

FILED April 13, 2015 (Date)

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IAEB
Board / Commission
[Signature]
Signature, Executive Officer

IN THE MATTER OF)	CASE NUMBER: 13-03; 14-19
)	DIA NUMBER: 14IAB001
)	
BRIAN E. GEERTS, CPA)	
)	FINDINGS OF FACT,
Certificate No. 008725)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER
Respondent)	

On December 18, 2014, the Iowa Accountancy Examining Board (Board) filed a Notice of Hearing and Statement of Charges against Respondent Brian E. Geerts, Certified Public Accounting (CPA). Respondent was charged with practices harmful and detrimental to the public in violation of Iowa Code sections 272C.10(3), and 542.10(1)(j), and 193A IAC 14.3(6)(c), and 14.3(7)(c) based on his pattern of unresponsive behavior with respect to clients and board inquiries in disciplinary investigations. He was further charged with failure to adhere to rules of professional conduct with respect to record retention and furnishing client records in violation of Iowa Code section 542.10(1)(d), and 193A IAC 13.4(7)(b), 13.4(8), and 13.8(6). A telephone prehearing conference was held on February 27, 2015 with all parties participating.

The hearing was held on March 6, 2015 at 2:00 p.m. in the Board conference room at 200 E. Grand, Ste 350, Des Moines, Iowa. Respondent appeared and was self-represented. The state of Iowa was represented by Assistant Attorney General John Lundquist. The following Board members served as the presiding officers for the hearing: Robert Snodgrass, CPA, Chairperson; Dale Liebfried, CPA; Ying Sa, CPA; Tommy Thompson, CPA; Shelley Laracuenta and Evelyn Rank, Public Members. A certified court reporter recorded the proceedings. Respondent elected to have a closed hearing, pursuant to Iowa Code section 272C.6(1). Emily Kimes-Schwiesow, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing and was instructed to draft the Decision and Order, consistent with deliberations, for the Board's review.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges, State's Prehearing Conference Report, the testimony of Randy Schnack, Anne Meyer, and the Respondent, the State's Exhibits 1-22, and Respondent Exhibits 1-4.

FINDINGS OF FACT

On February 18, 1994, Respondent was issued Iowa CPA certificate number 008725. Respondent is a self-employed CPA and maintains offices in Bettendorf, Iowa, and East Moline, Illinois. His primary business is tax preparation and he has approximately 1,400 clients. During tax season, Respondent employs 2-3 tax preparers and 7 office staff employees. Respondent is the sole employee for the business during non-tax season. (State Exhibit 1; Testimony of Respondent)

Respondent has had two prior disciplinary actions. In 2000, he entered into a Consent Order requiring education and desk review consultation of his audits. In 2011, he entered into another Consent Order requiring additional education and a civil penalty due to his failure to provide verification for an education audit. Additionally, Respondent was cautioned by the Board in 2012 regarding his lack of attention to client affairs. (State Exhibit 14, 15, 16)

In March 2013, a complaint was filed against the Respondent alleging a failure to retain or furnish tax records in a reasonable fashion. A second complaint was filed in September 2014 alleging Respondent was unresponsive to requests for tax information and records. (State Exhibit 3, 10)

Complaint 1 (13-03)

The first complaint, filed March 21, 2013, indicated Respondent provided accounting services for Anne Meyer's company, Med Law Connections. Ms. Meyer and her former business partner, Jennifer Law, started Med Law Connections in 2005. They began working with the Respondent in 2006, regarding the company's tax and payroll filings. Ms. Law had primary contact with the Respondent. From 2006 through October 2012, Respondent did not submit a bill to Med Law Connections. During this time period, Med Law Connections was notified by the IRS and the Social Security Administration that paperwork had not been properly filed. In November 2012, the business partnership between Ms. Meyer and Ms. Law was dissolved with Ms. Meyer retaining the company. Respondent then presented a bill to Med Law Connections encompassing all six years of his work for the company. Ms. Meyer requested an itemized bill from Respondent without response. An agreement was reached for each of the business partners to pay one half of the bill. (Testimony of Anne Meyer; State Exhibit 3)

Following the dissolution, Ms. Meyer was notified by the IRS that Med Law Connections' 2011 filing contained incorrect reports. Ms. Meyer sought a copy of the company's 2011 tax filing, as well as W2 forms and the online passwords for state and federal filings from the Respondent. Ms. Law indicated Respondent had emailed her a copy of the 2011 filing, but she could not open the email attachment. Respondent reported the 2011 tax filing was lost as a result of a computer server crash at his office, but assured Ms. Meyer he would retrieve the documents for her. Ms. Meyer continued to pursue communication with the Respondent via telephone,

email, and personal visits to his office. He did not produce the 2011 filing, and as of the date of hearing, Ms. Meyer had still not received it. Respondent never responded to Ms. Meyer's request for the online passwords. Ms. Meyer eventually hired another CPA to assist her and paid the IRS to recreate Med Law Connections' 2011 documents. (Testimony of Anne Meyer; State Exhibit 3)

On March 26, 2013, executive officer Toni Bright sent Respondent a letter and asked him to respond to Ms. Meyer's complaint by April 16, 2013. Respondent replied by email dated April 17, 2013. He indicated he had already provided some of the documents Ms. Meyer requested to Jennifer Law. In January 2013 the server in his office crashed and he lost all data that was not backed up, including Med Law Connections' 2011 documentation. Respondent reported he informed Ms. Meyer of the server crash and indicated he'd provide her with a copy as soon as he retrieved the data. He denied that Ms. Meyer was ever ignored or treated rudely. Respondent hoped to have the lost data back by the following week, and indicated he would update Ms. Bright when the 2011 documents were delivered. (State Exhibit 5)

Kurt Konek, CPA, completed a peer review report for the Board regarding Ms. Meyer's complaint on April 22, 2014, and an updated report on November 6, 2014. In the April 22, 2014 report, Mr. Konek determined that Respondent violated 193A IAC 13.2(8) by failing to retain a completed copy of Med Law Connections' 2011 tax return. On April 29, 2014, executive officer Robert Lampe requested Mr. Konek interview the Respondent and seek additional information. Mr. Konek left telephone messages for the Respondent on 4/29/14, 5/23/14, 5/27/14, and 11/6/14. He sent email messages to the Respondent on 4/29/14, 5/30/14, 6/25/14, and 7/22/14. Mr. Konek spoke with the Respondent on May 27, 2014. Respondent informed Mr. Konek his wife had recently died and he would respond to his inquiry as soon as possible. Mr. Konek did not hear from the Respondent again. He filed his updated report on November 6, 2014 indicating the Respondent had failed to properly retain and furnish client records in violation of 193A IAC 13.2(8), as well as 13.4(8) and 13.4(7)(b). (State Exhibit 7, 8, 9)

In response to Anne Meyer's complaint, Respondent testified that there were communication problems. From 2006 until 2012 he communicated almost exclusively with Ms. Law regarding Med Law Connections. He reported that he had previously provided Ms. Law with the information Ms. Meyer sought from him. Respondent opined that the deterioration of the relationship between Ms. Law and Ms. Meyer complicated the situation. He described Ms. Meyer as rude and difficult to deal with. Respondent acknowledged that he had not backed up the data lost in the server crash and was unable to produce a copy of Med Law Connections' 2011 filing. Respondent testified that he now saves all records as PDF documents and backs up the records every other day. (Respondent testimony)

Complaint 2 (14-19)

A second complaint against the Respondent was filed on September 16, 2014. Mr. Randy Schnack, alleged that the Respondent had failed to complete revisions to his 2011 and 2012 tax returns as agreed, and failed to return his tax forms and documentation to him. Mr. Schnack hired the Respondent to prepare his 2011 and 2012 income tax filing. In 2013, Mr. Schnack received social security disability payment for the years 2011 and 2012 on behalf of his deceased wife. He delivered the social security disability payment documentation to the Respondent. The Respondent indicated he would complete revisions to Mr. Schnack's 2011 and 2012 filings and contact him for signature. He did not complete the revisions. Mr. Schnack called the Respondent's office and visited in person several times with no response. He found the office closed with a note on the door indicating Respondent was unavailable due to his wife's death. Mr. Schnack continued to call, but received no reply from the Respondent. He filed a complaint with the Better Business Bureau on July 4, 2014. The Better Business Bureau informed him on September 5, 2014 they were closing their case because the Respondent had not responded to their inquiry. Mr. Schnack contacted the Bettendorf Police Department to file a complaint. Mr. Schnack visited the Respondent's residence on November 5, 2014 and spoke to Respondent's nephew. The nephew helped Mr. Schnack reach the Respondent by telephone. A meeting was scheduled for November 12, 2014. Respondent failed to show for the meeting. Ultimately, on January 21, 2015, Mr. Schnack visited Respondent's office and found him there. Respondent produced Mr. Schnack's documents at that time. Mr. Schnack subsequently took his documents to a different accounting firm who assisted him with filing an amendment. He has been informed he will owe \$374.00 in penalties and \$187.00 in interest for not filing timely. (Randy Schnack testimony; State Exhibit 10)

Kurt Konek completed a peer review report for the Board regarding Mr. Schnack's complaint on December 12, 2014. He found that Respondent had failed to respond to multiple requests for records from Mr. Schnack and was in violation of 193A IAC 13.4(7)(b) for failing to furnish the client records in a reasonable time. Additionally, Mr. Konek determined that Respondents pattern of not returning Mr. Schnack's calls and failing to attend meetings is unethical conduct or practice harmful or detrimental to the public in violation of Iowa Code section 272C.10(3). (State Exhibit 11)

Respondent took full responsibility for his failure to communicate with Randy Schnack. He did not dispute any of Mr. Schnack's allegations. Respondent indicated he was in his office off and on during the time period Mr. Schnack was trying to reach him. He acknowledged the requested documents were available and he could have easily mailed them. Respondent further acknowledged his failure to respond to the Better Business Bureau, and peer reviewer Kurt Konek. (Respondent testimony)

There is very little dispute regarding the allegations against the Respondent. He explained at hearing that both his wife and his mother died in the past year. He was out of the office a lot in order to assist with their health issues prior to the deaths. After the death of his wife in May 2014, Respondent put a note on the door of his office explaining his absence and was admittedly unresponsive for some time after that. He testified that he was not functioning for months. (Respondent testimony)

Respondent contends that he is now able to handle his workload and serve his clients. The loss of his wife and mother is behind him and all of his children are adults. In January 2015, he sent a letter to his clients apologizing for his failure to communicate and complete tasks timely while dealing with his family tragedy. He has retained a tax preparer, Bryce Villa, who is ready and willing to assist him. The Respondent acknowledged that he has violated the Board's rules and repercussions are warranted. He wants to retain his CPA certificate and indicated he is doing well now. (Respondent testimony; Respondent Exhibit 3, 4)

CONCLUSIONS OF LAW

Respondent was charged with failure to adhere to rules of professional conduct with respect to record retention and furnishing client records in violation of Iowa Code section 542.10(1)(d), and 193A IAC 13.4(7)(b), 13.4(8), and 13.8(6). He was also charged with engaging in practices harmful and detrimental to the public in violation of Iowa Code sections 272C.10(3), and 542.10(1)(j), and 193A IAC 14.3(6)(c), and 14.3(7)(c) based on his pattern of unresponsive behavior with respect to clients and board inquiries in disciplinary investigations.

Iowa Code section 272C.10(3) provides, in relevant part:

A licensing board ... shall by rule include provisions for the revocation or suspension of a licensee which shall include but is not limited to:

...

3. engaging in unethical conduct or practice harmful or detrimental to the public.

Iowa Code section 542.10(1)(d) & (j) provides, in relevant part:

...[T]he board may revoke, suspend..., reprimand, censure, or limit the scope of practice of any licensee, impose an administrative penalty ..., require remedial action, ... for any one or more of the following reasons:

...

d. Violation of a rule of professional conduct adopted by the board ...

...

j. Violation of section 272C.10.

193A IAC 14.3(6)(c) provides, in relevant part:

14.3 The board may initiate disciplinary action against a CPA ... on any of the following grounds:

...
(6) Negligence in the practice of public accounting ... includes the following ... :

...
c. Neglect of contractual or other duties to a client.

193A IAC 14.3(7)(c) provides, in relevant part:

14.3 The board may initiate disciplinary action against a CPA ... on any of the following grounds:

(7) Professional misconduct ... includes, but is not limited to, the following:

...
(c) Engaging in any conduct that subverts or attempts to subvert a board investigation ... or failure to fully cooperate with a disciplinary investigation ...

193A IAC 13.4(7)(b) provides, in relevant part:

13.4(7) Records

...
(b) Furnishing client records

(1) A CPA ... shall furnish within a reasonable time of a client's ... request:

1. All client-provided records ...
2. All client records prepared by the CPA ... and supporting records to the extent that such records would ordinarily constitute part of the client's books ...

193A IAC 13.4(8) provides, in relevant part:

13.4 Rules applicable to all CPAs and LPAs.

...
(8) Records retention. A CPA ... shall comply with all professional standards on records retention applicable to particular engagements ...

193A IAC 13.8(6) provides, in relevant part:

13.8 Rules applicable to tax practice:

...
(6) Return of client's records

(a) At the request of a client, a licensee must promptly return any and all records of the client that are necessary for the client to comply with the client's tax obligations.

(b) Records of the client include all documents, written or electronic, provided to the licensee, or obtained by the licensee in the course of the licensee's representation of the client, that preexisted the retention of the licensee by the client.

Failure to Retain and Furnish Client Records

The preponderance of the evidence established that the Respondent violated Iowa Code section 542.10(1)(d), and 193A IAC 13.4(7)(b), 13.4(8), and 13.8(6) by failing to retain and furnish client records. Anne Meyer made repeated requests for her tax documents. Respondent's response to Ms. Meyer indicated he had lost her information in a server crash, but implied he would retrieve the documents and provide them to her. The documents were not provided. At hearing, Respondent acknowledged the documents in question were not properly backed up and were not retrievable following the server crash.

After a complaint was filed with the Board regarding the Respondent, Kurt Konek attempted to contact him four times by telephone and four times by email to gather information. Respondent spoke to Mr. Konek only once and reported his wife had recently died. He told Mr. Konek he would respond to the inquiry as quickly as possible. Mr. Konek did not hear from the Respondent again. He concluded in his peer review reports that the Respondent had violated 193A IAC 13.2(8), as well as 13.4(8) and 13.4(7)(b) for failure to properly retain records and furnish client records.

Respondent's testimony that Ms. Meyer was rude and communication with her was difficult is not an excuse to ignore his obligation to timely respond and produce her records. His failure to maintain and back up client records is contrary to standards. Respondent's communication with Ms. Meyer was misleading insofar as he continued to indicate he would produce records that were no longer available to him.

Randy Schnack also sought the return of tax documents from the Respondent. He attempted to reach the Respondent via telephone, email, and in person with little to no response over the course of many months. He reported the Respondent to the Better Business Bureau and the local police department due to the Respondent's continuing failure to respond. As a result of the delay, Mr. Schnack was subject to penalties and interest totaling \$561.00. Respondent, at hearing, acknowledged his failure to respond to Mr. Schnack and indicated the requested tax documents were easily located within his office.

Unethical Conduct or Practice Harmful or Detrimental to the Public

The preponderance of the evidence established that Respondent's repeated failure to respond to communications from clients Randy Schnack and Anne Meyer, and peer reviewer Kurt Konek, was a violation of Iowa Code sections 272C.10(3), 542.10(1)(j), and 193A IAC 14.3(6)(c) and 14.3(7)(c). As described above, Respondent was unresponsive to Ms. Meyer, and his failure to respond to Mr. Schnack went on so long that the police were called. Both clients had to hire other CPA firms to assist them with matters complicated by Respondent's failure to timely respond and produce their records. Mr. Konek reviewed the documentation related to Mr. Schnack's complaint and determined Respondent's continued noncompliance with requests for tax documentation and his pattern of not returning phone calls is unethical conduct, a harmful practice, and detrimental to the public.

Sanction

In determining the appropriate sanction the Board considered the circumstances leading to the violations, the severity of the violations, and the harm to the public. The interests of Respondent's clients were clearly harmed by his continued neglect and failure to retain and promptly furnish their records. The Board also considered Respondent's prior discipline in 2001 and 2011, and the 2012 cautionary letter specifically addressing his lack of attention to client affairs. Despite past discipline and warnings from the Board, Respondent continued his pattern of unresponsive behavior. The Board is sympathetic to the personal loss Respondent has suffered. Despite his family tragedy, however, Respondent had an obligation to communicate with his clients, and to provide their records timely. The Board has serious concerns about the Respondent's ability to properly attend to his clients.

DECISION AND ORDER

IT IS THEREFORE ORDERED that CPA certificate number 008725 issued to Respondent Brian Geerts shall be suspended for a minimum period of six (6) months. Pursuant to 193A IAC 16.3(4), within fifteen (15) days of receipt of this decision, Respondent shall notify all of his clients in writing of his license suspension. Copies of the written notices shall be submitted to the Board within thirty (30) days of receipt of this decision. Prior to reinstating his license, Respondent must provide written verification of the following:

- A. Completion of the following continuing education approved by the Board: eight (8) hours of practice management or organizational skills and four (4) hours of ethics. These hours of continuing education shall be in addition to the continuing education hours required for license renewal.
- B. Payment of a of two thousand dollars (\$2000) civil penalty.

- C. A written business plan addressing contingencies in the result of Respondent's absence or inability to handle day to day matters, including contracts with those individuals who will provide services in such circumstances. The business plan shall also specifically address record retention and client tracking.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing. If the Board issues a separate order assessing additional costs or expenses, the Respondent shall promptly comply with the terms of that order.

Dated this 13th day of April, 2015.

 R. Snodgrass FOR CHAIR

Robert Snodgrass, CPA
Chairperson
Iowa Board of Accountancy Examiners

cc: Brian Geerts, Respondent
John Lundquist, Assistant Attorney General
Jeff Evans, Executive Officer, Iowa Professional Licensing & Regulation
Bureau

Judicial review of the board's action may be sought in accordance with the terms of Iowa Code chapter 17A. 193 IAC 7.37.