

TITLE 4: ECONOMIC RESOURCES
DIVISION 3: BUSINESSES AND PROFESSIONS

§ 3432. Enforcement Procedures: Hearings By the Board.

(a) In any case where probable cause with respect to a violation by a licensee has been determined by the Board, whether following an investigation under section 3431 of this Act, or upon receipt of a written complaint furnishing grounds for a determination of such probable cause, or upon receipt of notice of a decision by the Board of Accountancy of another state furnishing such grounds, the Board shall issue a complaint setting forth appropriate charges and set a date for hearing before the Board on such charges. The Board shall, not less than 30 days prior to the date of the hearing, serve a copy of the complaint and notice of the time and place of the hearing upon the licensee, together with a copy of the Board's rules governing proceedings under this section, either by personal delivery or by mailing a copy thereof by registered mail to the licensee at the licensee's address last known to the Board.

(b) A licensee against whom a complaint has been issued under this section shall have the right, reasonably in advance of the hearing, to examine and copy the report of investigation, if any, and any documentary or testimonial evidence and summaries of anticipated evidence in the Board's possession relating to the subject matter of the complaint. The Board's rules governing proceedings under this section shall specify the manner in which such right may be exercised.

(c) In a hearing under this section the respondent licensee may appear in person (or, in the case of a firm, through a partner, officer, director, shareholder, member or manager) and/or by counsel, examine witnesses and evidence presented in support of the complaint, and present evidence and witnesses on the licensee's own behalf. The licensee shall be entitled, on application to the Board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(d) The evidence supporting the complaint shall be presented by the investigating officer, by a Board member designated for that purpose, or by counsel. A Board member who presents the evidence, or who has conducted the investigation of the matter under section 3431 of this Act, shall not participate in the Board's decision of the matter.

(e) In a hearing under this section the Board shall be advised by counsel, who shall not be the same counsel who presents or assists in presenting the evidence supporting the complaint under subsection (d) of this section.

(f) In a hearing under this section the Board shall not be bound by technical rules of evidence.

(g) In a hearing under this section a stenographic or electronic record shall be made and filed with the Board. A transcript need not be prepared unless review is sought under subsection (j) of this section or the Board determines that there is other good cause for its preparation.

(h) In a hearing under this section a recorded vote of a majority of all members of the Board then in office (excluding members disqualified by reason of subsection (d) of this section) shall be required to sustain any charge and to impose any penalty with respect thereto.

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(i) If, after service of a complaint and notice of hearing as provided in subsection (a) of this section, the respondent licensee fails to appear at the hearing, the Board may proceed to hear evidence against the licensee and may enter such order as it deems warranted by the evidence, which order shall be final unless the licensee petitions for review thereof under subsection (j) of this section, provided, however, that within thirty days from the date of any such order, upon a showing of good cause for the licensee's failure to appear and defend, the Board may set aside the order and schedule a new hearing on the complaint, to be conducted in accordance with applicable subsections of this section.

(j) Any person or firm adversely affected by any order of the Board entered after a hearing under this section may seek judicial review thereof pursuant to procedures set forth in the Administrative Procedure Act (1 CMC § 9101 et seq.).

(k) In any case where the Board renders a decision imposing discipline against a licensee under this section and Section 3433 of this Act, the Board shall examine its records to determine whether the licensee holds a certificate or a permit to practice public accountancy in any other state; and if so, the Board shall notify the Board of Accountancy of such other state of its decision, by mail, within forty-five days of rendering the decision. The Board may also furnish information relating to proceedings resulting in disciplinary action to other public authorities and to private professional organizations having a disciplinary interest in the licensee. Where a petition for review has been filed pursuant to Section 3432(j), the notification and furnishing of information provided for in this subsection shall await the resolution of such review and, if resolution is in favor of the licensee, no such notification or furnishing of information shall be made.

Source: PL 13-52, § 11, modified.

Commission Comment: The Commission made conforming changes to the above subsection pursuant to 1 CMC § 3806. See the comment to 4 CMC § 3401 regarding PL 13-52.