1. Nobody will get hurt
2. I deserve more
3. It’s for a good purpose
4. I pay my fair share of taxes
5. The government wastes money
6. Top 1% is too rich
7. We will fix this later
Client Favors Puts CPAs on the Slippery Slope

The Slippery Slope starts when you help your client or employer by committing a minor unethical act.

One way to avoid the Slippery Slope is to hold yourself to higher standards and just say no when you believe a situation is unethical or calls your responsibilities as CPA into jeopardy. I know it is easy to say that we will all do what is right when we are on the outside looking in, however it will protect us from anything criminal or wrong. It is very easy not to go down this “slippery slope” when you want to help your client.

Your organization’s good tone at the top allows an ethical environment to prosper and keeps employees off the slippery slope.
"Tone at the top" is a concept that originated with accountants. The tone at the top is often considered to permeate an entire organization, and good tone at the top is considered a prerequisite for solid corporate governance.

Good organizational tone is set through policies, codes of ethics, a commitment to hiring competent employees, and the development of appropriate reward structures that promote good internal controls and effective governance.

In an analysis of ethical leadership, KPMG described ethical leaders as those who are receptive to employees' ethical concerns, value ethics and integrity over short-term business goals, and respond appropriately if they become aware of misconduct.

Tone at the Top is used to describe an organization's general ethical climate, as established by its board of directors, audit committee, and senior management. Having a tone at the top is believed by business ethics experts to help prevent fraud and other unethical practices.
Case Study Analysis

This course includes opportunities for critical thinking and ethical reasoning. The slides headed with *Case Study* are provided for your analysis. Please use your complex reasoning skills to attempt to resolve the issues found in the example. Some of the cases were resolved by the TSBPA and others have not been resolved.

If you or one of your colleagues were faced with one of these circumstances, what is the most ethical course of action?

Think of the stakeholders, the different methods of ethical reasoning, the TSBPA Rules, and come up with the best possible course of action.
Ethical Reasoning & Dilemmas

Board actions and the professional ethics of Texas CPAs is found in the application of the Rules of Professional Conduct.

These are some ethical cases and issues that the Texas State Board of Public Accountancy reviewed.
Case Study

Issuance of a Misc 1099 to collect fees is a violation

CPA and CPA Firm attempted to collect fees from their client by filing a Form 1099-Misc with the IRS. The CPAs advised the IRS that the client had realized income due to the discharge of an indebtedness when this had not occurred.

Result: Substantial administrative penalty and ACO directing the CPA and CPA Firm to stop issuing 1099s for the purpose of collecting fees from clients.

Rule Violation 501.74(d): A person shall obtain and maintain appropriate documentation to afford a reasonable basis for conclusions and recommendations in relation to any professional services performed.
Case Study

Failure to Return Client Records and Respond to the Board

CPA failed to return client records and personal tax information, failed to respond to a client’s inquiries, and failed to respond to Board communications.

**Result:** CPA entered into an ACO with the Board, whereby CPAs certificate was revoked for a period of three (3) years from the effective date of the order. However, the revocation was stayed, and CPA was placed on probation for three (3) years and administrative costs were assessed.

*Rule Violation 501.76:* A person shall return original client records to a client or former client within a reasonable time (promptly, not to exceed 10 business days) after the client or former client has made a request for those records.

*Rule Violation 501.90(12):* repeated failure to respond to a client's inquiry within a reasonable time without good cause.

*Rule Violation 501.93:* A person shall substantively respond in writing, within 30 days, to any communication from the board requesting a response.
Case Study
Commissions for Sale of Products, Services or Referrals

CPA inadvertently failed to disclose in writing to clients the nature, source, and amount or an estimate of the amount of other compensation received by the CPA upon the sale of investment property to clients.

Result: Substantial administrative penalty and CPA and CPA’s Firm was reprimanded.

RuleViolation 501.71:

(a) A person shall not for a commission, compensation or other benefit recommend or refer to a client any product or service or refer any product or service to be supplied to a client, or receive a commission, compensation or other benefit when the person also performs services for that client requiring independence under §501.70 of this chapter (relating to Independence).

(b) This prohibition applies during the period in which the person is engaged to perform any of the services requiring independence and during the period covered by any of the historical financial statements involved in such services requiring independence.

(c) A person who receives, expects or agrees to receive, pays, expects or agrees to pay, other compensation in exchange for services or products recommended, referred, or sold by him shall, no later than the making of such recommendation, referral, or sale, disclose to the client in writing the nature, source, and amount, or an estimate of the amount when the amount is not known, of all such other compensation.

(d) This section does not apply to payments received from the sale of all, or a material part, of an accounting practice, or to retirement payments.
Case Study
Confidential Information

CPA working in industry as an internal accountant voluntarily disclosed confidential information communicated to him by his employer. (Rule not only applicable regarding tax and audit engagements!)

Result: Substantial administrative penalty and reprimand.

Rule Violation 501.90(17): voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer.
Exceptions to Confidentiality Rules

The following are exceptions to when a CPA must keep communications and client information confidential:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");
Exceptions to Confidentiality Rules

(C) pursuant to:

(i) a court order signed by a judge;

(ii) a summons under the provisions of:

   (I) the Internal Revenue Code of 1986 and its subsequent amendments;

   (II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments; or


(iii) a congressional or grand jury subpoena; or

(iv) applicable federal laws, federal government regulations, including requirements of the PCAOB;
Exceptions to Confidentiality Rules

(D) in an investigation or proceeding by the board;
(E) in an ethical investigation conducted by a professional organization of CPAs;
(F) in the course of a peer review under §901.159 of the Act (relating to Peer Review); or
(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.
Case Study
Failure to Properly Perform an Audit

CPA and CPA Firm issued an audit report that failed to include required disclosures and issued two audit reports through a firm that was not licensed by the Board.

Result: CPA and CPA’s Firm entered into an ACO with the Board, whereby they were reprimanded and CPA’s license was suspended for a period of two (2) years from the effective date of the order. The suspension was stayed, and CPA was placed on probation for two (2) years. In addition, CPA and CPA’s firm will be subject to a scope limitation from the effective date of the Board Order. CPAs are prohibited from providing audit and review services.

Rule Violation 501.60: A person shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an auditor with respect to such financial statements, unless he has complied with GAAS. SAS issued by the AICPA, auditing standards included in Standards for Audit of Government Organizations, Programs, Activities and Functions issued by the U.S. GAO, auditing and related professional practice standards to be used by registered public accounting firms issued by the PCAOB, and other pronouncements having similar generally recognized authority, are considered to be interpretations of GAAS.
Client Practice of Public Accountancy

A CPA performs “Public Accountancy” when the CPA performs an "Attest Service“ and this means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the AICPA, PCAOB, or another national or international accountancy organization recognized by the board;

(B) a review or compilation required by the board to be performed in accordance with standards for accounting and review services adopted by the AICPA or another national or international accountancy organization recognized by the board;
Client Practice of Public Accountancy

C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the AICPA or another national or international accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA or another national or international accountancy organization recognized by the board;
Case Study
Peer Review

CPA firm received two successive deficient peer reviews and failed to complete a peer review. The CPA was engaged in the client practice of public accountancy and performed attest and non-attest services.

CPA Firm also failed to respond to Board communications within 30 days.

Result: Substantial administrative and CPA Firm shall not perform any attest service from the effective date of the Board Order until an application for removal of the limitation is found acceptable to the Technical Standards Review (TSR) Committee and ratified by the Board.

Rule Violation 501.93: A person shall substantively respond in writing, within 30 days, to any communication from the board requesting a response.

Rule Violation 527.4: Participation in the Peer Review program is required of each firm licensed or registered with the board that performs any attest service or any accounting and/or auditing engagements, including audits, reviews, compilations, forecasts, projections, or special reports.

Rule Violation 527.5: A firm, including a succeeding firm, which receives two consecutive reviews with a rating of pass with deficiencies and/or fail on a system or engagement review may be required to have an accelerated review by the Peer Review Committee.
You are just licensed as a CPA at a firm that audits a small company that does not have a general ledger. Your supervisor requests that you create a balance sheet and income statement for your supervisor to audit. What do you do?
Case Study
Firm License

You are employed as a contract CFO and the owner of the company you work for hires a CPA Firm to perform a compilation of the financial statements you prepared. You go to the TSBPA website and learn the CPA Firm hired to perform the compilation does not have a firm license issued by the TSBPA. You tell the owner and he tells you not to worry because the CPA firm does the company's tax return. What do you do?
Case Study
Confidential Information

You have been terminated by your employer because the company is downsizing and considering taking bankruptcy. This information has not been made public and will cause the financial statements to be incorrect and misleading. The CFO told you in confidence. You are in an interview with a competitor for a high paying job and you are asked why you left your employ in the secretly bankrupt company. What do you do?
Case Study

Supervision of Tax Work

You firm has too many tax returns to prepare and hires an Enrolled Agent to assist the firm with tax return preparation. The Enrolled Agent is allowed to prepare the returns without supervision of any CPA in the firm. The firm does not review the Enrolled Agent’s work. As a CPA, but non-owner, what should you do?
Case Study
CPA or Not?

You are at work and you learn the CFO of your employer, and your close friend, has not taken any continuing education because he has not submitted any expenses related to CPEs. You go to the TSBPA website and see that his CPA License has not been renewed for the current year and that he is holding himself out as a CPA during investor meetings. However, his license has not been revoked by the TSBPA. What do you do?
Complaint Notice

When a person receives a complaint that an alleged violation of the Act or Rules of Professional Conduct has occurred, a person shall provide to the complainant a statement that:
Complaints concerning Certified Public Accountants may be addressed in writing to the Texas State Board of Public Accountancy at 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900, telephone (512) 305-7866, e-mail to enforcement@tsbpa.state.tx.us, or fax (512) 305-7854.
Who Files Complaints?

You!

A licensee or certificate holder shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee or certificate holder has knowledge of these events:

1. The conviction or imposition of deferred adjudication of the licensee or certificate holder of any of the following:
   (A) A felony;
   (B) A crime of moral turpitude;
   (C) Any crime of which fraud or dishonesty is an element or that involves alcohol abuse or controlled substances; and
   (D) Any crime related to the qualifications, functions, or duties of a public accountant or CPA, or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary;

2. The cancellation, revocation, or suspension of a certificate, other authority to practice, or refusal to renew a certificate or other authority to practice as a CPA or a public accountant, by any state, foreign country or other jurisdiction;

3. The cancellation, revocation, or suspension of the right to practice as a CPA or a public accountant before any governmental body or agency or other licensing agency;
Self-Reporting Continued

(4) an unappealable adverse finding in any state or federal court or an agreed settlement in a civil action against the licensee or certificate holder concerning professional accounting services or professional accounting work or a finding of a breach of fiduciary duty, fraud or misappropriation; or

(5) the loss of a professional license from another state or federal regulatory agency such as an insurance license or a securities license, resulting from an unappealable adverse finding.

(b) The report required by subsection (a) of this section shall be signed by the licensee or certificate holder and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(c) Nothing in this section imposes a duty upon any licensee or certificate holder to report to the board the occurrence of any of the events set forth in subsection (a) of this section either by or against any other licensee or certificate holder.

(d) As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.
Others who file complaints

There are many people who may file a complaint against a CPA including
- Unhappy clients
- Other CPAs
- Employers, past or present
- Agencies
- Media

The list is almost endless and includes any person or entity relying on the CPA.

Q. How do I know if a complaint has been filed against me?
A. The Board's Enforcement Division will send written notification when an investigative file has been opened against you and ask you to respond to the allegations.
Process to File a Complaint

Q. How do I file a complaint?
A. There is no complaint form. Simply write a letter containing a factual narrative describing the substance of the allegations. The narrative should include the full name, business address and telephone number of the CPA or the CPA firm involved. In addition, include your complete contact information and copies of all documents relevant to your complaint.

Q. Can I file a complaint anonymously?
A. Yes you can, but very few anonymous complaints can be successfully pursued unless the person making the complaint is willing to testify. The testimony of the person making the complaint is always important evidence. Also, we mail a copy of the complaint letter to the CPA to inform them of the exact nature of the complaint.

Q. Do I need an attorney to file a complaint?
A. No. The Board's legal staff will investigate the complaint and, if necessary, prosecute the complaint.

Q. What is the authority of the Board when a complaint is filed?
A. The Board has the authority to discipline Texas CPAs only for violations of the Act or the Board's Rules ("Rules"), found in Chapters 501-527 of the Texas Administrative Code.

https://www.tsbpa.state.tx.us/enforcement/filing-complaint.html
After a Complaint is Filed

Q. What happens after I file a complaint?
A. Your complaint is reviewed by Enforcement Division staff, which determines whether the conduct described, if taken as true, involves professional misconduct. Not every dispute or disagreement with a CPA involves professional misconduct. Therefore, some complaints will be dismissed at this stage of the process.
Q. If the conduct I complained about alleges professional misconduct, what happens next?

A. An investigative file is opened. The CPA is notified of the investigation and is provided with copies of materials (excluding attorney-client communications and attorney work-product) and documents received as part of the complaint. The CPA has 30 days to respond to the Board in writing. After the CPA has responded to the allegations, the investigation is referred to one of the Board's Enforcement committees. These committees meet regularly to consider complaints. Pursuant to the Open Meetings Act, committee meetings are noticed in the Texas Register, but the meetings are not open to the public because investigative information is confidential by statute. The committee reviewing the complaint will make a recommendation on how to proceed with the investigation.
After Investigation File is Opened

Q. If a committee feels that professional misconduct occurred, or if the committee cannot decide how to resolve the matter, what happens next?

A. Sometimes a committee will try to reach an agreement with the CPA regarding appropriate disciplinary or corrective action. Sometimes a committee will invite the complainant and the CPA to meet with the committee at an informal conference. An informal conference allows both parties to present information to the committee and respond to the committee's questions. If an agreement between the CPA and the Committee is reached an agreed consent order ("ACO") resolving the investigation will be offered to the Board for its ratification or refusal. If an agreement cannot be reached and the committee determines that a violation has occurred, or if the committee is unable to resolve the dispute, the complaint is prosecuted before an administrative law judge ("ALJ") of the State Office of Administrative Hearings.

Evidence at the hearing may include testimony from the complainant, the CPA and other witnesses. At the conclusion of the hearing, the ALJ issues a Proposal for Decision ("PFD") and recommends a suggested resolution of the matter. The PFD and recommendation are presented to and voted on by the full Board in open session. The Board may accept, reject or modify the ALJ's PFD and recommendation. A Board member with an interest in the proceeding may not participate in the vote.
Resolution of a Complaint and Appeal

Q. What if I disagree with the Committee's recommendations, to whom do I appeal?
A. CPAs can reject the recommendation and request a hearing before an ALJ. A complainant may not appeal the Committee's findings.

Q. How will I know the resolution of my complaint?
A. During the investigation process, CPAs and complainants are notified that the investigation is active and pending. Upon final resolution, the complainant is notified of the outcome.

Q. What happens to a CPA who is found to have engaged in professional misconduct?
A. The nature of the sanction varies with the seriousness of the misconduct and any mitigating or aggravating factors. Sanctions may include education, corrective action, reprimand, probation, suspension, revocation or limitation of practice.

Q. I'm a CPA. Do I need an attorney to represent me if a complaint has been filed against me?
A. The decision to retain or consult legal counsel is entirely yours. The Board does not require that you hire an attorney and most CPAs do not.
Do the Right Thing

Have the courage to say no. Have the courage to face the truth. Do the right thing because it is right. These are the keys to living your life with integrity.

*W. Clement Stone (1902-2002) as cited by Mintz and Morris, Ethical Obligations and decision Making in Accounting (2008).*
Test

Answer the multiple choice questions provided in the written materials.
Any Questions or Comments?

Thank you!
This presentation is provided as general information only and should not be construed as legal advice. This presentation is not intended to be applied to any particular situation as such application requires knowledge and analysis of the specific facts involved.