

# Key 2018 VBOA Disciplinary Orders

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Robert Cox of Briglia Hundley, P.C. is not a representative of the Virginia Board of Accountancy and his views do not represent the VBOA.



## Robert H. Cox

Bob Cox is a trial attorney with over two decades of experience litigating all types of business cases in courts across the nation. As part of his commercial litigation practice, Bob represents accounting firms and accountants in connection with regulatory and enforcement matters before the Securities and Exchange Commission, PCAOB, and state licensing bodies. Before joining Briglia Hundley in 2017, Bob was an Assistant Director with the PCAOB's Division of Enforcement and Investigations for more than six years.



# Objectives

- Overview of Significant VBOA Disciplinary Orders in 2018
- Final Opinion and Order in Eric Wayne Bartland

# Virginia Board of Accountancy

- Independent board in the executive branch of state government
- Duties include regulation and discipline of CPAs and CPA firms
- Responsible for investigating complaints against licensed Virginia CPAs and CPA firms and expired licensees or non-licensees using the CPA title or performing services in Virginia restricted to CPAs

# Overview of Enforcement Process

- Once a complaint is received by VBOA staff it is reviewed by the Enforcement Division.
- If probable cause exists to initiate an investigation, the investigation process begins.
- If Enforcement determines violations have occurred and sanctions are deemed appropriate, a potential resolution of the complaint is proposed in writing in a consent order. Alternatively, Enforcement can refer for Informal Fact-Finding (IFF) conference before two or more Board members or formal hearing before entire Board.
- If the individual chooses not to sign the order, he/she may elect to be heard in an (IFF).
- Enforcement Committee will review the case and present the presiding officer's recommendations to the full Board for consideration. The Board may accept or reject the recommendations in whole or in part. Board renders final decision.
- Individual can appeal IFF and request a formal hearing.
- Individual has 30 days to appeal the Board's final decision to the courts.

# Overview

- From January to September 2018, the VBOA issued 24 orders
- 21 of the 23 orders were consent orders
  - CPA agreed to a proposed consent order from the VBOA
- 21 of the orders included violations of 18VAC5-22-90 for CPE deficiencies
  - 18 of the 20 orders involved only a CPE deficiency violation
  - 6 of the orders included a charge for false certifications on renewal applications
- 2 of the orders involved unlicensed activity in violation of Code of Virginia Section 54.1-4414
- 1 order involved multiple violations including acts discreditable, lack of professional care, failure to respond, CPE deficiency, and false certifications on renewal applications.

# CPE Violations

- CPE deficiency
  - Sanctions typically:
    - Suspension of license for one year
    - \$1,500 monetary penalty
    - Submit proof of completion of the current year's Virginia-Specific Ethics Course; and
    - Be subject to a CPE compliance review for the reporting period following reinstatement

# Unlicensed Activity

- Gina Milaine Guinn
  - Guinn violated the Code of Virginia Sections 54.1-4414 and 54.1-4413.4 when she used the CPA title on her resume and business cards despite not having an active CPA license.
  - Sanctions: reprimand, monetary penalty of \$350, and required to report the order as an adverse administrative action to any present or future regulatory authority before which she practices (*i.e.*, PCAOB, SEC, etc.).
- Gregg Harrison Turk
  - Turk violated Section 54.1-4414 when he did not hold an active Virginia license and used the CPA title in his email correspondence, letterhead, and Form ADV.
  - Sanctions: monetary penalty of \$12,000 for using the CPA title and discontinue use of and remove the CPA title from all signage and any and all listings until such time he has been granted a license by the VBOA.

# Eric Wayne Bartland

- Most significant and comprehensive order issued by VBOA since 2014.
- The VBOA found that Bartland violated the Code of Virginia when five separate complaints revealed he failed to exercise due professional care, failed to return client records upon request, failed to perform the work for which he was engaged, failed to respond to a VBOA investigation, disclosed confidential client information without client consent, and committed additional acts discreditable when communicating with clients.
- Bartland was also presumed to be CPE deficient after he failed to submit proof of CPE compliance.

# Eric Wayne Bartland - Sanctions

- Second highest monetary penalty, \$51,850 in last five years.
  - Record penalty is \$200,000 imposed on David J. Hoare, May 9, 2014 for discreditable acts and due professional care violations.
  - Third highest penalty is \$50,000 imposed on George Turner, Jr. for discreditable acts and failure to submit the required CPE.
- License revoked.
- Cannot use the CPA title nor provide any services restricted to CPAs in Virginia.
- If he holds a CPA license in another state that is a substantially equivalent jurisdiction, he shall not have the privilege of using the CPA title in Virginia unless the VBOA grants him the privilege.

# Origin of Case

- Five separate complaints made to the VBOA over the course of two months.
- Complaints alleged similar misconduct
  - Failure to exercise due professional care
  - Failure to return client records
  - Disclosed confidential information of another client
  - Engaged in behavior not in conformity with the standards of conduct and practice
    - Use of profanity
    - Threats (call police, invoice for thousands in fees, religious allusions)
- Bartland was a Virginia CPA whose license was initially issued in 2004.

# Burkhart Complaint

- Client for bookkeeping and tax services for 10 years
- Confidential Information: Bartland revealed sensitive payroll and tax-related details and personal information about a friend of Burkhart who was also a client (Mr. Jones).
- Due Professional Care: Bartland failed to send 1099s to Burkhart's contractor and when Burkhart complained, Bartland texted that Burkhart should find a new CPA. Bartland failed to file certain returns.
- Failure to Return Records: Bartland did not return client records and claimed that he had returned all client records.
- Behavior Not in Conformity: Used belligerent and vulgar language in texts and emails.

# Jones Complaint

- Bartland never filed Jones's 2013 business tax return.
- Bartland threatened to "fire" Jones several times.
- Jones retained a new CPA firm and the new firm requested that Bartland send Jones's records on multiple occasions. Bartland allegedly did not forward the records.
- Burkhart told Jones that Bartland had shared confidential information about Jones's financial and personal life and had alleged that Jones was using drugs and drinking on the job and operated his business in a fraudulent manner.
- On at least 5 occasions, Bartland allegedly sent vulgar and/or threatening texts to Jones.

# Pettits Complaint

- Employed Bartland for several years for tax services.
- Met and called Bartland several times over a one month period inquiring about the status of the returns and were told they were not ready.
- Alleged that Bartland claimed he obtained an extension.
- On May 10, they engaged another firm which requested the client records.
- Alleged that Bartland refused to provide the documents to the firm, threatened to call the sheriff and the IRS, threatened to bill the firm thousands of dollars, and used vulgarity.

# Hayes Complaint

- After waiting almost two months for Bartland to prepare his tax returns, Hayes alleged that Bartland told Hayes to find another tax preparer and that he would return his documents.
- Hayes engaged a new preparer and requested return of his records, but Bartland did not provide the records.
- Bartland sent Hayes four abusive and threatening text messages warning Hayes never to set foot in his office and that he would return any original documents.
- Bartland never returned the client records, which were Hayes's originals.

# Kerr Complaint

- Mother and daughter hired Bartland.
- Came to pick up their returns on April 16, 2017 but Bartland was not at his office. Mother called Bartland and stated that she felt he had failed his fiduciary responsibilities on multiple occasions. Bartland allegedly responded with obscenities and hung up the phone.
- The daughter then called Bartland who allegedly proceeded to scream at her as well. Bartland agreed to drop off their returns when he met with another client.
- Instead, Bartland told the other client to inform the Kerrs that they needed to sign paperwork to release the returns. Mother called Bartland for an explanation, he swore at her, and he hung up the phone.
- On April 24, the mother emailed Bartland to state that the returns had not been received and to request return of the client documents. Bartland allegedly responded that they were dropped in the mail and stated more insults and threats.
- On May 4, the Kerrs' attorney sent a letter requesting return of the client documents, and on May 8, Bartland responded that he would mail the returns.
- In June 2017, Bartland sent completed 2016 returns, but the daughter's return had errors. The Kerrs had another accountant prepare the 2016 returns.

# VBOA Investigative Questionnaire

- Bartland did not respond to the VBOA's May 12, 2017 Notice of Apparent Violation and investigative questionnaire.
- On August 16, 2017, the VBOA sent a Notice of Informal Fact-Finding Conference.
- Bartland submitted a response to the VBOA Notice of Apparent Violation on September 8, 2017.

# Response to VBOA

- Bartland admitted discussing personal information about Jones with Burkhart.
- He blamed delays in filings on Burkhart providing incorrect information or not replying.
- He also blamed delays on filings for Jones and Hayes on his client's failure to send complete information.
- In addition, he blamed sleep deprivation on causing him "to not be able to perform my job satisfactorily. . ." and yelling at some of the complainants.
- He accused Burkhart, Jones, and Hayes of conspiring to "cover up many acts committed by Jones. . ."
- He failed to submit any CPE certificates of completion.

# Informal Fact-Finding Conference

- On October 13, 2017, Bartland appeared before the Presiding Officer during an IFF Conference.
- He did not read the annual certification regarding CPE compliance on his renewal applications but signed the certification despite not knowing if he had met CPE requirements.
- He admitted to discussing Jones's confidential information with Burkhart and another individual and that he understands now that he was not to share confidential client information without that client's permission.
- He admitted to the "general connotation" of his words recounted by the Kerrs in their complaint.
- He attributed his behavior to sleep deprivation and other issues he was dealing with.
- He agreed that he should have provided difficult clients with disengagement letters and the return of their records instead of resorting to texts and emails.
- He also admitted that he should not have used profanity and behaved "more professional."
- Bartland admitted that he returned tax returns and client records after April, but believed he returned all client records.

# Complainants' Testimony

- Several of the complainants testified at the IFF Conference.
- Generally testified consistent with their written complaints.
- Burkhart, Jones, and Hayes disputed that Bartland had returned all of their personal records. They also recounted threatening and abusive texts.
- Burkhart admitted that he contacted Jones and Hayes to request that they also file complaints against Bartland with the VBOA.

# Code of Virginia Section 54.1-4413.3

- Section 54.1-4413.3 provides that persons using the CPA title in Virginia shall conform to the following standards of conduct and practice, in part:
  1. Exercise sensitive professional and moral judgment in all activities.
  2. Act in a way that serves the public interest, honors the public trust, and demonstrates commitment to professionalism.
  3. Perform all professional responsibilities with the highest sense of integrity, maintain objectivity and freedom from conflicts of interest in discharging professional responsibilities, and avoid knowingly misrepresenting facts or inappropriately subordinating judgment to others.
  4. Follow the Code of Professional Conduct, and the related interpretative guidance, issued by the American Institute of Certified Public Accountants, or any successor standard-setting authorities. . . .

\* \* \*
  7. Do not engage in any activity that is false, misleading, or deceptive.

# Board Regulations

- 18VAC5-22-90(A) states, in relevant part: “If during the current calendar year a person who holds a Virginia license provided services to the public, he shall have obtained at least 120 hours of continuing professional education during the three-calendar-year period ending with the current calendar year. For each of the calendar years in that period, he shall have obtained at least 20 hours of continuing professional education, including an ethics course of at least two hours.”
- 18VAC5-22-170(a) states, in relevant part: “When requested by the board:
  3. Persons or firms shall provide the board documents related to the board’s investigation of their possible violation of provisions of Chapter 44 (Section 54.1-4400 et seq.)

# AICPA Code of Professional Conduct – Integrity

- ET Section 0.300.040 – Integrity
  - .01 Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.
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# Professional Competence and Due Care

- ET Section 0.300.060 addresses due care and competence:
  - 01 Due care principle. A member should observe the profession's technical and ethical standards, strive continually to improve competence and the quality of services, and discharge professional responsibility to the best of the member's ability.
  - .05 Members should be diligent in discharging responsibilities to clients, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards.
  - .06 Due care requires a member to plan and supervise adequately any professional activity for which he or she is responsible.
- IRS Circular 230 Section 10.35(a) states that “[a] practitioner must possess the necessary competence to engage in practice before the [IRS]. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.”

# Acts Discreditable Rule

- IRS Circular 230 Section 10.28 requires that “a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section.”
- AICPA Code of Professional Conduct ET Section 1.400.001.01 states, “A member shall not commit an act discreditable to the profession.”
- ET Section 1.400.200 states, in relevant part:
  - .03 The member should return client-provided records in the member’s custody or control to the client at the client’s request.
  - .09 A member who is required to return or provide records to the client should comply with the client’s request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.
  - .11 A member would be considered in violation of the “acts Discreditable Rule” [1.400.001] if the member does not comply with the requirements of this interpretation.

# Confidential Client Information

- Rule 0.400.09 of the AICPA Code of Professional Conduct defines “confidential client information” as “any information obtained from the *client* that is not available to the public.”
- Rule 1.700.001 states that “[a] member in public practice shall not disclose any confidential information without the specific consent of the client.”

# VBOA Findings

- Failure to Return Client Records
  - The failure to return client records were violations of Section 54.1-4413.3(1) when Bartland failed to exercise professional moral judgment in all activities, and Section 54.1-4413.3(2) when Bartland failed to act in a way that serves the public interest, honors the public trust, and demonstrates commitment to professionalism.
  - In addition, the VBOA found that the failure to return all records also included a violation of Section 54.1-4413.3(4) by violating AICPA Code of Professional Conduct §§ 0.300.060, 1.300.001.01, 1.400.001.01, and/or 1.400.200.

## VBOA Findings (cont'd)

- Disclosure of Client Information
  - The VBOA found that Bartland's disclosure of confidential client information about Jones to Burkhart and Jones to Flynn without Jones's consent violated Sections 54.1-4413.3(1), 54.1-4413.3(2), and 54.1-4413.3(3) (failing to perform all professional responsibilities with the highest sense of integrity, failed to maintain objectivity and freedom from conflicts of interest in discharging professional responsibilities, and failed to avoid knowingly misrepresenting facts or inappropriately subordinating judgment to others).
  - In addition, the disclosures were violations of Section 54.1-4413.3(4) by failing to follow AICPA Code of Professional Conduct ET §§ 0.300.040, 0.300.060, 1.300.001.01, 1.400.001.01, and/or 1.700.001.01.

## VBOA Findings (cont'd)

- Communicating in an inappropriate manner
  - The VBOA found that Bartland communicated in an inappropriate, vulgar, threatening, or abusive manner to Burkhart, Jones, Metropolitan (accounting firm hired by the Pettits), Hayes, Pamela Kerr, and Erin Kerr on one or more occasions. These constituted violations of Sections 54.1-4413.3(1), 54.1-4413.3(2), and 54.1-4413(3).
  - In addition, the communications were violations of Section 54.1-4413.3(4) by failing to follow AICPA Code of Professional Conduct ET § 0.300.040, 0.300.060, 1.300.001.01, and 1.400.001.01.

## VBOA Findings (cont'd)

- CPE Violations

- The VBOA found that cause existed to impose a penalty on Bartland for falsely certifying that he had complied with the Board's CPE requirements on his 2015, 2016, and 2017 individual CPA license renewal applications pursuant to Section 54.1-4413.4(B) in violation of Sections 54.1-4413.3(1), 54.1-4413.3(2), 54.1-4413.3(3), 54.1-4413.3(4) (violation of AICPA Code of Professional Conduct ET § 0.300.040), 54.1-4413.3(7), and 54.1-4413.4(B)(2) (in that Bartland engaged in fraud or deceit in obtaining, renewing, or applying for reinstatement or lifting the suspension of a Virginia license).
- In addition, Bartland violated 18VAC5-22-90(a) when he failed to demonstrate that he completed the annual Virginia-specific ethics course, obtained the minimum of twenty hours of CPE, and obtain a minimum 120 hours of CPE for calendar years 2014, 2015, and 2016.

## VBOA Findings (cont'd)

- Failure to Respond to a Board Request
  - The VBOA found that Bartland violated 18VAC5-22-170(a) by failing to respond to a Board request for information related to the Board's investigation of possible violations within 30 calendar days.

# Questions?

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