

**State of California
Office of Administrative Law**

In re:
Board of Accountancy

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections: 54.3, 54.4

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2023-1020-03

OAL Matter Type: Regular Resubmittal (SR)

This action proposes to adopt a requirement to notify clients regarding client records when a licensee's practice is sold, transferred, or discontinued.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2024.

Date: December 4, 2023



Ashita Mohandas
Attorney

For: Kenneth J. Pogue
Director

Original: Patti Bowers, Executive Officer
Copy: Sarah Fletcher

RESUBMITTAL

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2022-1108-01	REGULATORY ACTION NUMBER 2023-1020-03	EMERGENCY NUMBER SP
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 04 2023
1:40 PM

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

OFFICE OF ADMIN. LAW
2023 OCT 20 PM 3:31

AGENCY WITH RULEMAKING AUTHORITY
California Board of Accountancy

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2022, 46-Z	PUBLICATION DATE 11/18/22	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Sale, Transfer, or Discontinuance of Licensee's Practice		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2023-0626-01S	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	54.3, 54.4	
	AMEND	N/A	
	REPEAL	N/A	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) September 26, 2023 - October 11, 2023			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)		<input type="checkbox"/> Fair Political Practices Commission	
<input checked="" type="checkbox"/> Other (Specify) Kimberly Kirchmeyer, Director, Department of Consumer Affairs		<input type="checkbox"/> State Fire Marshal	
7. CONTACT PERSON Sarah Fletcher		TELEPHONE NUMBER (279) 236-3027	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) sarah.fletcher@cba.ca.gov

a. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Dominic Franzella</i>	DATE October 18, 2023
TYPED NAME AND TITLE OF SIGNATORY Dominic Franzella, Executive Officer	

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ENDORSED APPROVED

DEC 04 2023

Office of Administrative Law

TITLE 16
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

ORDER OF ADOPTION

SALE, TRANSFER, OR DISCONTINUANCE OF LICENSEE'S PRACTICE

§ 54.3. Sale or Transfer of Licensee's Practice.

A licensee that sells or transfers all or part of the licensee's practice to another person ("successor person"), as defined in section 5035 of the Business and Professions Code, and will no longer retain any ownership in the practice shall comply with all of the following:

(a) Send a written notice regarding the sale or transfer of the practice to each client that is subject to the sale or transfer. The notice shall be sent via first-class or certified mail to the last known address of the client, or via electronic transmission as provided in this section. The notice shall contain, at a minimum, the following: a request for the client's consent to transfer that client's records to the successor person, and a notice that the client's consent will be presumed if the client does not notify the licensee that the client objects within 90 days from the date of the written notice. The licensee may not transfer any client records to the successor person until either the client's consent is obtained, or the 90 days has lapsed without any objection from the client, whichever is shorter. The licensee is required to retain a copy of the written notice, and any document reflecting the client's consent or objection to the transfer of that client's records, in either written or electronic format, for not less than four years from the date of sale or transfer of the licensee's practice. Any written or electronic copy of the notice specified in this section, and any document reflecting the client's consent or objection shall be a legible, complete, and accurate reproduction of the original business record;

(b) If a client objects to the transfer of their records to the successor person, the licensee shall return any client records without delay, or as agreed upon with the client; and,

(c) With respect to client records not subject to the sale or transfer, a licensee shall return any client records without delay, or as agreed upon with the client,

(d) If the licensee is unable to contact a client, that client's records shall not be transferred, and shall be retained by the licensee for a period of not less than four years from the date of sale or transfer of the licensee's practice, or if the client's records include audit documentation as defined in section 68.2, for the time period set by section 68.3, whichever is longer. A notice returned to the licensee, either by mail or electronic transmission, would demonstrate that the attempt to contact the client was unsuccessful.

(e) 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.

(f) For the purposes of this section, "electronic transmission" means 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. Proof of such authorization and consent for electronic transmission shall be demonstrated through a written confirmation of such agreement from the client. As part of that agreement, at the time of giving consent to electronic transmission, the client shall provide their electronic mail address for the purpose of receiving electronic notice or documents from the licensee.

(g) "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.

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.

§ 54.4. Discontinuance of Licensee's Practice.

A licensee that discontinues their practice but does not sell or transfer the practice to another person ("successor person"), as defined in section 5035 of the Business and Professions Code, shall comply with all of the following:

(a) Send a written notice regarding the discontinuance of the practice to each client as provided in this section. The notice shall be sent via first-class or certified mail to the last known address of the client, or via electronic transmission as provided in this section. The notice shall contain, at a minimum, 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. The licensee shall also return any client records, without delay, or as agreed upon with the client. The licensee is not required to provide notification to former clients.

(b) If the licensee is unable to contact a client, that client's records shall be retained for a period of not less than four years from the date the licensee's practice discontinues, or if the client's records include audit documentation as defined in section 68.2, for the time period set by section 68.3, whichever is longer. A notice returned to the licensee, either by mail or electronic transmission, would demonstrate that the attempt to contact the client was unsuccessful.

(c) 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.

(d) For the purposes of this section, "electronic transmission" means 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. Proof of such authorization and consent for electronic transmission shall be demonstrated through a written confirmation of such agreement from the client. As part of that agreement, at the time of giving consent to electronic transmission, the client shall provide their electronic mail address for the purpose of receiving electronic notice or documents from the licensee.

(e) "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.

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.