

# HFMA

## Arkansas State Board Ethics: 2021 Board Update

December 9, 2021

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### *Review of A.C.A. Subsection 6 - Revocation and Suspension*

- *A.C.A. § 17-12-601 - Prohibited Acts*
- *A.C.A. § 17-12-602 - Sanctions*
- *A.C.A. § 17-12-603 - Procedure*
- *A.C.A. § 17-12-604 - Reinstatement*

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## A.C.A. § 17-12-601

### Grounds Generally (Prohibited Acts)

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#### *A.C.A. §17-12-601(a) – Prohibited Acts*

- 1) Fraud, dishonesty, or deceit in obtaining a CPA license, firm registration, or practice privilege;
- 2) Dishonesty, fraud, or gross negligence in the practice of public accountancy;
- 3) Violation of any of the provisions of this chapter;
- 4) Violation of a rule of professional conduct or other rule promulgated by the board;
- 5) Conviction of a felony under § 17-3-102;

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***A.C.A. §17-12-601(a) – Prohibited Acts (continued)***

- 6) Conviction of any crime under any state or federal law that involves dishonesty or fraud;
- 7) Imposition of any sanction or disciplinary action (other than failure to pay fees) by any state, federal or foreign agency (e.g. SEC, PCAOB, IRS) that regulates public accounting regarding licensee's conduct while rendering services;
- 8) Conduct discreditable to the public accounting profession; and
- 9) Violation of any board order for the resolution of asserted violations of this chapter, a board rule of professional conduct, or other board rule.

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***A.C.A. § 17-12-601(b)***

The board may deny an application for a license, registration, certificate, or practice privilege if it finds the applicant committed any of the acts, conduct, or practices prohibited by subsection (a) of this section.

***A.C.A. § 17-12-601(c)***

In addition to the offenses listed in § 17-3-102, the Arkansas State Board of Public Accountancy may refuse to issue a license to or reinstate a license of a person who has been convicted of a felony involving theft or fraud, regardless of the amount of time that has elapsed since the conviction.

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## Polling Question #1

Regarding Arkansas Accountancy Laws, Board Rules and the Board's Code of Professional Conduct:

- a) I read over them when I was first licensed and have not looked at them since
- b) I have a copy of them on my nightstand near my bed
- c) I go to the Board's website to research them as the need arises
- d) There's a Code of Conduct?

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# A.C.A. § 17-12-602

## Sanctions

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### *A.C.A. §17-12-602(a) – Sanctions*

- 1) Suspension, revocation, or denial of license or practice privilege or the renewal thereof;
- 2) A penalty not to exceed ten thousand dollars (\$10,000) for each violation as well as investigation costs incurred by the board;
- 3) Completion of appropriate education programs;
- 4) Pre-issuance review of audits, reviews or compilations;

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**A.C.A. §17-12-602(a) – Sanctions** *(continued)*

- 5) Quality review as specified by the board;
- 6) **Successful completion of the licensing examination;**
- 7) Conditions or restrictions upon the license, registration, or practice privilege; and
- 8) **Any other requirements or penalties the board finds appropriate that would achieve the desired disciplinary purposes but would not impair the public welfare and morals.**

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**A.C.A. §17-12-602 – Sanctions** *(continued)*

- b) Licensee may be required to pay the cost of the proceeding.
- c) **Each instance shall constitute a separate violation.**
- d) The Board may order that the license, registration, or practice privilege be suspended until its holder has complied in full with all imposed sanctions.
- e) **The Board may pursue other civil or criminal proceedings concerning the same violation and the imposition of a penalty does not preclude the Board from imposing other sanctions;**
- f) The Board is authorized to file suit in Circuit Court to collect any monetary penalty assessed if the penalty is not paid within the time prescribed.

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## Polling Question #2

A licensee not enrolled in Peer Review issues 3 audit reports and 2 compilation reports through an unlicensed firm. What is the maximum monetary penalty the Board could assess?

- a) \$50,000
- b) \$ 8,000
- c) \$10,000
- d) \$80,000

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# A.C.A. § 17-12-603

## Procedure - Hearings

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### *A.C.A. §17-12-603 – Hearings*

- a) A Hearing may commence from the Board's own motion or on the complaint of any person.
- b) A written notice shall be served in person or by certified mail not less than 30 days before the hearing date.
- c) The Board may proceed with the hearing even if the accused fails to appear and may enter any justified order.
- d) The accused may appear in person and by counsel;

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### **A.C.A. §17-12-603 – Hearings** *(continued)*

- e) The Board may issue subpoenas to compel the attendance of witnesses/ document production.
- f) **The Board shall not be bound by technical rules of evidence.**
- g) A stenographic record of the hearings shall be kept, and a transcript filed with the Board.
- h) **The Board's legal counsel shall appear and represent the Board at all hearings.**
- i) Decision of the Board shall be by majority vote.
- j) **Arkansas APA remedies available**

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### **Polling Question #3**

If the Board schedules a hearing and the licensee does not appear:

- a) All proposed compliance issues are dropped
- b) The Board must reschedule the hearing
- c) The Board may proceed with the hearing and enter an order, including revocation of a license
- d) The Board may proceed with the hearing and draw a conclusion, but may not take any action until the licensee is present

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### **Board Rule 11.1 – Investigations**

- (a)(1) All investigations to be performed by Board’s Investigator under the supervision of the Compliance Committee (CC) or CPE CC.
- (a)(2) (and a3) Compliance Committee (and CPE CC) comprised of 1 Board member and Exec. Director.
- (b) Some minor violations may be disposed of informally (e.g. through correspondence).
- (c) Investigation may be by staff person or by Board-designated investigating officer.

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### **Board Rule 11.1 – Investigations (continued)**

- d) No person or entity has a right to be present or to be heard during the investigation. However, they must be given the opportunity to make a statement which must be considered before recommending any finding.
- e) Upon completion, the CC chair presents to the Board a summary of the investigation’s result and their recommendation:
  - i. Finding of probable cause to order a hearing,
  - ii. Finding of probable cause and close by disciplinary order, or close with no further action
  - iii. Finding of no probable cause.

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### **Board Rule 11.2 – CC Recommendation**

- a) After considering the CC recommendation, the Board will find probable cause, no probable cause, or request further investigation.
- b) **A finding of no probable cause shall be final.**
- c) Finding of probable cause leads to:
  - 1) Initiate disciplinary proceedings via hearing notice;
  - 2) Institute action pursuant to A.C.A. § 17-12-104 or § 17-12-105; or
  - 3) Take other appropriate action

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### **Board Rule 11.2 – CC Recommendation (cont.)**

- d) Hearing notice must be sent by certified mail.
- e) **Upon failure to appear, the Board may proceed to hear evidence and may enter an order justified by the evidence.**
- f) Respondent has a right to information pursuant to A.C.A. § 25-15-208(a)(3).
- g) **Hearings upon motions may be deferred until the final hearing, and rulings thereon may be reserved until the conclusion of the final hearing;**

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### **Board Rule 11.5 – Hearings Before the Board**

- a) Board's presiding officer, or any designated hearing officer, has the authority to:
  1. Administer oaths and affirmations;
  2. Rule upon offers of proof and receive relevant evidence;
  3. Regulate the course of the hearing;
  4. Hold conferences for settlement or simplification of issues; and
  5. Dispose of procedural requests

Board can determine any issue that would dispose complaint

- b) **Board shall make findings of fact and conclusions of law for each charge and shall enter an order stating effective date, disciplinary action, & penalty, if any.**
- c) The Board shall promptly notify the respondent and any complaining party of its findings and order.

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### **Board Rule 11 – Miscellaneous Sections**

**Rule 11.3 Computation of Time:** the day of the action or event not included in the time period prescribed or allowed by rules (e.g. respond within 30 days to certified letter).

**Rule 11.4 Subpoenas:** Subpoenas for witnesses or documents shall be issued by the Board upon its own initiative or upon the written application of any party. They shall be served as required by Rule 45 of the AR Rules of Civil Procedure. If issued by Respondent, Respondent must pay witness fees, expenses and mileage.

**Rule 11.6 Hearings Before a Hearing Examiner or Member of the Board:** Basically, same as Rule 11.5, except Board can appoint a hearing examiner or member of the Board to conduct the hearing in the absence of the Board.

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### **Board Rule 11 – Miscellaneous Sections (cont.)**

**Rule 11.7 Review of Examiner's Report (11.6):**  
Procedures for filing the examiner's report and for filing exceptions or briefs by the respondent.

**Rule 11.8 Disposition of Procedural Requests (11.6):**  
Board may appoint one of its members or a hearing officer to rule upon procedural requests.

**Rule 11.9 Evidence:** Governed by ACA §25-15-213(4).

**Rule 11.10 Record:** Accurate record of proceedings shall be recorded and transcribed by a court reporter.

**Rule 11.11 Publication:** Board may publish name and narrative summary of disciplinary action.

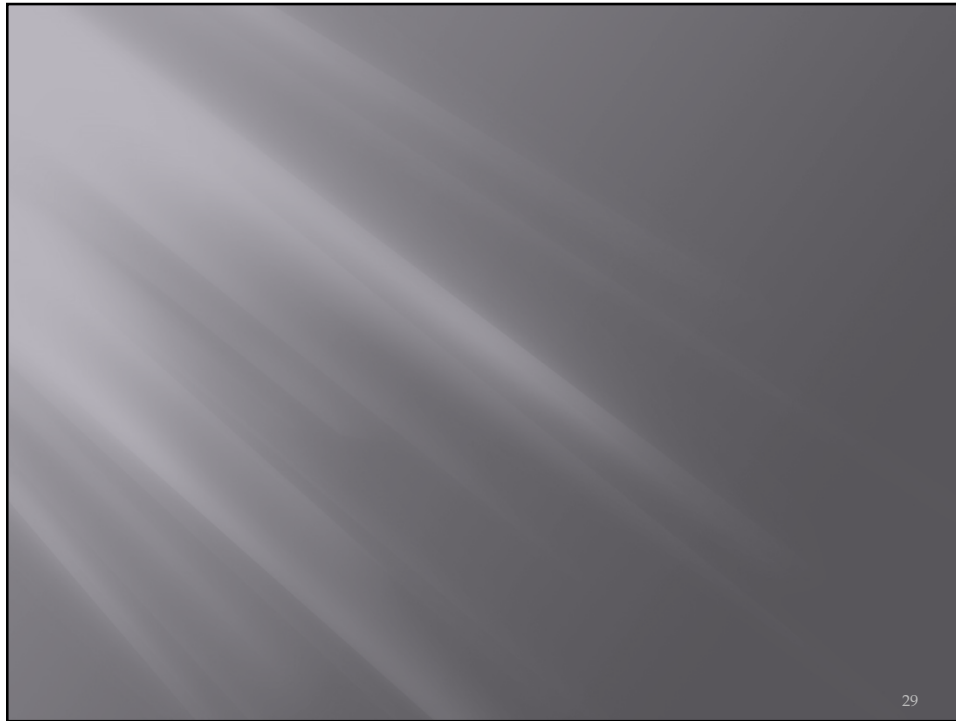
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## **Polling Question #4**

**A disciplinary action imposed upon a licensee:**

- a) Is sensitive information and, therefore, not subject to FOIA
- b) Will be published in the Board's newsletter
- c) Is final and cannot be appealed in a court of law
- d) Subjects the licensee to a Board "watch" list

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## A.C.A. § 17-12-604

### Reinstatement

Upon application, the Board may issue a new certificate to a CPA whose certificate was revoked. Can also reissue a revoked registration or modify the suspension of a revoked or suspended license.

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### ***A.C.A. § 17-12-504: Renewals & Fees***

- License expires if not renewed by January 1<sup>st</sup>.
- Late fees are assessed each month license is not renewed.
- License lapses if not renewed by April 1<sup>st</sup>.
- May reinstate lapsed license within 3 years via application, reinstatement fee and CPE.
- License voided if not reinstated within 3 years.
- Holder of a void license may apply for a new license under § 17-12-301.

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### **Polling Question #5**

Ranked by order of occurrence, what are the top three types of investigative issues addressed by the Board?

- a) Inactive status violations, holding out as a CPA/accountant, failure to renew license
- b) Discreditable conduct, unlicensed firms, holding out as a CPA
- c) Failure to renew license, holding out as a CPA/accountant, discreditable conduct
- d) Standards/rules violations, failure to renew license, Peer Review/Quality Review violations

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# Miscellaneous Items

## *Board Rule 14 (Quality Review) and Board Rule 20 (Peer Review)*

- Practice Review performed on licensees every 3 years.
- Must submit latest compilation report(s) (with disclosures and without disclosures) for Quality Review.
- Participation in Peer Review program exempts licensee from Quality Review process but not from Practice Review.
- Practice Review surveys must be completed for both individual CPA licensee and firm registration.

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## *Active, Inactive and Retired Status*

Type of Work Performed	Active	Inactive	Retired
Work associated with accounting	✓	Non-public accounting	X
Prepare tax returns	✓	X	X
Consulting Services	✓	Non-public accounting	X
Serving on Board of Directors	✓	Volunteer basis; no \$\$\$	Charitable, Civic, NFP only; no \$\$\$

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# Favorite Investigative Moments

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## Questions???

Board staff members are always available to answer any questions about this course or any accountancy statutes or Board rules.

[www.arkansas.gov/asbpa](http://www.arkansas.gov/asbpa)

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*The Board is here to help every  
Arkansas CPA licensee*

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