

FILED 12/27/18 (Date)
IAEB

Board / Commission

Robert E. Lampe
Signature, Executive Officer

BEFORE THE ACCOUNTANCY EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:

Bret M. Schweir,

Respondent

Case No. 18-01

NOTICE OF INTENT TO ORDER
COMPLIANCE AND IMPOSE
CIVIL PENALTY

YOU ARE HEREBY NOTIFIED that, pursuant to Iowa Code section 542.14(2) (2017) and Iowa Administrative Code chapter 193A—17 (2017), the Accountancy Examining Board of the State of Iowa (“**Board**”) intends to issue an order ordering compliance with Iowa Code section 542.13 and Board rules and imposing a civil penalty in an amount not to exceed **\$2,000.00** based on the following:

1. Bret M. Schweir (“**Respondent**”) is not a Certified Public Accountant (“**CPA**”) or a Licensed Public Accountant (“**LPA**”) in the State of Iowa. Likewise, to the Board’s knowledge, Respondent is not exercising a practice privilege pursuant to Iowa Code section 542.20.
2. In 2017, the Board received a complaint alleging Respondent issued an audit report in violation of the laws, rules, and standards administered by the Board.
3. The Board subsequently requested, and Respondent provided to the Board, a copy of the report forming the basis of the complaint, along with accompanying financial statements.
4. The Board also inquired as to whether Respondent had provided similar services for any other clients. Respondent indicated that he had done so for at least one other client. The Board subsequently requested, and Respondent provided to the Board, a copy of a report and accompanying financial statements issued by Respondent to that client.

5. These reports revealed that:

- a. On at least two (2) prior occasions in or around 2017, Respondent prepared financial statements for workers unions and attached to them to a summary stating that Respondent had examined the accompanying financial statements and that Respondent believed the financial statements were fairly presented as to the unions' assets, liabilities, and fund balances, and as to the unions' revenues, expenses, and changes in fund balances for the applicable year end.
- b. In each case, Respondent indicated under his signature line that he was an "Independent Accountant."
- c. In at least one case, the client identified in writing that they perceived the service being provided to them by Respondent as an "audit."

6. The Board subsequently submitted the reports and accompanying financial statements to a peer reviewer hired by the Board. The peer reviewer was tasked with assessing whether the reports constituted "audit reports" within the meaning of the statutes, rules, and standards administered by the Board.

7. The peer reviewer concluded that the reports issued by Respondent met the definition of a "Report" set forth in Iowa Code section 542.3(26) in that they implied assurance as to the reliability of the accompanying financial statements; and in that they implied that the person issuing the report possessed special knowledge or competence in accounting by use of a title indicating that the person was an "independent accountant" and from the language in the reports themselves. *See also* Iowa Code § 542.3(1)(a) (defining "Attest" or "attest services"); Iowa Code § 542.3(23) (defining the "Practice of public accounting").

8. The peer reviewer also noted that the language used in the reports did not conform to the safe harbor language set forth in Iowa Administrative Code Rule 193A—17.6, which provides language unlicensed persons may utilize in providing financial statement preparation services that do not otherwise qualify as attest or compilation services. *See also* Iowa Code § 542.13(8) (“A nonlicensee shall not use language in any statement relating to the affairs of a person or entity which is conventionally used by licensees in reports on financial statements or any attest service. The board shall develop and issue language which nonlicensees may use in connection with such financial information.”). The safe harbor language is as follows:

I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.

Iowa Admin. Code r. 193A—17.6.

9. Based on the foregoing, Respondent engaged in the unlicensed practice of public accounting in violation of Iowa Code sections 542.13(1), (8), and (12), which provide, respectively:

- a. “Only a certified public accountant may issue a report on financial statements of a person, firm, organization, or governmental unit, or offer to render or render any attest service.” Iowa Code § 542.13(1).
- b. “A nonlicensee shall not use language in any statement relating to the affairs of a person or entity which is conventionally used by licensees in reports on financial statements or any attest service.” Iowa Code § 542.13(8); *see also* Iowa Admin. Code r. 193A—17.6.
- c. A holder of a certificate issued under section 542.6 or 542.19 shall not

perform attest services in a firm that does not hold a permit issued under section 542.7. Iowa Code § 542.13(12).

10. The public depends on the “reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises.” Iowa Code § 542.2. Especially in the area of assurance services, this requires practitioners who possess special competency and demonstrated qualifications in attesting “to the reliability or fairness of presentation of such information.” *Id.*

11. The Board has the authority to order compliance with Iowa Code section 542.13 and Board rules and impose civil penalties for violations of Iowa Code sections 542.13 pursuant to Iowa Code section 542.14(2). *See also* Iowa Admin. Code r. 193A—17.1, .3.

12. The Board will issue an order requiring compliance with the above-cited sections of Iowa Code section 542.13 and imposing civil penalty in the amount of **\$2,000.00** if Respondent does not timely request a hearing, as provided in Iowa Code section 542.14(4). *See also* Iowa Admin. Code r. 193A—17.4.

13. In determining the amount of civil penalty to be imposed, the Board emphasizes that the restrictions imposed on attest services, and that prohibition against the use of language suggesting a particular non-attest service is an attest service, set forth in Iowa Code section 542.13 are cornerstone restrictions of Iowa Code chapter 542. Violations of these restrictions strike at the very heart of the key objectives of Iowa Code chapter 542, and pose a high risk of harm to the public, in contravention of the public interest. *See* Iowa Code § 542.14(3); *see also* Iowa Admin. Code r. 193A—17.5.

14. Respondent may request a hearing within thirty (30) days of the date this Notice

of Intent is mailed through restricted, certified mail, or within thirty (30) days of personal service. A request for hearing must be made in writing to the following address, to the attention of:

Robert E. Lampe,
Board Administrator, Iowa Accountancy Examining Board
Professional Licensing Bureau
200 E. Grand, Ste. 350
Des Moines, IA 50309

Such request will be deemed made on the date of the United States postmark or the date of personal service. Respondent should consult Board rules at 193A Iowa Administrative Code chapter 17.

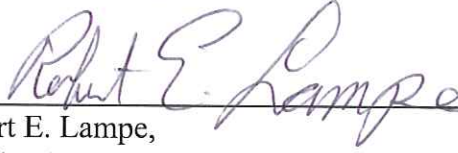
15. If a request for hearing is not timely made, the Board chairperson or the chairperson's designee may issue an order requiring compliance or imposing the civil penalty as described in this Notice. The order may be mailed by regular first-class mail or served in the same manner as this Notice. Iowa Admin. Code r. 193A—17.4(2).

16. If a request for hearing is timely made, a separate notice of hearing shall issue. The Board will conduct a public hearing under the same contested case rules that are applicable to disciplinary cases against licensees under Iowa Code chapter 542. If the Board finds the evidence at hearing establishes the allegations by a preponderance of the evidence, the Board may issue an order requiring compliance or imposing the civil penalty as described in this Notice. Iowa Admin. Code r. 193A—17.4(3).

17. If Respondent fails to pay a civil penalty within thirty (30) days after entry of an order imposing the civil penalty, or if the order is stayed pending an appeal, within ten (10) days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty,

including reasonable attorney fees and costs.

Issued this 27 day of December, 2018

A handwritten signature in cursive script that reads "Robert E. Lampe". The signature is written in dark ink and is positioned above a horizontal line.

Robert E. Lampe,
Board Administrator, Iowa Accountancy Examining Board
Professional Licensing Bureau
200 E. Grand, Ste. 350
Des Moines, IA 50309