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DEPARTMENT OF JUSTICE
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OPINION 24-0074

Lisa Benefield
Executive Director
State Board of Certified Public
Accountants of Louisiana
601 Poydras Street, Ste. 177
New Orleans, Louisiana 70130

1 ACCOUNTANTS

La. R.S. 37:71, *et seq*

The Louisiana Accountancy Act does not authorize the State Board of Certified Public Accountants of Louisiana to seek judicial enforcement of a Board order requiring a licensee or privilege holder to pay restitution. However, the Board may add demonstration of restitution as part of any disciplinary remedy it imposed. The Board may condition the licensee's ability to continue to practice on payment of such restitution.

Dear Ms. Benefield:

Our office received your request for an opinion regarding the State Board of Certified Public Accountants of Louisiana's ("Board") disciplinary authority under the Louisiana Accountancy Act, La. R.S. 37:71, *et seq* (the "Act"). You ask whether a Board order requiring a licensee or privilege holder to pay restitution may be enforced by using public funds to bring an action in a court of competent jurisdiction and proper venue.

It is the opinion of this office that the Board has no authority to judicially seek enforcement of an order of restitution.

The CPA Board is responsible for overseeing the practice of CPAs and CPA firms within Louisiana, by regulating CPA education and practice in accordance with the legislative intent and purpose pursuant to La. R.S. 37:72, *et. seq*.

We begin our analysis of your request by examining the language of the statute governing licensee discipline, La. R.S. 37:79.¹ "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the Legislature." *Pumphrey v. City of New Orleans*, 2005-0979 (La. 4/4/06); 925 So.2d 1202, 1209-10.

The grounds for disciplinary actions of CPAs are delineated in La. R.S. 37:79, which authorizes the Board to revoke, suspend, or refuse to issue or renew any certificate or permit for the reasons enumerated in the statute.² The Board is also authorized to

¹ The appropriate starting point of statutory interpretation is the language of the statute itself. *In re Louisiana Health Serv. & Indem. Co.*, 98-3034 (La. 10/19/99), 749 So.2d 610, 615 ("... legislative intent is not the appropriate starting point for statutory interpretation.") *citing*, *Touchard v. Williams*, 617 So.2d 885, 888 (La. 1993).

² The statute lists thirteen grounds for disciplinary action, including fraud, perjury, or deceit in obtaining or in renewing a certificate, permit, or privilege; dishonesty, fraud, or gross negligence in the performance of services while holding a certificate, license, privilege, or in the filing or failure to file that individual's own income tax returns; and providing false testimony before the board.

reprimand, place on probation, censure, limit the scope of practice of, or impose an administrative fine on any licensee. La. R.S. 37:79(A). In lieu of or in addition to any of the foregoing remedies the Board may impose additional requirements, including but not limited to, requiring a licensee to "[c]omply with any other requirement or action the board may deem appropriate." La. R.S. 37:79(B). The catchall, "any other requirement," language in La. R.S. 37:79(B)(4) suggests that, if deemed appropriate by the Board, demonstrating payment of restitution would be an authorized disciplinary remedy under the plain language of the Act.

Nor is the Board granted authority to judicially enforce an order of restitution issued by another administrative or judicial body. An administrative agency only has the authority expressly granted by the legislature. *Hawkins v. State, Through Department of Health and Hospitals*, 613 So.2d 229, 234 (La. App. 1 Cir. 1992). The legislature has provided the Board no express grant of authority to enforce a restitution order imposed by another board or by a court, and no inherent power to enforce restitution orders may be implied from the statutes.

The Act contains authorization to enforce two types of Board orders. First, the plain language of La. R.S. 37:79(C) authorizes the Board to seek judicial enforcement of orders imposing, exclusively, "costs, fees, or fines" imposed by the Board. The *fin*es are set forth in La. R.S. 37:79(A) as "administrative fines not to exceed two thousand dollars per violation." Costs and *fe*es are defined in La. R.S. 37:79(B)(3). Second, by writ of injunction, the Board may seek judicial enforcement of any order directing a person or firm to cease and desist any activity, conduct, or practice constituting a violation of the Act, under La. R.S. 37:79(D).

Nevertheless, because demonstrating payment of restitution is an authorized disciplinary remedy under the plain language of La. R.S. 37:79(B)(4), it is the opinion of this office that the Board may legitimately add demonstration of restitution as part of any disciplinary remedy it imposed under La. R.S. 37:79(A). Furthermore, the Board may condition the licensee's ability to continue to practice on payment of such restitution.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

LIZ MURRILL
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BY: 
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