

# REGULATION AND LIABILITY OF ACCOUNTANTS PURSUANT TO LOUISIANA LAW

*By Charles S. McCowan, Jr.<sup>1</sup>*

## INTRODUCTION

The Louisiana statutes and regulations governing accountants have become much more sophisticated and comprehensive through the years. In the early 1900s the State's emphasis was on the qualifications and admission to the practice of public accounting. This continues to be a focus of the state's efforts; however, like other learned professions, the Louisiana legislature has adopted additional provisions recognizing the inevitable fact of life that:

“Professions once seemingly inviolate from litigation are no longer sacrosanct. The age old axiom that physicians bury their mistakes, while attorneys and accountants file theirs away, has little relevance in modern day America.”<sup>2</sup>

The purpose of this article is to provide an analysis of Louisiana statutes, regulations and jurisprudence regarding the accounting profession,<sup>3</sup> as accountants, like others who practice skilled professions, are now full members of the “Krewe of Defendants” in the Louisiana litigation parade.

## II. HISTORICAL PROSPECTIVE OF LOUISIANA LAW AND REGULATIONS REGARDING ACCOUNTANTS

In 1908, the Louisiana legislature passed the first law regulating the practice of public accounting.<sup>4</sup> The legislation established a State Board of Accounting, fixed fees and prohibited the unauthorized use of any letters, abbreviations or words to indicate that an unauthorized person was a certified public accountant. The Board was authorized to revoke the certificate of any person for “unprofessional conduct...or for other cause...” upon notice and an administrative hearing. Additionally, the law provided that it would be a misdemeanor to fraudulently use the abbreviation “CPA.”

---

<sup>1</sup> J.D. 1967, Paul M. Hebert Law Center at Louisiana State University. Member, Order of the Coif and the *Louisiana Law Review*. Charles S. McCowan, Jr. is a partner in the Baton Rouge, Louisiana law firm of Kean, Miller, Hawthorne, D'Armond, McCowan & Jarman L.L.P. He is a member of the Louisiana Association of defense Counsel and the Defense Research Institute and has been the author of numerous articles in legal journals and publications, as well as a frequent speaker at continuing legal education seminars.

<sup>2</sup> Eizenstat and Speer, Monograph, “Accountants’ Professional Liability: Expanding Exposure”, The Defense Research Institute, Vol 1972, Number 6.

<sup>3</sup> The scope of this article is limited to the provisions of Louisiana law and regulations and does NOT cover matters governed by Federal law or regulations.

<sup>4</sup> Act No. 125 of 1908.

In 1923, the Louisiana Supreme Court upheld the constitutionality of the 1908 act in *State v. De Verges*<sup>5</sup>, where the defendant had been charged with unlawfully holding himself out as having received a certificate from the state board of accountants to practice as an “expert accountant” and having improperly used the designation “CPA.” The Court recognized the practice of public accounting as a profession of skill and science and the importance of having placed proper safeguards to maintain its dignity by opining:

“We think, therefore, that the Legislature, in the public interest and for the general welfare, unquestionably had and has the power to regulate the highly skilled and technical profession of public accounting....”

\*\*\*

“It is true that neither morals, health, nor safety of anyone is jeopardized by the practice of this profession, however, incompetent a person may be, but the power of the state in matters of this sort is not confined to professions involving such consequences. It may also act whenever the general welfare requires to protect the public in the skilled trades and professions against ignorance, incompetence and fraud.”<sup>6</sup>

The 1908 law was revised in 1924<sup>7</sup> in order to place the practice on a higher plane of professional dignity and to impose more rigid qualifications on those desiring to be called a certified public accountant. While continuing the State Board of Accountants, the act included a much more comprehensive definition of a “Certified Public Accountant” and their employees<sup>8</sup> and enhanced enforcement provisions.

The 1924 state accounting regulatory provisions came under scrutiny again in 1930, in *Ronaldson v. Moss Watkins, Inc.*<sup>9</sup> involving a non-Louisiana licensed Texas CPA, who attempted to collect a fee for Louisiana work. The court rejected the claim by the accountant for fees under a contract as being an agreement in violation of statute; however, the court also rejected a claim by the client for the return of money paid for an “erroneous and worthless audit” holding that there was “no culpable malpractice” because of the court recognized the profession’s appreciation in the difference in the scope of work, skill and independent verification involved in a “balance sheet audit” and

---

<sup>5</sup> *State v. De Verges*, 153 La. 349, 95 So. 805 (La. Feb. 26, 1923).

<sup>6</sup> *Id.* at 351.

<sup>7</sup> Act No. 136 of 1924.

<sup>8</sup> Act No. 136 of 1924 Section 1. “Be it enacted by the Legislature of Louisiana, That any citizen of the United States, residing or having a place for the regular transaction of business in the State of Louisiana, being over the age of twenty one (21) years, of good moral character, and who shall have received from the State Board of Certified Public Accountant, a certificate of his qualifications to practice as a Certified Public Accountant, as hereinafter provided, shall be styled and known as a Certified Public Accountant... Nothing contained in this Article shall prevent the employment by a Certified Public Accountant or Public Accountant or a firm or co-partnership of Certified Public Accountants, or Public Accountants or unlicensed persons as Junior, Semi-Senior, Senior or other Assistant Accountants, provided that the unlicensed employees work under the control and supervision of Certified Public Accountants, or Public Accountants and do not certify to any one the accuracy or verification of audits and statements, and provided further that such unlicensed employees do not hold themselves out as engaged in the practice of Public Accountancy....”

<sup>9</sup> *Ronaldson v. Moss Watkins, Inc.*, 13 La. App. 350, 127 So. 467 (La. App. 1s cir. 4/314/1930).

a “detailed audit.”<sup>10</sup> However, the validity of the State’s interest in regulating the accounting profession was recognized.

The various statutory provisions in the 1924 Act were carried forth in the 1950 Louisiana Revised Statutes. There were substantive amendments and re-enactments of the legislation in 1979, 1997 and 1999.<sup>11</sup> The legislation is designated as Louisiana Revised Statutes 37:71, et seq, and known as the “Louisiana Accountancy Act”<sup>12</sup> One of the results of the 1997 legislation, was assigning the responsibility to the State Board of Certified Accountants of Louisiana<sup>13</sup> for the licensing, regulatory and enforcement functions<sup>14</sup> and the enactment of a “Review Panel” procedure for claims against certified public accountants or firms, which is administered by the Society of Louisiana Certified Public Accountants.<sup>15</sup>

While the scope of who is within the ambit of the statute and accompanying regulations have been considered by Louisiana courts from time to time,<sup>16</sup> it is clear that:

“The purpose of the statute in question is to protect the public from expressions of opinion by persons unqualified in the highly technical profession of accounting. *Accountants' Association of Louisiana, supra*, 487 So.2d at 159. There is no doubt that this is a legitimate state objective. See *State v. De Verges*, 153 La. 349, 95 So. 805 (1923). As the United States Supreme Court has long recognized, the states have the power to regulate professionals in such a way as will protect the general public from “the consequences of ignorance and incapacity as well as deception and

---

<sup>10</sup> But see *Accountants’ Association of Louisiana v. State*, 533 So2d 1251, writ denied 538 So2d 593, cert denied *Louisiana Society of Accountants v. Louisiana*, 110 S. Ct. 60, 493 U.S. 813, 107 L.Ed.2d 28, where Plaintiffs unsuccessfully sought to have declared unconstitutional certain provisions of the Louisiana Public Accountancy Law ([La.R.S. 37:71 et seq.](#)) which prohibit unlicensed, uncertified accountants from issuing “review reports.”

<sup>11</sup> Act No 510 of 1979 and Act No. 473 of 1999.

<sup>12</sup> La. R.S. 37:1.

<sup>13</sup> The web site for the State Board is [www.cpaboard.state.la.us](http://www.cpaboard.state.la.us)

<sup>14</sup> R.S. 37:71 – 95 and in particular La. R.S. 37:74.

<sup>15</sup> La. R.S. 37:101 – 124. The website for the Society is [www.lcpa.org](http://www.lcpa.org).

<sup>16</sup> See e.g. *Op. Atty.Gen.* 1938-38 p. 3, where the difference in the scope of services was addressed by the State Accounting Board and the Attorney General in 1937:

“A person offering his services to the public and designating himself as ‘accountant’ or ‘auditor’ is effectually a ‘public accountant’, and his representing himself as such without complying with the statute, is a violation of the law.

The Board has held that persons who merely render a bookkeeping service to concerns who do not need the fulltime services of a bookkeeper, who devise bookkeeping systems; and who prepare tax returns, are not doing any public accounting and that such services are not in violation of law.”

and, *Accountants’ Association of Louisiana v. State*, *supra*, involving a “review report,” which was found to involve a “review” or one of three distinct types of financial analysis defined by the American Institute of Certified Public Accountants (AICPA), a national association widely recognized as the standard-setting body in the field of public accounting. The other two types are the audit and the compilation.

fraud.” *Dent v. West Virginia*, 129 U.S. 114, 122, 9 S.Ct. 231, 233, 32 L.Ed. 623 (1889).”<sup>17</sup>

### **III. DUTIES AND RESPONSIBILITIES OF THE STATE BOARD OF CERTIFIED ACCOUNTANTS OF LOUISIANA**

The declared purpose of the Louisiana Accountancy Law,<sup>18</sup> is to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status of private and public clients. To that end, the Louisiana Legislature has decided that it is in the public interest to regulate the qualifications and conduct of those with special competency and skill in the field of accounting<sup>19</sup> and has created the State Board of Certified Public Accountants of Louisiana and given it the responsibility to regulate entry into the practice, the continuum of practice and enforce the provisions of the law with respect to violations of the various prohibitory provisions.<sup>20</sup> In addition to the statutory grants of authority, in carrying out its duties, the Board has promulgated an extensive set of regulations.<sup>21</sup>

The Accountancy Act statutorily fixes the qualifications for a certificate as a certified public accountant in Louisiana<sup>22</sup>, which include provisions to ensure that only those with the proper education, experience and moral character be admitted to the profession. However, the law expressly links the examination into the moral character requirement of a certificate holder to a “substantial connection” between the lack of moral character and the professional responsibilities of the certificate holder and has an exacting evidentiary standard of “clear and convincing” evidence.<sup>23</sup> The Louisiana State Bar’s requirement’s for admissions also include a moral character and general fitness requirement<sup>24</sup>; however, the “substantial connection” test is not statutorily included in bar admissions’ statutory scheme.<sup>25</sup>

Enforcement powers with regard to holders of certificates and permits also is within the jurisdiction of the Board. Similar to the bar regulatory requirements,<sup>26</sup> the

---

<sup>17</sup> Accountants’ Association of Louisiana, *supra*. At 1255.

<sup>18</sup> La. R.S. 37:71, et seq.

<sup>19</sup> La. R.S. 37:72.

<sup>20</sup> La. R.S. 37:74.

<sup>21</sup> La. Administrative Code (LAC) 46:101, et. Seq. See <http://doa.louisiana.gov/osr/lac/lac46.htm>

<sup>22</sup> La. R.S. 37:75 and 76.

<sup>23</sup> La. R.S. 37:75B(2).

<sup>24</sup> Louisiana State Bar Association, Articles of Incorporation, Article XIV, Section 11, 1a(iii). The ability to practice law in Louisiana is limited to active members of the Bar, other than a limited regulated ad hoc admission procedure for out of state attorneys. Article 4 Section 5.

<sup>25</sup> See e. g. In re Downing, 930 So.2d 897 (La. 5/17/06), where the Court noted, “The proscription against conduct that is prejudicial to the administration of justice most often applies to litigation-related misconduct. Louisiana State Bar Ass’n v. Harrington, 585 So.2d 514, 520, n. 4 (La.1990) (citing examples). However, Rule 8.4(d) also reaches conduct that is uncivil, undignified, or unprofessional, regardless of whether it is directly connected to a legal proceeding. See, e.g., In re: Ashy, 98-0662 (La.12/1/98), 721 So.2d 859 (attorney who made unwanted sexual advances toward a client was found to have violated Rule 8.4(d), among other provisions of the Rules of Professional Conduct).

<sup>26</sup> Louisiana State Bar Association, Rules of Professional Conduct, Rules 8.1 and 8.4.

Board is entitled to revoke a certificate, permit or privileges, following notice and a hearing, for any one or more of the following reasons:

- (1) Fraud, perjury, or deceit in obtaining or in renewing a certificate, permit, or privilege.
- (2) Cancellation, revocation, suspension, or refusal to issue or renew a certificate, license, or privileges for disciplinary reasons in any other state for any cause, including other restrictions imposed by such licensing authority.
- (3) Revocation or suspension of, or a voluntary consent decree concerning, the right to practice before any state or federal agency.
- (4) Dishonesty, fraud, or gross negligence in the performance of services while holding a certificate, license, or privilege in the filing or failure to file that individual's own income tax returns.
- (5) Violation of any provision of this Part or rule adopted by the board in accordance with the provisions of this Part or violation of professional standards or rules of professional conduct adopted by the board.
- (6) Entry of a plea of guilty or nolo contendere or conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, this state, or any other state.
- (7) Performance of any fraudulent act while holding a certificate, permit, or privilege.
- (8) Conduct reflecting adversely upon the licensee's or privilege holder's fitness to perform services while a licensee.
- (9) Making a false or misleading statement or verification in support of an application for a certificate, permit, or privilege filed by another person.
- (10) Providing false testimony before the board.
- (11) Engaging in efforts to deceive or defraud the public.
- (12) Professional incompetency.
- (13) Rendering, submitting, subscribing, or verifying false, deceptive, misleading, or unfounded opinions, reports, or audits.<sup>27</sup>

Pursuant to its' rule making authority, the Board has adopted Rules of Professional Conduct,<sup>28</sup> which supplement the statutory enforcement provisions. These rules generally cover "Independence" obligations,<sup>29</sup> "Integrity and Objectivity" requirements,<sup>30</sup> "Competence and Professional Standards"<sup>31</sup> and responsibilities to clients.<sup>32</sup> There are also provisions spelling out other responsibilities and practices, including general conduct, the use of the "CPA" designation, firm names, and advertising.<sup>33</sup>

---

<sup>27</sup> La. R.S. 37:79A.

<sup>28</sup> La. Administrative Code (LAC) 46:1700, et. seq.

<sup>29</sup> La. Administrative Code (LAC) 46:1701A.

<sup>30</sup> La. Administrative Code (LAC) 46:1701B.

<sup>31</sup> La. Administrative Code (LAC) 46:1703.

<sup>32</sup> La. Administrative Code (LAC) 46:1705.

<sup>33</sup> La. Administrative Code (LAC) 46:1707.

The investigatory and hearing requirements and procedures are also provided by statute<sup>34</sup> and supplemented by administrative rules.<sup>35</sup> The Board is authorized to appoint, or engage an investigative officer and investigators and experts and the investigative officer may informally settle matters that are deemed not to rise to the level requiring a formal disposition. However, if the investigating officer determines that there is “probable cause” that a violation exists and warrants further action, the respondent is notified, given an opportunity to respond and can then a complaint filed or reverse the finding of “probable cause.”<sup>36</sup> In the event that formal charges are filed, the Board then conducts an administrative hearing in closed session. There is limited pre-hearing discovery, subpoena power, motion practice and an actual hearing, with witnesses testifying under oath.<sup>37</sup> Significantly, “The board shall not be bound by technical rules of evidence in such hearing.”<sup>38</sup>

Unlike attorney disciplinary proceedings, where the Supreme Court has exclusive original jurisdiction concerning a member of the bar,<sup>39</sup> review of decisions of the State Board and appeals are tried by a district court of proper jurisdiction and venue.<sup>40</sup> In interpreting these provisions, the courts have found that an agency which attempts to control the behavior of individuals who are members must be governed by standards for decision which are stated in advance and that there is no violation in the Board's rules for conduct not proscribed.<sup>41</sup> The Board is afforded broad discretion in the imposition of an administrative sanction, as it is in the nature of a disciplinary measure. In deciding what, if any, discipline to impose, the Board may be strict, moderate or lenient.<sup>42</sup> Holladay, 96-1740 at p. 18, 689 So.2d at 727. The findings of the Board are given great weight by a reviewing court.<sup>43</sup>

---

<sup>34</sup> La. R.S. 37:79, et seq.

<sup>35</sup> La. Administrative Code (LAC) 46:1901, et. seq

<sup>36</sup> La. Administrative Code (LAC) 46:1905.

<sup>37</sup> La. R.S. 37: 81 and La. Administrative Code (LAC) 46:1909.

<sup>38</sup> La. R.S. 37:81F.

<sup>39</sup> LSA-Const. Art. 5, § 5B.

<sup>40</sup> La. R.S. 37:79C, 37:81J and 49:964, *State Bd. of Certified Public Accountants of Louisiana v. Donnelly* 688 So.2d 127 (La.App. 5 Cir.,1997).

<sup>41</sup> *Gallent v. State Bd. of Certified Public Accountants of Louisiana*, 401 So.2d 555 (La.App. 4<sup>th</sup> Cir, 1981).

<sup>42</sup> *Rabb v. State Bd. of Certified Public Accountants of Louisiana*, 893 So.2d 904 (La.App. 4 Cir.,2004).

<sup>43</sup> *State ex rel. Eberle v. State Board of Certified Public Accountants*, 171 La. 318, 131 So. 32

La. 1930; *State ex rel Thoman v. State Board of Certified Public Accounting*, 172 La. 261, 134 So. 85 (La. 1931) and *Rabb v. State Bd. of Certified Public Accountants of Louisiana*, *supra*, where the court noted, “A reviewing court should not set aside an administrative agency's decision to impose a particular sanction unless that decision can be characterized as arbitrary, capricious or an abuse of discretion. *Holladay v. Louisiana State Board of Medical Examiners*, 96-1740, p. 18 (La.App. 4 Cir. 2/19/97), 689 So.2d 718, 727 citing La. R.S. 49:956(5)). The imposition of an administrative sanction is in the nature of a disciplinary measure. In deciding what, if any, discipline to impose, the Board may be strict, moderate or lenient. *Holladay*, 96-1740 at p. 18, 689 So.2d at 727.”

#### **IV. DUTIES AND RESPONSIBILITIES OF THE SOCIETY OF LOUISIANA CERTIFIED PUBLIC ACCOUNTANTS**

In 1997, the Louisiana Legislature adopted a claims review panel procedure involving “claims” against certified public accountants and firms.<sup>44</sup> This procedure is parallel to the review procedure of the Louisiana Medical Malpractice Act, La. R.S. 40:1299.41, et seq.<sup>45</sup> Hence, it is generally recognized that the public accountant review panel procedure constitutes special legislation, and its provisions are strictly construed.<sup>46</sup>

“Claims” are broadly defined as:

(1) "Claim" means any cause of action against a certified public accountant or firm, regardless of the legal basis of the claim, including but not limited to tort, fraud, breach of contract, or any other legal basis, arising out of any engagement to provide professional services, including but not limited to the following:

- (a) The providing of attest services as defined in R.S. 37:73(1)(a).
- (b) The providing of business or financial advice.
- (c) Advice relative to plans or actions to qualify for tax benefits or otherwise reduce the amounts of tax owed.
- (d) Advice relative to the structuring of pension or retirement or insurance plans or other employee benefits.
- (e) The provision, including design, of computer software for accounting or bookkeeping functions.
- (f) Any other advice relative to the conduct of any business whether conducted for profit or not.<sup>47</sup>

Unlike the matters within the jurisdiction of the State Board of CPAs of Louisiana, there are no supplemental administrative rules governing the conduct of the review panels. The review panel law<sup>48</sup> provides that all claims, except those validly agreed for submission to lawfully binding arbitration or in the absence of an express waiver,<sup>49</sup> shall be submitted to a review panel administered under the auspices of the Society of Louisiana Certified Public Accountants prior to a suit prior to a suit being commenced.<sup>50</sup>

---

<sup>44</sup> La. R.S. 37:101, et seq.

<sup>45</sup> *Bardwell v. Faust*, App. 1<sup>st</sup> Cir. 2007, 2006-1472 (La. App. 1 Cir 5/4/07), 2007 WL 1299705.

<sup>46</sup> *Id.*, see also *Sewell v. Doctors Hosp.*, 600 So.2d 577, 578 (La.1992), and *Williams v. Notami Hospitals of La., Inc.*, 04-2289, p. 7 (La.App. 1st Cir.11/4/05), 927 So.2d 368, 373.

<sup>47</sup> La. R.S. 37:101 et seq.

<sup>48</sup> La. R.S. 37:102

<sup>49</sup> La. R.S. 37:107. A waiver has been found to exist by virtue of a failure to timely file the appropriate demand for the review panel. See *Moon Ventures, L.L.C. v. KPMG, L.L.P.* App. 3 Cir., 2007, 2006-1520 (La. App. 3<sup>rd</sup> Cir. 8/15/07) 2007 WL 2317109.

<sup>50</sup> La. R.S. 37:105A.

The request for review by a claimant shall be in writing and must contain a short concise statement of the material facts that give rise to the dispute. The Society is empowered to dismiss the claim if the claimant fails to take the necessary timely steps to secure the appointment of the attorney chairman of the panel<sup>51</sup> and in the event that the parties are unable to agree on an attorney chairman, the law provides for the involvement of the Louisiana Supreme Court in the selection process.<sup>52</sup>

The panel is composed of three CPAs, who have practiced in Louisiana for more than ten years, with the claimant and the respondent each having the right to choose one CPA panelist, and one attorney.<sup>53</sup> There are provisions in the law for the qualifications and duties of the panelists.<sup>54</sup> The attorney member of the panel acts in an advisory capacity and administrative capacities and has no vote.<sup>55</sup>

Although there is an opportunity for certain pre-hearing discovery,<sup>56</sup> the panel may only consider written evidence.<sup>57</sup> The panel has the authority to request and procure “all necessary information” in making its decision.<sup>58</sup> The panel’s sole duty is to, “(E)xpress its opinion as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standard or care” or whether there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court.<sup>59</sup>

The role of the panel does not include the factual determination of whether damages were sustained and, if so, the amount of the damages, as those are issues for a subsequent judge or jury to decide.<sup>60</sup> The panel’s opinion is admissible, but not conclusive, in any subsequent court proceeding.<sup>61</sup>

## **V. THE “STANDARD OF CARE” AND OTHER ISSUES INVOLVED IN CLAIMS AGAINST ACCOUNTS**

As noted, in exercising its’ function, a review panel determines whether the accountant met the “applicable standard of care.” That conduct is generally contrasted to “malpractice”, which is defined as:

*“Malpractice. Professional misconduct or unreasonable lack of skill. This term is usually applied to such conduct by doctors, lawyers and accountants. Failure of one rendering professional services to exercise*

---

<sup>51</sup> La. R.S. 37:103.

<sup>52</sup> La. R.S. 37:109.

<sup>53</sup> La. R.S. 37:109, 111.

<sup>54</sup> La. R.S. 37:110, 112.

<sup>55</sup> La. R.S. 37:110.

<sup>56</sup> La. R.S. 37:116C-D.

<sup>57</sup> La. R.S. 37:116A.

<sup>58</sup> La. R.S. 37:118.

<sup>59</sup> La. R.S. 37:119.

<sup>60</sup> Adams v. Kern, 987 So.2d 879, 08-140 (La. App. 5<sup>th</sup> Cir. 6/19/08).

<sup>61</sup> La. R.S. 37:120.

*that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of those services or to those entitled to rely upon them. It is any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct.*<sup>62</sup>

Or, stated another way, a plaintiff must establish the standard of care expected of accountants practicing in the locality by:

Establishing the requisite standard of care is one of the elements of proving negligence. In order to prevail on a claim of negligence under La. C.C. art. 2315, a plaintiff must establish that: (1) the defendant had a duty to conform his or her conduct to a specific standard of care (the duty element); (2) the defendant failed to conform his or her conduct to the appropriate standard of care (the breach of duty element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) actual damages (the damages element).<sup>63</sup>

A Louisiana federal court has discussed the applicable “standard of care” for accountants as:

“Under Louisiana law all professionals are held to the same standard of care regarding performance of services for their clients. In *Calandro Development, Inc. v. R.M. Butler Contractors, Inc.*, 249 So.2d 254 (La.App. 1st Cir.1971), a case involving an engineer, the court stated:

“... Our jurisprudence uniformly holds that the duty owed by those practicing learned professions to their clients, patients or retainers, is that of exercising that degree of professional care and skill customarily employed by others of the same profession in the same general area...” (249 So.2d at 265).

While we have found no Louisiana case so holding, both plaintiff and the defendant certified public accountant firm concede that the state courts would consider that certified public accountants are professionals and thus bound to a professional standard. At least one federal district court has so held...Accordingly, the accountant defendants will be held to the same standard that Louisiana applies to lawyers, physicians, engineers and other

---

<sup>62</sup> See *Boudreaux v. Panger*, 481 So.2d 1382 (La.App. 5 Cir.,1986), affirmed 490 So2d 1083 (La. 1986); *Roger v. Dufrene*, 92-C-2224, 613 So.2d 947 (La. 1993).

<sup>63</sup> *Huckabay v. KPMG Peat Marwick, LLP*, 36, 775 CA, 843 So.2d 1186 (La. App. 2d Cir. 4/9/03).

professionals. The Supreme Court of Louisiana set forth the applicable standard ...as follows:

“An attorney is obligated to exercise at least that degree of care, skill, and diligence which is exercised by prudent practicing attorneys in his locality. He is not required to exercise perfect judgment in every instance. However, the attorney's license to practice and his contract for employment hold out to the client that he possesses certain minimal skills, knowledge and abilities...”

Thus, ... the accountant firm by virtue of their certification by the state and their engagement to perform services ... represent that they possess certain minimum skills, knowledge and abilities and they will be held to the standard of prudent practicing accountants in the locality.

The cases indicate that Louisiana follows the “locality rule,” that is to say, professionals must exercise that degree of care and skill customarily employed by others of the same profession in the area where they practice. We have found no specific definition of “locality” but conclude that it must be employed in a reasonably flexible manner to define the general geographic area of practice, without attention to the niceties of municipal or parish boundary lines but yet restricting the term to an area less than state wide.”<sup>64</sup> (Citations Omitted)

A related state law issue<sup>65</sup> involves who has a right to make a claim against an accountant for alleged malpractice. In the limited number of cases applying Louisiana law, it appears that the courts will also apply principles applicable to malpractice claims against attorneys:

Admittedly, no Louisiana court has had the occasion to consider the Restatement in the precise context of accountants' liability. However, we see no reason to presume that Louisiana would treat the accounting profession differently. In fact, in what we view as the analogous situation of attorneys' negligent misrepresentations, we have construed Louisiana law as limiting such malpractice liability to clients and nonclients whom the attorneys know will rely upon their legal work product.<sup>66</sup>

The time within which to bring a claim against an accountant has also been subject to legislation and judicial discussion. The time periods that govern actions for professional accountant liability are set forth in Louisiana Revised Statute 9:5604:

---

<sup>64</sup> Gantt v. Boone et al, 77-464-A, 559 F. Supp. 1219 (MD LA 1983). See also Bancroft v. Indemnity Insurance Company of North America, 203 F.Supp. 49 (W.D.La.1962); aff'd 309 F.2d 959 (5th Cir.1962).

<sup>65</sup> Again, it must be remembered that the scope of this article is limited to the provisions of Louisiana law and regulations and does NOT cover matters governed by Federal law or regulations.

<sup>66</sup> First National Bank of Commerce v. Monco Agency, Inc., 89-3734, 911 F.2d 1053 (CA 5<sup>th</sup> Cir. 1990); Trust Company of Louisiana v. N.N.P. Inc, 95 – 30493, 104 F.3<sup>rd</sup> 1478 (CA 5<sup>th</sup> Cir. 1997). See also Glod v. Baker, 02-988, 851 So.2d 1255 2002-988 (La. App. 3<sup>rd</sup> Cir. 8/6/03).

§ 5604. Actions for professional accounting liability

A. No action for damages against any accountant duly licensed under the laws of this state, or any firm as defined in R.S. 37:71, whether based upon tort, or breach of contract, or otherwise, arising out of an engagement to provide professional accounting service shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered or should have been discovered; however, even as to actions filed within one year from the date of such discovery, in all events such actions shall be filed at the latest within three years from the date of the alleged act, omission, or neglect.

B. The provisions of this Section are remedial and apply to all causes of action without regard to the date when the alleged act, omission, or neglect occurred. However, with respect to any alleged act, omission, or neglect occurring prior to September 7, 1990, actions must, in all events, be filed in a court of competent jurisdiction and proper venue on or before September 7, 1993, without regard to the date of discovery of the alleged act, omission, or neglect. The one-year and three-year periods of limitation provided in Subsection A of this Section are preemptive periods within the meaning of Civil Code Article 3458 and, in accordance with Civil Code Article 3461, may not be renounced, interrupted, or suspended.

C. Notwithstanding any other law to the contrary, in all actions brought in this state against any accountant duly licensed under the laws of this state, or any firm as defined in R.S. 37:71, whether based on tort or breach of contract or otherwise arising out of an engagement to provide professional accounting service, the prescriptive and preemptive period shall be governed exclusively by this Section and the scope of the accountant's duty to clients and nonclients shall be determined exclusively by applicable Louisiana rules of law, regardless of the domicile of the parties involved.

D. The provisions of this Section shall apply to all persons whether or not infirm or under disability of any kind and including minors and interdicts.

E. The preemptive period provided in Subsection A of this Section shall not apply in cases of fraud, as defined in Civil Code Article 1953.

F. The preemptive periods provided in Subsections A and B of this Section shall not apply to any proceedings initiated by the State Board of Certified Public Accountants of Louisiana.

This statute must, however, be considered in conjunction with the accounting review panel provisions discussed above. Thus, it has been said that:

The time periods that govern actions for professional accountant liability are set forth in LSA-R.S. 9:5604 and are preemptive. Thus, if the right to bring such a claim is not exercised within those time periods, the claim is extinguished...Overlaid on the requirements of LSA-R.S. 9:5604 are those set forth in Title 37 relative to review panels. Applying principles of statutory construction to harmonize the applicable statutes, we turn to LSA-R.S. 37:125. Therein, the legislature explicitly provided that a claimant is deemed to have exercised its right to bring a claim for professional accountant liability and prevents the extinguishing effect of preemption when it files a request for review by a review panel. Thus, we interpret the applicable statutes to provide that preemption under LSA-R.S. 9:5604 is avoided when a claimant files a request for review of its claim of professional accounting liability within one year of the negligent act, or one year of discovering the negligent act, but not more than three years after the negligent act.

\*\*\*

We find the statute to be clear that the \*\*13 action must be brought within one year of the date of the alleged act by the accountants or within one year of discovering the alleged acts by the accountants, but in no event more than three years after the date of the alleged act by the accountants.<sup>67</sup> (Footnotes and Citations Omitted)

## VI. CONCLUSION

Accountants, like physicians and lawyers, owe a duty to perform their services with a degree of skill and competence reasonably expected of persons in their profession in the community. Hence, the Louisiana legislature has enacted a comprehensive regulatory scheme governing both practice requirements as well as the consequences of falling below the standard of care expected. It is suggested that both the State Board of Certified Accountants of Louisiana and the Society of Louisiana Certified Public Accountants have performed commendably in carrying out their responsibilities under the Louisiana Accountancy Law.

---

<sup>67</sup> Ascension School Employees Credit Union v Provost, Salter, Harper & Alford, 2004 CA 1227, 916 So.2d 252 (La. App. 1<sup>st</sup> Cir. 6/10/05); Bardwell v. Faust, 2006 CA 1472, 962 So.2d 13, 2006-1472 (La. App. 1<sup>st</sup> Cir. 5/4/07).