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# Responding to the Minnesota Board of Accountancy

by Thomas J. Shroyer

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Having worked with Minnesota CPAs to prevent, avoid and defend against professional liability claims, we have recently detected a pronounced tendency by claimants and their lawyers to present their alleged claims to the Minnesota Board of Accountancy (BOA) at varying stages of the litigation process. Some claimants attempt to use the BOA to gain leverage in settlement negotiations, others to “flush out” evidence or force the CPA to issue a definitive written statement for later use in litigation. Sometimes claimants just want to vent after the conclusion of settlement negotiations or litigation – and the enforceability of settlement clauses barring a claimant from filing such a claim is debatable on public policy grounds. Recently, in another jurisdiction, following a settlement, the claimant’s expert witness filed a claim for substandard professional services.

It is also fair to say that disappointed or unhappy clients are ever more inclined to take “official action” rather than attempting to resolve issues on an informal and private basis.

As a result, our firm has become increasingly active in representing CPAs confronted with complaints lodged against them at the BOA. Against that background, we will respectfully offer a number of observations and practical suggestions for CPAs who receive notice from the BOA that a complaint has been lodged and that their written response is mandatory.

## **1. Check your professional liability insurance policy.**

Many malpractice insurance policies provide a “loss prevention” feature that affords CPAs with legal representation for responding to complaints made to the BOA or the AICPA and MNCPA ethics enforcement committees. Many insurers offer the benefit without any charge up to a certain limit. It is no secret that the insurance carriers offer this benefit because they have learned that failing to take proactive steps to safeguard against a bad outcome at the earliest possible stages can lead to significant financial losses if a civil damages claim later ensues. This should provide practitioners with a big clue that they, too, need to view complaints with the highest degree of respect and some healthy measure of alarm.

## **2. Do something.**

If you receive notice of a complaint, action is mandatory (it’s not optional). If a written response is required by a specified date, it is important to either provide an adequate written submission on or before the deadline – or call the designated investigator and request additional time for your response. Such requests are often granted, and the BOA is aware that practitioners are simply overwhelmed during “busy season” and at other tax compliance and financial statement reporting deadlines. Since failure to cooperate with an investigation can itself be the basis for discipline, and since the complaint will never go away by itself, the CPA simply must be certain to respond. In addition, the problem may have negative effects professionally and personally if ignored.

## **3. Be prepared.**

Some matters presented to BOA are not resolved solely on the basis of the CPA’s written response to the initial complaint. If this is the case, the CPA may be invited to appear for an informal interview with the Complaint Committee. While appearance is voluntary, the request will note that if you choose not to cooperate, you may be subpoenaed to appear. The notice also has a “Tennessee Warning,” which says that anything you say at this informal session can and will be used against you if the BOA determines that disciplinary action is warranted. Thus, you may want to request that the interview be recorded.

Sometimes practitioners appear before the Complaint Committee without adequate preparation. They find themselves addressing questions and issues that were not part of the original complaint or that they did not view as being included in the original complaint. In either case, ill-prepared CPAs sometimes get themselves into different and deeper trouble on the basis of off-the-cuff, ill-considered or inappropriately worded responses to inquiries by members of the Complaint Committee.

The lesson to be learned and applied is that an appearance before the Complaint Committee should be carefully and thoroughly considered. Attention should be given to seemingly hidden issues lurking in the complaint or other possible issues surrounding the engagement, but not implicated within the formal complaint.

## **4. Get help.**

Even if you are uninsured or your insurance provider does not offer loss prevention assistance, you may want to retain legal representation. A lawyer can often make useful suggestions for maximizing the

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effectiveness of your initial written response, in order to obtain summary dismissal and avoid the need for an appearance before the Complaint Committee. If an appearance is required, rest assured that it is not an admission of guilt or fault to bring your attorney into the hearing with the Complaint Committee. If nothing else, having an attorney by your side may simply help you to feel better and more self-confident in stating your case. An attorney may also be able to offer perspective to the BOA or help to clarify your responses to their inquiries.

Every complaint to the Minnesota Board of Accountancy must be treated with professionalism, the utmost of respect and great care. The consequences of an adverse outcome – in terms of publicity, censure, reprimand, suspension, or loss of certificate, fines and potentially negative impact on civil damages claims – are simply too great to ignore, slough off or treat with disdain.



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