

COMPLAINT PROCESS

MISSION OF THE BOARD

The mission of the Minnesota Board of Accountancy (the “Board”) is to regulate the profession and enforce the statutes and rules in order to protect the public.

We ensure that individuals meet the education, examination and experience standards for certification, and maintain their records in good standing.

We take disciplinary action against those who violate the statutes, rules and standards governing the practice of the public accounting.

Information regarding possible violations comes to the attention of the Board through written complaints. Complaints may be filed by anyone. Complaints are not public information and may not be discussed with anyone except the Respondent (subject of the investigation) and the Complainant. The Board is mandated to investigate all jurisdictional complaints against regulated individuals.

The principle laws that define and limit the Board’s powers and responsibilities are:

- Minnesota Statutes Chapter 214
- Minnesota Statutes Section 326A
- Minnesota Rules Chapter 1105

THE BOARD’S COMPLAINT COMMITTEE

The Complaint Committees consists of three members of the Board, and meets approximately once a month.

The Complaint Committee is supported by:

1. The Investigator
2. The Board’s Executive Director
3. The Minnesota Assistant Attorney General assigned to the Board

When a new Board Member(s) is assigned to the Complaint Committee, the staff investigator provides training on:

- The Complaint Registration Form.
- The complaint process.
- The Tennesen Warning.
- Explains the file may be closed with no disciplinary action taken or with a recommendation to take disciplinary action.
- Reviews Minnesota Statutes 14.045 (2018) for the limits on penalties and fines and the factors that go into account in determining the amount of the civil penalty.

The Assistant Attorney General provides orientation as well. The training consists of (not all inclusive):

- The Board’s jurisdiction
- Verified written complaint
- Investigations
- Conferences
- Committee action and remedies
- Settlement Agreement and Cease and Desist Order
- Stipulation and Consent Order
- Contested Case Hearing
- Unilateral Cease and Desist Order
- Minnesota Government Data Practices Act, Minnesota Chapter 13
- Open Meeting Law Chapter 13D
- Conflicts of interest

PROTOCOL FOR COMPLAINT PROCESSING

1. A COMPLAINT IS FILED WITH THE BOARD.

In order to initiate the investigation process, the Board must receive a signed, written complaint. The complaint-related forms are available on the Board's website as a single download or the forms can be mailed by contacting the Board office. The Complaint Registration Form and the Authorization to Release Complaint Form must be submitted to the Board.

Include as much detail as possible in the statement of complaint:

1. Identify the person the complaint is against.
2. Detail the specifics of the complaint.
 - a. What happened?
 - b. When did it happen?
 - c. Where did it happen?
 - d. Why did it happen?
 - e. How did it happen?
 - f. Who was involved?
3. Include any documentary evidence you might have (copies of tax returns, working papers, bookkeeping records, etc.) Do not send originals, only copies. Originals cannot be returned.

The Board does not accept anonymous complaints, however; the Board may gather any public information which is available to the Board and issue a complaint with the Executive Director as the Complainant.

2. A COMPLAINT FILE IS SET UP.

When the Complaint and signed Authorization to Release Complaint is returned to the Board office, staff open a complaint and the file is then assigned to one of the Complaint Committee members. A letter confirming receipt of the complaint is sent.

3. THE COMPLAINT IS INVESTIGATED.

Staff investigator thoroughly reviews the file. The investigator works with the Complaint Committee member to determine, based on the facts submitted with the complaint, if there may be a potential violation of a Minnesota Statute and/or Minnesota Rule that the Board can enforce.

The investigator may send an allegation letter directly to the Respondent (subject of the investigation), if based on the facts submitted with the complaint, it indicates a potential violation of a Minnesota Statute and/or Minnesota Rule, alleging what the Respondent may be in violation of and cite the specific Minnesota Statute(s) and/or Minnesota Rule(s). In some instances, additional investigation is required prior to sending out an allegation letter.

The investigator obtains, verifies and/or uncovers facts related to the complaint which may include:

- Tax returns
- Working papers
- Financial statements
- Copies of contracts or agreements between the parties.
- Third party information or documentation.

4. OUTSIDE CONSULTANT TO THE BOARD MAY REVIEW.

The Complaint Committee may desire to hire an outside consultant to assist in investigating a particular complaint. If this is done, the consultant will sign a Confidentiality Agreement to ensure the privacy of data related to the investigation of the complaint.

WAYS A COMPLAINT MAY BE RESOLVED

1. CLOSURE.

A complaint is closed when two or more Complaint Committee members vote to close the matter after a review of the alleged violations and the Respondents (subject of the investigation) response to the allegations.

A response is obtained through a letter of inquiry and/or through an appearance before the Complaint Committee. Based on a review of the information, the Committee may close the matter if it determines that disciplinary action or corrective action were not warranted in the matter.

The complaint file is retained in the Board's nonpublic files. If the Board receives additional complaints of a similar nature in the future, the Complaint Committee may choose to reopen the closed file.

When a complaint file has been closed, the Complainant will receive a closure letter from the Board.

The provisions contained in the Minnesota Government Data Practices Act, Minnesota Statute 13.41 (2018), prohibit the Board from disclosing the results of its review or the basis for its closing of the complaint file other than disciplinary actions that result in a Stipulation and Consent Order or a Settlement Agreement and Cease and Desist Order which are public information and are summarized in the Board's newsletter, *The Board Report*, and posted on the Board's website as they occur.

The Respondent will receive a closure letter. However, if an allegation letter had not been sent, a closure letter may be sent to the certificate holder to notify them that a complaint was received provided that the Complainant signed the Authorization to Release the Complaint authorizing the Board to release the complaint.

2. DISCIPLINARY ORDER.

Purpose: An order may be issued to a certificate holder or to an unlicensed person so as to protect the public. Any proposed order is drafted with the assistance of the Assistant Attorney General assigned to the Board.

STIPULATION AND CONSENT ORDER:

1. When the Complaint Committee finds the certificate holder in violation of Minnesota Statutes 326A or Minnesota Rules 1105, it will ask the Respondent (subject of the investigation) to voluntarily enter into a Stipulation and Consent Order which includes the enforcement actions the Committee is proposing. The types of enforcement actions may include: censure and reprimand, civil penalty, revocation, suspension, to place conditions and/or limitations on their certificate, continuing professional education, etc.
2. The Stipulation is an agreement between the certificate holder and the Complaint Committee in which the certificate holder agrees to the enforcement action as a result of the committee having identified the specific statutes and/or rules they violated.
3. Any Order is issued by the full board.
4. Should the certificate holder refuse to agree to the Proposed Order itself and/or to the enforcement actions proposed by the Complaint Committee, or if the full Board rejects the proposed Stipulation and Consent Order, the matter may proceed to a contested case hearing initiated under the Administrative Procedures Act. The hearing is held before an Administrative Law Judge (ALJ) and involves the presentation of testimony and submission of exhibits in a manner similar to a civil trial.
5. The ALJ makes a Findings of Fact and a recommendation which will be limited to discipline or no discipline. After reviewing the ALJ report, the Board may issue a Findings of Fact, Conclusion of Law and Order, which describes the disciplinary action taken against the licensee.

SETTLEMENT AGREEMENT AND CEASE AND DESIST ORDER:

1. When the Complaint Committee finds an unlicensed or non-certificate holder in violation of Minnesota Statutes 326A, it will ask the Respondent (subject of the investigation) to voluntarily enter into a Settlement Agreement and Cease and Desist Order including the enforcement actions the Committee is proposing. The types of enforcement actions may include: to cease and desist from holding themselves out as a certificate holder and may include a civil penalty.
2. The Settlement Agreement and Cease and Desist Order is an agreement between the unlicensed person or non-certificate holder and the Complaint Committee in which they agree to the cease and desist and enforcement action as a result of the committee having identified the specific statute(s) they violated.
3. The Settlement Agreement and Cease and Desist Order is issued by the full board when it has reviewed and ratified the Settlement Agreement and Cease and Desist Order between the Complaint Committee and the unlicensed or non-cer-

tificate holder. The Settlement Agreement and Cease and Desist Order implements the terms of the agreement.

4. Should the unlicensed or non-certificate holder refuse to agree to the Settlement Agreement and Cease and Desist Order itself and/or to the enforcement actions proposed by the Complaint Committee, or if the full Board rejects the proposed Settlement Agreement and Cease and Desist Order, the matter may proceed to a contested case hearing initiated under the Administrative Procedures Act. The hearing is held before an Administrative Law Judge (ALJ) and involves the presentation of testimony and submission of exhibits in a manner similar to a civil trial.
5. If the Complaint Committee is successful at the contested case hearing, the ALJ will indicate that the Board's position is correct and make a recommendation which will be limited to discipline or no discipline. After reviewing the ALJ report, the Board may issue a Findings of Fact, Conclusion of Law and Order, which describes the disciplinary action taken against the unlicensed person or non-certificate holder.

TYPES OF ENFORCEMENT ACTIONS THAT MAY BE PART OF A DISCIPLINARY ORDER:

- Refuse to renew.
- Suspension. This requires the individual to cease all practice until the suspension is lifted.
- Revocation. This action results in the individual's license or certificate being annulled altogether.
- Censure and reprimand.
- Condition or limit the person's license or certificate to practice. This permits the individual to continue to practice, but must meet certain conditions within a specified time period.
- Civil penalty.