

CALIFORNIA BOARD OF ACCOUNTANCY

INITIAL STATEMENT OF REASONS

Hearing Date: January 10, 2023

Subject Matter of Proposed Regulations: Sale, Transfer, or Discontinuance of Licensee's Practice

Sections Added: 54.3 and 54.4, Article 9, Division 1, Title 16 of the California Code of Regulations (CCR)

The California Board of Accountancy (CBA) regulates the accounting profession in part by establishing and maintaining minimum standards of practice for the protection of the public. The CBA currently regulates over 100,000 licensees, including individual Certified Public Accountants / Public Accountants (CPAs/PAs), accountancy partnerships, and accountancy corporations, all of which are required to be separately licensed by the CBA (Accountancy Act – see Business and Professions Code (BPC), § 5000 and following).

Problems being addressed:

Pursuant to BPC section 5018, licensees are required to adhere to the rules and standards of professional conduct adopted by the CBA, which are set forth in Title 16, Division 1, Article 9 of the California Code of Regulations¹. The CBA requires licensees to comply with all applicable professional standards, including the Code of Professional Conduct developed by the American Institute of Certified Public Accountants² (AICPA). (See Cal. Code Regs., tit. 16, section 58 ["Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards".]) The Code of Professional Conduct is a set of principles, rules, and interpretations that guide CPAs in the performance of their professional responsibilities, and it applies to California licensees pursuant to CCR section 58.

In October 2016, the AICPA Professional Ethics Executive Committee (PEEC) adopted new and revised interpretations (Interpretations) of the AICPA Code of Professional Conduct to provide guidelines about their scope and application.

The CBA has determined that additional detail is reasonably necessary to implement the following PEEC Interpretations:

¹ All references to the California Code of Regulations are to Title 16, unless otherwise indicated.

² The AICPA is the world's largest member association representing the accounting profession with a history of serving the public interest since 1887. It sets ethical standards for the accounting profession and U.S. auditing standards for private companies, nonprofit organizations, and federal, state, and local governments.

- 1.400.205: Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice (New Interpretation)
- 1.700.050: Disclosing Client Information in Connection With a Review or *Acquisition* of the Member’s Practice (Revised Interpretation)

While these PEEC Interpretations provide information to a licensee, they lack detail regarding implementation. The CBA’s proposed regulations are intended to provide the additional needed detail.

The regulatory proposals being presented are consistent with the recent PEEC Interpretations and ensure safeguards are in place for consumers. They are consistent with existing laws, specifically Civil Code section 1798.81, which relates to the destruction of records, and BPC section 5063.3, which prohibits the disclosure of a client or prospective client’s confidential information, except under certain circumstances. Further, the proposed regulations are consistent with existing regulations, CCR section 54, which defines confidential information; and section 54.1, which sets forth the circumstances under which a client or potential client’s confidential information may be disclosed.

New Interpretation -- section 1.400.205, “Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice”

This Interpretation went into effect on June 30, 2017. It provides guidelines regarding transferring or returning client records during the sale, transfer, discontinuance or acquisition of a practice; however, additional detail is needed to implement this section to ensure confidential information of affected consumers is protected.

- Sale or Transfer of Practice
The Interpretation for section 1.400.205 of the AICPA Code of Professional Conduct recommends that Members³ submit a written request to each client subject to the sale or transfer requesting their consent to transfer the client’s files to the successor firm and encourages the Member to retain evidence of the client’s consent.

Proposed section 54.3 would require licensees to seek such consent and specify the manner and form by which this must occur, as discussed in detail below. Licensees would be required to send and retain a copy of the written notice regarding the sale or transfer and retain any documentation indicating the client’s consent or objection for a specified period of time.

³ The use of the term “Member” or “Members” refers to the CPA members of AICPA.

In addition, the Interpretation recommends that, if the Member is unable to contact the client, client files and records that are not transferred should be retained in a confidential manner and according to the firm's record retention policy or pursuant to applicable state law or regulation, whichever is longer. Proposed section 54.3 would require the licensee to retain the client records for a specific period of time and establish an appropriate method of disposal once the record retention period has concluded.

- **Discontinuance of Practice**

The Interpretation for section 1.400.205 of the AICPA Code of Professional Conduct recommends that a member, who discontinues practice and does not sell or transfer the practice, notify each of the member's clients. Proposed section 54.4 would require licensees to notify the client and specify the manner by which they must do so, as described in detail below.

Revised Interpretation -- section 1.700.050, "Disclosing Client Information in Connection With a Review or Acquisition of the Member's Practice" went into effect October 31, 2016. This Interpretation provides guidance regarding preserving clients' confidential information when a licensee's practice is reviewed, or a licensee reviews a practice, in conjunction with a prospective purchase, sale, or merger of all or part of a licensee's practice; however, additional detail is needed to implement this section to ensure confidential information of affected consumers is protected.

This Interpretation recommends that Members, who obtain client files as the result of acquiring all or part of a practice, not disclose any confidential client information that is contained in such files and refers Members to section 1.400.205 for guidance regarding the handling of client files obtained pursuant to an acquisition. The CBA's proposed section 54.3 would set forth specific requirements regarding the handling of client records pursuant to the sale or transfer of a practice, as described in detail below.

Prior Rulemaking:

This rulemaking represents a renewed effort for the CBA to promulgate regulations on the process of sale, transfer, or discontinuance of a licensee's practice. The prior rulemaking proposal was noticed and later withdrawn to give sufficient time to duly consider feedback, reach out to stakeholders, and make amendments to the proposed text.

Anticipated Benefits from this Regulatory Action:

The CBA's proposed regulations would establish procedures for licensees to follow when selling, transferring or discontinuing their practice in order to protect the confidential information of affected consumers. In addition, the proposal would create requirements for the appropriate handling of client records, including the manner of disposal, which further enhances consumer protection.

Moreover, the CBA's mission is to protect consumers. This proposal would safeguard confidential client information when a licensee sells, transfers, or discontinues a practice by requiring licensees to follow specified procedures regarding notification, disclosure, retention, and disposal of client records. This proposal would protect consumers by ensuring a licensee notifies their clients of the sale, transfer, or discontinuance of their practice and would provide affected consumers with the opportunity to obtain their records from such a licensee. Further, the regulatory proposal would safeguard confidential client information when disposing of client records should that become necessary by requiring licensees to dispose of the records in a manner that would make the records unreadable or undecipherable through any means.

Specific Purpose/Factual Basis/Rationale:

The CBA proposes to adopt sections 54.3 and 54.4 of Title 16 in the CCR.

1. Section 54.3

This proposed section proposes various requirements that a licensee would be required to comply with when selling or transferring all or part of their practice to a successor person and not retaining any ownership interest in the practice. This portion of the CBA's proposal provides additional needed detail regarding new Interpretation 1.400.205, Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of Practice, one of the professional standards that CBA licensees are required to comply with pursuant to section 58.

a. Section 54.3(a)

Proposed Language: The CBA is proposing to require licensees that sell or transfer all or part of their practice to a successor person and will not retain any ownership in the practice to send, via first-class or certified mail to the last known address of the client, or via electronic transmission, a written notice regarding the sale or transfer to each client that is subject to the sale or transfer.

Rationale: The notification requirement is reasonably necessary to ensure that affected clients will be aware of the possibility that their confidential information may be transferred to another person, and provide these clients with the opportunity to determine whether they would like their records transferred to the successor person or if they would like to make arrangements to have their client records returned. It is reasonably necessary that the notice be in writing to ensure that the details of the notification are documented and to allow the CBA to evaluate licensees' compliance with the notice requirement.

One of the issues raised by stakeholders was how the term defining the successor entity was defined in this proposed regulation. The terms 'person,' and 'successor person' via proposed section 54.4, are described in the proposed text as "defined by section 5035 of the Business and Professions Code" to cover all of the successor entities that, in CBA's experience, may be involved in a sale, transfer, or discontinuance of a practice, whether those entities are individuals, partnerships, firms, associations, limited liability companies, or corporations.

This proposed regulatory language also requires the notice to be sent to the last known address of the client. In CBA's experience, client contact information may not always be up-to-date. It is reasonable to require notice be sent to the last known address so the licensee can demonstrate a good faith effort to contact the client. If a client is unreachable, it is not reasonable to require the licensee to incur the cost of searching for the client, as it would be unclear such a search would be successful.

The notification requirement is consistent with BPC section 5063.3, which requires licensees obtain the client's consent to disclose client confidential information obtained pursuant to the licensees' accountancy practice, except in certain circumstances. It is also consistent with the AICPA's "Confidential Client Information Rule," which requires the CPA to obtain consent from the client prior to disclosing any confidential client information. It is reasonably necessary that the notice be sent via first-class or certified mail to the client's last known address, or via electronic transmission, to ensure that the notice is promptly and accurately delivered to the client.

Proposed Language: The CBA's proposal would require that the notice include a request for consent to transfer the client's records to the successor person and a notice indicating that, if the client fails to notify the licensee within 90 days of the date of the notice that the client objects to the transfer, consent will be presumed.

Rationale: The CBA proposes that the notice include a statement that failure of the client to object within 90 days from the date of the notice will result in the client's consent being presumed. This is reasonably necessary because, despite a licensee's best efforts, they may face situations in which they are unsuccessful in reaching a client or a client may not respond to the notice. The 90-day timeframe balances time for the

client to object to the disclosure of their confidential information to the successor person with the licensee's ability to sell their practice. It provides a reasonable amount of time for the consumer to respond and provides a set date for the licensee to either make arrangements with the client to return the client records or presume consent so that the sale or merger may proceed after a reasonable period of time has passed. Additionally, this timeframe is consistent with the Interpretation for section 1.400.205 of the AICPA's Code of Professional Conduct, which specifies that a client's consent to transfer their files to the successor firm may be presumed after a period of not less than 90 days.

Proposed Language: The regulation would prohibit the licensee from transferring any client records to the successor person until the earlier of the following: (1) the licensee obtains the client's consent; or (2) the date specified in the notice, which shall be at least 90 days after the date of the notice, provided no objection is made by the client during that time period.

Rationale: To ensure that licensees do not transfer a client's records before the client has had an opportunity to respond to the notice, the CBA proposes that the regulation specifically state that the licensee may not transfer any client records until the client consents or the objection period lapses.

Proposed Language: Section 54.3(a) also proposes to require that licensees retain the notice and any documentation regarding the client's consent or objection to the transfer of the client's records.

Rationale: This is reasonably necessary to allow the CBA to evaluate its licensees' compliance with the notice and retention requirements.

Proposed Language: The CBA proposes that all notice documentation be retained for a period of not less than four years from the date of sale or transfer of the licensee's practice.

Rationale: The four-year time period is consistent with other familiar professional standards, such as record retention requirements for tax preparers, and provides a reasonable period of time for clients to obtain their records before they are destroyed, and for the CBA to audit compliance with the requirement. As a client's records could also include audit documentation, allowing for a potentially longer retention timeframe consistent with section 68.3 is reasonably necessary to ensure that audit documentation is retained as required by statute. Regardless of the status of the individual's license, the CBA maintains jurisdiction and authority to discipline, per BPC 5109, which states:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court

of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

Once the four-year timeframe has elapsed (or if the client's records include audit documentation as defined in section 68.2, once the time period set by section 68.3 has lapsed), the proposed regulation would require the licensee to dispose of the records by shredding, erasing, or otherwise modifying the personal information to make it unreadable through any means. This would ensure that the licensee does not retain a client's confidential information for an unlimited amount of time. The manner of disposal is consistent with the record disposal requirements for businesses set forth in section 1798.81 of the Civil Code⁴, which would ensure that none of the client's confidential information is compromised when the licensee disposes of them.

The time period begins at the point of the sale or transfer because the sale or transfer is the event described by the notice, and the event subject to enforcement under this proposed rulemaking.

Proposed Language: This proposed language also specifies the retention requirement applies to both written and electronic records.

Rationale: Requiring retention of both written and electronic records ensures it is clear to licensees that records must be kept whether received as electronic or hard copy. This clarification comports with modern communication methods, including email and other electronic methods of contact, that may be used by a client to voice consent or objection to the transfer, and allows the CBA to enforce retention of those records.

Proposed Language: Section 54.3(a) requires documents reflecting a client's consent or objection shall be legible, complete, and accurate reproductions of the original record.

Rationale: This requirement clarifies to licensees the extent of the recordkeeping requirement and ensures records will be kept in a manner that allows effective retrospective evaluation of their contents. This benefits the CBA in its enforcement efforts by ensuring competent evidence will be retained. This also benefits licensees by

⁴ Civil Code section 1798.81 requires businesses to, "take all reasonable steps to dispose, or arrange for the disposal, of customer records within its custody or control containing personal information when the records are no longer to be retained by the business by (a) shredding, (b) erasing, or (c) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means."

ensuring an accurate record of consent or objection is kept; the same benefit accrues to clients as well.

b. Section 54.3(b)

Proposed Language: The CBA proposes that in instances where the client objects to the transfer of their records to a successor person, the licensee be required to return the client's records without delay, or as agreed upon with the client.

Rationale: Providing two methods on the timeframe for return of the clients' records, which could be viewed as a primary method and an alternative method, provides maximum flexibility for both the licensee and the client. The onus is on the licensee to return the client records without delay, meaning within a reasonable period of time following the notification of the sale or transfer of the licensee's practice. Including the "as agreed upon with the client" enables the client and licensee to arrange a sooner or later timeframe based on the need for the records.

c. Section 54.3(c)

Proposed Language: The CBA proposes to establish requirements relating to the handling of client records that are not subject to the sale or transfer of the licensee's practice.

Rationale: When a licensee sells or transfers a practice, for example, there may be inactive client records that will not be subject to the sale or transfer. With respect to such records, the CBA proposes that the licensee be required to return the client records to the client without delay, or as agreed upon with the client. The rationale for 'without delay' above relating to the return of records upon objection in section 54.3(b) by the client applies here as well.

d. Section 54.3(d)

Proposed Language: The CBA proposes that if the licensee is unable to reach a client regarding the return or transfer of the client's records, the licensee shall not transfer that client's records.

Rationale: This proposed rulemaking establishes a general concept that records shall not be transferred without notice and consent from clients. If a licensee is unable to reach a client, the notice cannot be completed, and consent cannot be obtained. Because the records should be in the possession of the licensee prior to the attempted contact, the CBA believes it is appropriate to require that licensee to continue possession to ensure the documents are not lost or mishandled.

Proposed Language: The CBA proposes that, in the above situation, the licensee shall retain that client’s records for a minimum of four years from the sale or transfer of the licensee’s practice, or if the client’s records include audit documentation as defined in section 68.2, the licensee shall retain that client’s records for the time period set by section 68.3, whichever is *longer*.

Rationale: As client’s records could include audit documentation, outlining a retention timeframe that allows for longer retention as set forth in section 68.3 is reasonably necessary to ensure that audit documentation is retained as required by statute. The reasons for requiring a four-year retention period are described in this Initial Statement of Reasons under the description of Section 54.3(a), above.

e. Section 54.3(e)

Proposed Language: The CBA proposes that after the retention period indicated in subdivision (d), the licensee shall dispose of or arrange for the disposal of client records that are no longer to be retained by the licensee by shredding, erasing, or otherwise modifying the personal information in those records to make the records unreadable or undecipherable through any means.

Rationale: Proper disposal of client records further enhances consumer protection by ensuring records that are no longer needed but may contain sensitive information are not potentially stolen or misplaced. Further, the manner by which a licensee would be required to dispose of the records is consistent with section 1798.81 of the Civil Code, which sets forth record disposal requirements for businesses, and is reasonably necessary to ensure that none of the client’s confidential information is compromised when the licensee disposes of such records.

f. Section 54.3(f)

Proposed Language: Subdivision 54.3(f) contains a definition of the term “electronic transmission” as referenced in subdivision (a), as “the transmission of a document by electronic means to the electronic mail address at or through which a client has authorized or consented to such communication method.”

Rationale: In the CBA’s experience, most modern business communication occurs via email. The broad purpose of this rulemaking’s accommodation of electronic communication is to recognize that reality. To that end, this rulemaking describes, using specific language, that “electronic transmission” means a transmission made to an electronic mail address, as opposed to another type of data transfer method, or a transfer destination other than an email address.

This proposed language requires the electronic mail address to be one authorized or consented to by the client to ensure the address is one where the communication is likely to be successfully received and read by the client. This also ensures, prior to the communication, that the client is willing to receive communications in this manner, which improves the reliability of communications between the licensee and the client.

Proposed Language: Subdivision 54.3(f) states proof of authorization shall be demonstrated through a written confirmation of such agreement from the client.

Rationale: This proposed regulation requires communications where “a client has authorized or consented,” which raises the question of how the authorization or consent will be evidenced. The written authorization is a separate document that can be referred to to demonstrate the authorization and consent, as opposed to authorization verbally or via electronic mail, that may be less reliable as evidence of the agreement.

Proposed Language: Subdivision 54.3(f) states that as part of the agreement to receive electronic transmissions, at the time of such consent, the client shall provide their electronic mail address for the purpose of receiving electronic notice or documents from the licensee.

Rationale: This requirement is included in the proposed language to establish evidence of the electronic mail address where delivery was authorized by the client, as licensees will be able to demonstrate the destination electronic mail address was accurate. This also benefits the client by clearly communicating to the licensee the desired electronic mail address.

g. Section 54.3(g)

Proposed Language: The CBA proposes that “client records” shall have the meaning set forth in section 68 and shall include working papers as defined in section 68.1, if considered part of the client’s records as specified by section 68.

Rationale: Although the AICPA Code of Professional Conduct uses the terms “files” and “records”, the CBA’s existing regulatory terminology considers “records”, as set forth in sections 68 and 68.1, to include documents that the AICPA would refer to as “files”. Using the CBA’s existing regulatory terminology consistently in this proposed rulemaking ensures consistent usage of terms and prevents confusion on the part of licensees and the public that may result if some other term were used.

h. Note to Section 54.3

Proposed Language: A note is added to proposed section 54.3 as follows:

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 5018 and 5063.3, Business and Professions Code, Section 1798.81, Civil Code.

Rationale: This note refers the reader to the listing of statutes granting the CBA authority to engage in this rulemaking, and to those statutes implemented through this rulemaking. Business and Professions Code section 5010 is the CBA's general grant of rulemaking authority over the California Accountancy Act (sections 5000 *et seq.*). Section 5018 contains the CBA's authority to promulgate regulations regarding professional conduct.

In the reference section, Section 5018 describes the rules of professional conduct generally, of which the CBA considers notification of discontinuation of practice and retention of associated records to be a part. Section 5063.3 is being affected by this proposed rulemaking specifically regarding disclosures made as required by regulation. Finally, Civil Code section 1798.81 is implemented through the document disposal provisions of this proposed section.

2. Section 54.4

This section proposes requirements that licensees must follow when discontinuing their practice without a sale or transfer of the practice. The proposed regulations, as outlined below, provide additional needed detail regarding new Interpretation 1.400.205, Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice, one of the professional standards that CBA licensees are required to comply with pursuant to section 58.

a. Section 54.4(a)

Proposed Language: The CBA is proposing to require licensees that discontinue their practice without a sale or transfer to a successor person to send a written notice regarding the discontinuance of the practice via first-class or certified mail to each client at their last known address, or via electronic transmission, and to return the client's records without delay, or as agreed upon with the client.

Rationale: The notice requirement is reasonably necessary to ensure that each client is notified about the discontinuation of a licensee's practice and to provide clients with an opportunity to inquire about the disposition of their records. Each client is included to ensure the proposed text covers all clients affected by the discontinuance. It is

reasonably necessary that the notice be in writing to ensure that the details of the notification are documented and to allow the CBA to evaluate licensees' compliance. It is reasonably necessary that the notice be sent via first-class or certified mail to the client's last known address, or via electronic transmission, to ensure that the notice is promptly and accurately delivered to the client. The requirement to return records without delay or as agreed upon is reasonably necessary to ensure that clients will receive their records within a reasonable period of time. As noted elsewhere in this Initial Statement of Reasons, the inclusion of electronic communication is designed to accommodate current communication practices.

The terms 'person' and 'successor person' are defined as such for the reasons described in this Initial Statement of Reasons under section 54.3(a).

Proposed Language: Section 54.4(a) would require that the notice include the date of discontinuance of the practice and, if the licensee maintains any client records, the date and method of delivery or return of any client records.

Rationale: It is important the notice contain the date of discontinuance of the practice to establish a point of reference for record retention requirements described in subdivision (b) of proposed section 54.4. This date also clarifies whether documents are returned timely to clients by concretely defining the start date of any time period in which documents are to be returned.

If client records are maintained, the notice must contain the date and method of delivery or return of client records because establishing a clear date in the notice means there will be a record of that date being communicated to the client for the purpose of ensuring records are returned without delay. This will allow all involved – the licensee, the client, and potentially the CBA, to review evidence of when the records were originally intended to be delivered or returned. Further, by including a date, the date for returning the records is declared at the outset of the notice process instead of through post-notice communications between the licensee and the client. This prevents delay in the return of the records and will make the process of discontinuing a practice more efficient. The method of delivery must be noted to communicate to the client in advance where to look for the records, whether that is via mail, electronic transmission, or some other method.

Proposed Language: Section 54.4(a) specifies the licensee is not required to provide notification to former clients.

Rationale: This exception is consistent with the AICPA Code of Conduct section 1.400.205 stating "the member is not required to provide notification to former clients of the firm", and also reflects feedback from the public about questions of which clients must be notified. Notification to former clients is excluded, as it would be overly

burdensome to require it; licensees may have a large number of former clients that may be difficult to locate, and notification of former clients serves no purpose beyond a certain number of years.

b. Section 54.4(b)

Proposed Language: Section 54.4(b) specifies that if the licensee is unable to reach a client regarding the return of the client's records, the licensee would be required to retain the client's records for at least four years after the discontinuance of the practice, or if the client's records include audit documentation as defined in section 68.2, the licensee shall retain that client's records for the time period set by section 68.3, whichever is *longer*.

Rationale: As noted elsewhere in this Initial Statement of Reasons, the four-year time period is consistent with other familiar professional standards, such as record retention requirements for tax preparers, and provides a reasonable period of time for clients to become aware of the discontinued practice and seek to obtain their records before they are destroyed and provides a reasonable period of time for the CBA to audit compliance with this requirement. As a client's records could also include audit documentation, allowing for a potentially longer retention timeframe consistent with section 68.3 is reasonably necessary to ensure that audit documentation is retained as required by statute.

c. Section 54.4(c)

Proposed Language: The CBA proposes that after the retention period indicated in subdivision (b), the licensee shall dispose of or arrange for the disposal of client records that are no longer to be retained by the licensee by shredding, erasing, or otherwise modifying the personal information in those records to make the records unreadable or undecipherable through any means.

Rationale: Proper disposal of client records further enhances consumer protection by ensuring records that are no longer needed but may contain sensitive information are not potentially stolen or misplaced.

Further, the manner by which a licensee would be required to dispose of the records is consistent with section 1798.81 of the Civil Code, which sets forth record disposal requirements for businesses, and is reasonably necessary to ensure that none of the client's confidential information is compromised when the licensee disposes of such records.

d. Section 54.4(d)

Proposed Language: Subdivision 54.4(d) contains a definition of the term “electronic transmission” with further description of the circumstances under which such transmissions may be consented to and how such consent is demonstrated, using the same text as proposed subdivision 54.3(f) of this proposed rulemaking.

Rationale: The reasons for this language are the same as those described in this Initial Statement of Reasons for subdivision 54.3(f), above.

e. Section 54.4(e)

Proposed Language: The CBA proposes that “client records” shall have the meaning set forth in section 68 and shall include working papers as defined in section 68.1, if considered part of the client’s records as specified by section 68.

Rationale: Although the AICPA Code of Professional Conduct uses the terms “files” and “records”, the CBA’s existing regulatory terminology considers “records”, as set forth in sections 68 and 68.1, to include documents that the AICPA would refer to as “files”. Using the CBA’s existing regulatory terminology consistently in this proposed rulemaking ensures consistent usage of terms and prevents confusion on the part of licensees and the public that may result if some other term were used.

f. Note to Section 54.4

Proposed Language: A note is added to proposed section 54.4 as follows:

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code.
Reference: Sections 5018 and 5063.3, Business and Professions Code, Section 1798.81, Civil Code.

Rationale: This note refers the reader to the listing of statutes granting the CBA authority to engage in this rulemaking, and to those statutes implemented through this rulemaking. Business and Professions Code section 5010 is the CBA’s general grant of rulemaking authority over the California Accountancy Act (sections 5000 *et seq.*). Section 5018 contains the CBA’s authority to promulgate regulations regarding professional conduct.

In the reference section, Section 5018 describes the rules of professional conduct generally, of which the CBA considers notification of discontinuation of practice and retention of associated records to be a part. Section 5063.3 is being affected by this proposed rulemaking specifically regarding subdivision (a)(7) regarding disclosures made as required by regulation. Finally, Civil Code section 1798.81 is implemented

through the document disposal provisions of this proposed section.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

- AICPA Code of Professional Conduct, New and Revised Ethical Interpretations, October 2016, accessed from <https://us.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014-december-15-content-asof-2020-June-20-code-of-conduct.pdf>, on October 23, 2022.
- Minutes of the March 17-18, 2016 CBA Meeting
- March 17-18, 2016, CBA Item III.E. Exposure Draft Regarding the American Institute of Certified Public Accountants Professional Ethics Division's Omnibus Proposal Regarding Proposed Revisions to the American Institute of Certified Public Accountants Code of Professional Conduct
- Minutes of the January 26, 2017 CBA's Committee on Professional Conduct (CPC) Meeting
- Minutes of the January 26, 2017 CBA Meeting
- January 26, 2017, CPC Item II. and CBA Item VIII.A.2. – Discussion and Possible Action on Proposed Legislative Language to Amend Business and Professions Code Section 5063.3 and to initiate a Rulemaking to Adopt Regulations Regarding the Sale or Transfer of a Licensee's Practice and for Client Notification of Discontinuance of Licensee's Practice
- Minutes of the January 20-21, 2022 CBA Meeting
- January 20-21, 2022, CBA Item XI.C. – Discussion and Possible Action Regarding Proposed Adoption of Title 16, California Code of Regulations, Sections 54.3 and 54.4
- Minutes of the September 22-23, 2022 CBA's Committee on Professional Conduct (CPC) Meeting **(in production)**
- Minutes of the September 22-23, 2022 CBA Meeting **(in production)**
- September 22-23, 2022, CPC Item IV. and CBA Item XIII.A.3. – Discussion and Possible Action to Initiate a Rulemaking to Add California Code of Regulations,

Title 16, Sections 54.3 – Sale or Transfer of Licensee’s Practice and 54.4 – Discontinuance of Licensee’s Practice

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

- This proposal reflects the AICPA interpretations 1.400.205 and 1.700.050, which apply to the accountancy profession within and outside of California. Licensees are already required to meet professional standards, which includes the AICPA interpretations, pursuant to CCR section 58.
- The AICPA interpretations are general and lack detail, which the CBA proposal would supply for the benefit of licensees and the public. Many of the proposal’s requirements are common business practices that may already be followed and, as such, would not have a significant impact.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the entire notification and record retention process is already recommended as part of the AICPA Code of Professional Conduct, which applies to the accountancy profession within and outside of California. Any postage and/or storage costs will be paid by the licensee, and those costs may vary depending on the format of the records (paper or hardcopy).
- It will not create new businesses or eliminate existing businesses within the State of California because the notification and record retention process is already recommended as part of the AICPA Code of Professional Conduct, which all licensees, within and outside of California, must adhere to. Because the rules will be applicable to all licensees, no one business will be impacted more or less than any other.
- It will not affect the expansion of businesses currently doing business within the State of California because the entire notification and record retention process is recommended to be followed by all licensees who sell, transfer, or discontinue their practice.
- This regulatory proposal benefits the health and welfare of California residents because the proposal would allow the CBA to better protect consumers by

specifying that licensees and successor persons, when selling, transferring, or discontinuing a practice, follow specified procedures regarding notification, disclosure, retention, and disposal of client records.

- This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.
- This regulatory proposal does not affect the state's environment because it has nothing to do with the environment.
- The CBA indicates that because licensees primarily already conform to the proposed regulations as they reflect and enhance upon the current standards of professional conduct, any economic impact for licensees and successor persons to comply with these requirements are anticipated to be minimal.

The regulations will require licensees to notify clients of the sale or transfer of the practice via first-class or certified mail, or via electronic transmission. If sent by first-class or certified mail, it may result in costs of \$0.60 (domestic) and \$1.40 (international) per notification, or \$4.00 per notification for certified mail. The CBA cannot provide an estimate of the total future costs related to notifying clients because the number of notifications would depend on unknown variables including: 1) the number of future sale or transfers of practices, 2) the number and location of clients impacted, and 3) the method of notification.

Licensees would also be required to either transfer client records to the successor person or to the client, as specified, or retain the records, as specified. Because any client record transfer and/or retention costs would also depend on these same unknown variables, the CBA cannot provide an estimate of these transfer or retention costs.

However, the CBA notes that most client records are typically retained by the licensee in digital format and any transfer or retention of these records would occur digitally, which would not likely result in additional costs.

The CBA further notes a typical licensee opting to sell or transfer their practice would likely be averse to significant record transfer or retention costs. As a result, these individuals would probably choose to digitize any records as part of their normal course of business and complete the digitizing of records prior to the sale or transfer to eliminate these potential costs.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The only alternative considered was to maintain the status quo. The CBA rejected this alternative because maintaining the status quo would not provide licensees with sufficient guidance to comply with the AICPA Code of Professional Conduct and Interpretations as required by CCR section 58 selling, transferring, or discontinuing their practice. The Interpretations provide broad guidance, but the proposed regulations provide more detailed steps to ensure consumer protection.