

Before the
N.H. Board of Accountancy
Concord, N.H. 03301

In the Matter of :

Ron L. Beaulieu & Co.
License #00379
(Disciplinary Matter)

Docket No. 16-03

FINAL DECISION AND ORDER

Before the New Hampshire Office of Professional Licensure & Certification, Board of Accountancy ("Board") is an adjudicatory/disciplinary proceeding in the Matter of Ron L. Beaulieu & Company ("Respondent" or "Beaulieu & Co.") in Docket Number 16-03.

BACKGROUND INFORMATION

The proceeding was commenced by a Notice of Hearing originally issued January 10, 2017 by the Board of Accountancy ("the Board"), to determine whether Ron Beaulieu & Co., Certified Public Accountant Firm (CPA) #00379, ("Ron Beaulieu & Co. or the Respondent") engaged in unprofessional or dishonorable conduct in violation of RSA 309-B:11, and RSA 309-B:10 , I-a through (f) and/or (j) by failing to comply with the subpoena duces tecum; whether the Respondent violated RSA 309-B:10, I-a (g) and/or (j) and Administrative Rule Ac 404.03 (g) by failing to retain work papers and/or records as required; whether the Respondent violated RSA 309-B:10, I-a (e) and/or (j) in that he committed professional misconduct by failing to properly conduct auditing services for TCCAP for fiscal years 2008-2011; and whether, if any of the

foregoing are proven, and to what extent, Respondent should be subject to disciplinary action pursuant to RSA 309-B:10 and RSA 332-G:11.

A hearing was held on Monday, April 19, 2017 at the Board office at 121 South Fruit Street, Concord, New Hampshire. Mr. Beaulieu, owner of Beaulieu & Co., appeared with his counsel, John Vanacore, Esquire, at the hearing. Testimony was received at the hearing from Tom Musgrave, recused Board Member who assisted in the evaluation of this matter and the Respondent, Ron Beaulieu, owner of Ron Beaulieu & Company. Recused from this matter were the following Board Members: Richard Nelson and Jeffrey Seifert. John Daigneault disclosed to all parties that the firm where he is employed, but a separate branch, was involved in a subsequent audit of Tri-County Community Action Program (hereafter TCCAP. Daigneault also disclosed that he did not participate in the audit of TCCAP. All parties agreed, after Respondent consulted privately with his counsel, to proceed and that there was no conflict with Daigneault participating in hearing this matter. Daigneault stated that he could participate impartially in the matter. Accordingly, the following Board members present were¹

Frederick Briggs, Chairperson, Presiding Office
Wayne Geher, Board Member
John Daigneault, Board Member
Richard Silverman, Board Member

WITNESSES FOR PROSECUTION:

Thomas Musgrave, CPA, recused Board Member/Investigator
Respondent, Ronald L. Beaulieu

WITNESS FOR RESPONDENT:

Ronald L. Beaulieu

The following exhibits were introduced into evidence and accepted into the record:

STATE'S EXHIBITS:

1. Report on Tri-County Community Action Program, Inc. dated July 29, 2015;
2. Subpoena Duces Tecum, dated October 19, 2016;
3. TCCAP engagement letter, dated August 14, 2008, produced by Respondent on November 17, 2016;
4. TCCAP engagement letter dated September 10, 2009, produced by Respondent on November 17, 2006;
5. TCCAP representation letter, dated April 13, 2009, produced by Respondent on November 17, 2016;
6. TCCAP representation letter, dated April 8, 2010, produced by Respondent on November 17, 2016;
7. TCCAP representation letter, dated December 30, 2010, produced by Respondent on November 17, 2016;
8. TCCAP representation letter, dated March 30, 2012, produced by Respondent on November 17, 2016;
9. Five Responses to Request for Production of Documents relating to a civil action currently pending, produced by Respondent on November 17, 2016;
10. TCCAP Audited Financial Statements Report prepared by Crane & Bell, PLLC, dated June 30, 2007, produced by Respondent on November 17, 2016;
11. TCCAP Audited Financial Statements Report dated June 30, 2008, produced by Respondent on November 17, 2016;

¹ The same Board members also deliberated and voted on this Final Decision and Order.

12. TCCAP Audited Financial Statements Report, dated June 30, 2009, produced by Respondent on November 17, 2016;
13. TCCAP Audited Financial Statements Report, dated June 30, 2010, produced by Respondent on November 17, 2016;
14. TCCAP Audited Financial Statements Report, dated June 30, 2011, produced by Respondent on November 17, 2016;
15. TCCAP Exempt Organization filing, dated May 13, 2009, produced by Respondent on November 17, 2016;
16. TCCAP Exempt Organization filing, dated May 12, 2010, produced by Respondent on November 17, 2016;
17. TCCAP Exempt Organization filing, dated March 29, 2011 produced by Respondent on November 17, 2016;
18. TCCAP Exempt Organization filing, dated May 9, 2012 produced by Respondent on November 17, 2016;
19. Letter to Ron Beaulieu & Company from Mason & Rich dated February 6, 2013, produced by Respondent on November 17, 2016;
20. Letter to Ron Beaulieu & Company from Orr & Reno dated June 2, 2014; and
21. Email from Ron Beaulieu to Philadelphia Insurance Company, dated June 4, 2014, produced by Respondent on November 17, 2016

RESPONDENT'S EXHIBITS:

- A. Letter to Investigator Ren W. Horne of 2/11/16;
- B. Sample NH OPLC Complaint Form, blank;
- C. Curriculum Vitae of Ron L. Beaulieu, current as of 4/11/2017;
- D. Letter to Investigator Ren W. Horne, 11/16/2016;

- E. RSA 359-C:10 – Obtaining Records by Subpoena, current as of 4/11/2017;
- F. RSA 358-A:8 – Subpoena; Production of Books, Examination of Persons, Etc.; current as of 4/11/2016;
- G. Federal Circular A-133, Audits of State, Local Governments and Non-Profit Organizations;
- H. RSA 309-A:19 – Licensees’ Working Papers and Clients’ Records, current as of 4/11/2017;
- I. Me. Rev. Stat. Ann. Tit. 32 Section 12280 – Licensee’s working papers; client’s records; current as of 10/13/2016;
- J. Peer Review of Telling & Associates, CPAs, PC; 10/8/2009;
- K. Peer Review of Telling & Associates, CPAs, PC; 10/19/2012;
- L. Acceptance of AICPA of Peer Review of Telling & Associates; 2/20/2013;
- M. Peer Review of Bruce C. Norling, CPA, PC; 12/21/2015;
- N. Audits of States, Local Governments and Non-Profit Organization;
- O. Any exhibits offered by Hearing Counsel for the Board of Accountancy.

TESTIMONY OF THOMAS MUSGRAVE:

Thomas Musgrave was the recused Board Member who assisted in the investigation in this matter. He has been licensed since 1983. As a CPA he is familiar with the records which need to be kept and a CPA’s Tax Retention obligations. He testified that when a CPA conducts an audit he or she is required to review clients books and records; general ledgers; client financial statements; internal financial statements and work papers. The CPA is required to maintain their

own work papers for all audits conducted. The documents provided by the Respondent in this matter were clearly insufficient to substantiate his work was in compliance of the audit criteria.

CROSS EXAMINATION OF THOMAS MUSGRAVE:

Musgrave testified that the Respondent is required to maintain all of his records from an audit for a period of five years pursuant to New Hampshire state law. The CPA's work papers to support the audit findings are not always the client's records. Mr. Musgrave testified that the requirement to retain records of an audit are set forth in Administrative Rule Ac 404.03 which states as follows:

Ac 404.03 Retention of Client Records.

(a) A CPA shall return client records in his or her possession to the client upon request by the client or the client's designated agent for their return. The records shall be returned immediately upon demand unless a delay is necessary in order to retrieve a closed file or to extract the CPA's work papers described in (d) – (f) below. If the records cannot be returned immediately upon demand, the CPA shall immediately notify the client of the date by which the records will be returned. Nothing in this section shall require a CPA to pay delivery costs when the records are returned to the client.

(b) If the client is any form of a partnership, records shall be returned upon request by any of its general partners, its managing partner or his or her designated agent. If the client is a corporation, records shall be returned upon request by its president. If the client is a limited liability company, records shall be returned upon request by the managing member. Joint records shall be returned upon request by any party.

(c) A CPA shall not retain a client's records in order to force payment of any kind.

(d) Work papers shall be the CPA's property and need not be surrendered to the client. If work papers contain data which should properly be reflected in the client's books and records but have not been duplicated therein copies of any such work papers shall be provided to the client.

(e) Work papers considered part of the client's records shall include but not be limited to:

(1) Worksheets in lieu of original entries, such as listings and distributions of cash receipts or cash disbursements on columnar work paper;

(2) Worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar types of depreciation records;

(3) All adjusting and closing journal entries and supporting details not fully set forth in the journal entry; and

(4) Consolidating or combining journal entries worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(f) Work papers developed by the CPA incident to the performance of an engagement which do not result in changes to the client's records, or are not in themselves part of the records ordinarily maintained by such clients, shall be solely the CPA's .

(g) A CPA shall ensure that the work product and the work papers created in the performance of an engagement for a client are retained for a minimum of 5 years after creation unless the CPA is required by law to retain such records for a longer period.

Emphasis Added.

Mr. Musgrave was then asked to review Respondent's Exhibit H, NH RSA 309-B:19, which states that nothing in this section shall require a licensee to keep any work paper beyond the period prescribed in any other applicable *statute*. Emphasis Added. He was then asked to review the Federal Circular A-133 entitled Audits of State, Local Governments and Non-Profit Organizations referring to "Retention of Working papers," which states that the auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee..." This was a federal circular, not a "statute", as stated in RSA 309-B:19.

When asked what the Respondent had done wrong in this case in Mr. Musgrave's view, he stated that the Respondent did not properly maintain his work records. However, Mr. Musgrave made clear that he was not in a position to testify whether the supremacy clause was applicable in this matter regarding Federal Circular A-133 and on that basis was not sure whether the Respondent had fully complied with the requirements of the subpoena. He confirmed that the subpoena was signed on November 19, 2016 and the Respondent replied on November 16, 2016 when he failed to provide the required documents.

RE-DIRECT TESTIMONY OF THOMAS MUSGRAVE:

Mr. Musgrave confirmed that all of the exhibits requested in the subpoena were relevant.

RE-CROSS-EXAMINATION OF THOMAS MUSGRAVE:

Mr. Musgrave agreed with the language in the Accountancy Rules Ac 404.04(g), requiring that the records be maintained for a period of five years unless required by law to do so for a longer period of time.

HEARING COUNSEL'S EXAMINATION OF RESPONDENT

Mr. Beaulieu testified that he is a licensed CPA in Maine. He is the owner of Ronald Beaulieu & Company which is licensed in New Hampshire. He was retained by TCCAP for the purpose of performing audits for that agency from 2008 through 2011. He was engaged to perform the 2012 audit but never completed that audit because he did not complete all required auditing procedures. He was engaged by TCCAP until June 2, 2014.

State's Exhibit 20 was admitted under objection by Respondent's counsel. The Presiding Officer ruled that the document would be given the weight the board members deemed appropriate.

Mr. Beaulieu testified that his office periodically purges documents, i.e. due to space issues, etc., both hard copies and on the computer. Many documents are deleted from his computer. He stated he is only required to maintain/retain client audit records, including financials, compilations and reports for a period of three (3) years. He stated that the documents he subsequently provided, including Exhibit N which was provided on the date of the hearing, was not in his possession at the time of the subpoena.

Mr. Beaulieu testified that he retains tax client accounts for five to seven years but not the auditing records. The tax records he maintains for nine years and then he deletes them or disposes of the hard copies.

Mr. Beaulieu then stated that the only documents he maintains are on the computer system. When the Respondent was asked if he reviewed the letter from the subsequent auditors, Mason & Rich, dated February 6, 2013 he stated he did not recall if he received the letter and does not know if they ever sent it to him.

Mr. Beaulieu was asked the letter to him From Orr & Reno dated June 2, 2014. He stated that despite that letter informing him that he was on notice that there may be a potential claim against him by TCCAP, he did not do anything to further search for TCCAP records. He was asked whether he should still have maintained those records under state statute, i.e. the records from January, 2010. Beaulieu then testified that in 2013 he may or may not have had the records.

Mr. Beaulieu went on to testify that his computer system is set up to flag documents that are three years old. He stated that it does not mean they are automatically deleted and that a person would have to enter into the system and delete the documents. He stated that any records he had in 2013 were provided to the Attorney General's Office.

Beaulieu testified that he planned, directed and supervised the audit in this case. He confirmed that he reviewed a lot of work papers during the course of this audit. He testified that the work papers were on the computer systems, where they would stay as inactive. He was asked why he then did not provide the documents and he stated that he sporadically does house cleaning of his documents and deletes them. He was then asked where the documents were that he was required to retain from 2010 through January, 2013. He stated that the work papers are purged but he does not know when he purged them.

When Mr. Beaulieu was put on notice of a possible action against him in 2013, he searched his records and could not find them, including the emails. Although they were scanned into the computer, they were later get deleted. He stated he did his best to provide the requested documents, and stated that at that time he purchased 11 new computers and got rid of 7 computers.

Beaulieu was asked why he couldn't produce the billing documents he had for TCCAP. He answered that he does not retain any type of ledger beyond the year that he submits his own

billing. Beaulieu then stated that regarding State's Exhibit 15, he had maintained a copy of that document. He then stated he kept paper copies of those documents in a paper file and in fact not all documents are scanned into the computer. Similarly, he stated that he was able to provide State's Exhibits 4, 6, 12 and 16 because those documents also were kept as hard copies, not electronically. Finally, when questioned about State's Exhibit 13, TCCAP Audited Financial Statements Report dated June 30, 2010, he stated that the dates of January 1, 1970 were a mistake and that that date was a default date on his paper copy of that report.

Beaulieu testified that in 2010 there was in fact no engagement letter, i.e. he simply utilized an ongoing engagement letter. He agreed that in 2008 and 2009 he signed an engagement letter and probably reused that in 2010 and 2011; he did not sign it just used it for subsequent years. He stated this was probably the same for 2012, i.e. for the fiscal year ending June 30, 2011. In addition the Respondent conceded that he likely did not retain the audit documents in this matter for a period of five years which was required pursuant to New Hampshire law.

Respondent testified that he worked on the audit in this case and is now being sued for gross misconduct regarding his work on the audit. However, he believes he conducted an appropriate audit and kept the records for the period of time he needed to.

Respondent testified that he kept reports in accordance with generally accepted accounting principles. He was then asked about how in 2012 his client, TCCAP, was determined to be on the brink of collapse and with the state's involvement the organization went into receivership. Respondent stated that in 2012 he never issued a report on his client's statements and did not do anything in 2012. He stated that the standard report did not receive a bill of good health.

At this point the Presiding Officer, Fred Briggs, and Board Member Wayne Geher inquired of the Respondent. Chairman Briggs questioned the Respondent about the prior period adjustment on page 3 of State's Exhibit 11 and the discrepancy between his findings of net assets on July 1, 2008 of \$3,317,281 and the adjustment by the trustee/receivership indicating an actual lower net asset on that date of \$1,662,450.00.

Board members then asked the Respondent if he ever supplied to the State (APU attorney) any complete financial work product. He was asked for a complete set of his financial report. He was asked about OMB A-133 report and was asked where those records were and answered that they were a separate work product. He was then asked whether the A-133 Reports were destroyed. He does not know where the reports are. He was asked if he recalled his A-133 Findings for any years and if not how could he state that the findings resulted in low risk. He stated he did not keep many pages of documents. Board Member Daigneault inquired of the Respondent how he could go for four years with no findings and then when TCCAP was audited by a new auditor who found twenty-five plus findings – without any prior works papers from the Respondent.

Respondent was asked whether he knew that an A-133 report required disclosure of significant deficiencies, not ordinary deficiencies.

Respondent testified that he later learned of TCCAP's cash flow problem, which ultimately resulted in the Attorney General's office eliminating the Board of Directors. The Respondent did confirm that for the work for which he was hired on September 30, 2011, he was compensated for by TCCAP.

Respondent agreed that State's Exhibit 1, Report on Tri-County Community Action Program, Inc. dated July 29, 2015 indicates that the Respondent misstated funds of the agency;

there were unfavorable periods of adjustments which he was unable to explain at the hearing. Respondent agreed that the report indicated that the last financial statement was determined to have overstated the cash by \$400,000.00. However, the Respondent then went on to state that the A.G.'s report was inconclusive, as the Respondent continued to maintain that he had originally had the records to support his work but that those records had been destroyed. Board Member Silverman also emphasized that the Report of the Attorney General indicated several deficient auditing procedures. The Respondent testified those would have only been with respect to planning.

ATTORNEY VANACORE'S EXAMINATION OF RESPONDENT:

Respondent testified that he attended the University of Maine. In 1986 he opened his own practice in Portland, Maine. He primarily performs audits for government and non-profit organizations. He has been peer reviewed every three years since 1990, as required for a certified public accountant. As a result, he enters into engagements with clients pursuant to the professional standards required.

He stated in his standard engagement letter he has his system formatted to retains record for three years. This is incorporated in his standard engagement letters which he always uses. He stated he was never aware of the New Hampshire law which required him to retain his records for a period of five years.

Respondent confirmed that Todd Fahey informed him to notify his carrier of a potential claim against him by TCCAP, but did not tell him that he could not destroy any records after receiving that correspondence. He did purge the TCCAP records, but did not do so intentionally. He purges his records based on a date range. He agreed that in the 2008 audit, there should have been a disclosure on the financial statement and that was a one-time mistake.

He stated he did not skip steps during the TCCAP audits. He testified that the numbers he was working with were: 2009 - \$120,000 net assets; 2010 - \$501,000.00; 2011 - \$49,000.00. He stated the expenses were in excess of revenues but that was not a deficiency. He testified he did not find any indicators of significant risk during his standard audit. He stated that the problem with federal government audit standards relate to the A133 report. However, he acknowledged that when doing such an audit, if an error is found it must be identified and reported to the federal program. In that sense the CPA, though retained by the agency, is also responsible to the federal government and must report the indicators of something wrong.

Respondent was then asked if he kept his records for a period of three years, why did he destroy his records in 2015 (which is when they were discovered destroyed), when he was notified in 2013, two years earlier, to notify his carrier of a potential claim. He was asked how he thought he could defend a potential claim without maintaining his records regarding that matter.

Respondent confirmed that a lawsuit was filed against him in this matter in 2015. He did not discover until that point that he no longer had the required documents.

HEARING COUNSEL'S CLOSING ARGUMENT:

Attorney Heaton argued that all exhibits were admitted as evidence in this matter. While Respondent argued he did not have documents related to this matter, he produced some documents prior to this hearing and one document related to TCCAP on the date of the hearing (Exhibit N). Attorney Heaton argued that the Respondent committed professional misconduct by failing to comply with the subpoena duces tecum in violation of RSA 309-B:11 and RSA 309-B:10, I-a(f) and/or (j). Counsel further argued that the evidence established that the Respondent committed professional misconduct by failing to retain work papers and/or records in violation of RSA 309-B:1-a (g) and/or (j) and Administrative Rule Ac 404.03(g); and that the Respondent

committed professional misconduct by failing to properly conduct auditing services for TCCAP for fiscal years 2008-2011 in violation of 309-B:I-a(e) and/or (j). Counsel argued that if any of the allegations set forth in the Notice of Hearing, paragraph 5 (A), (B) and/or (C), the Respondent should be subject to the disciplinary sanctions set forth and authorized by New Hampshire RSA 309-B:10, I and III and RSA 332-G:11.

RESPONDENT'S COUNSEL – CLOSING ARGUMENT:

Counsel argued that the statutes and rules argued in this matter can be ambiguous and should be viewed as perceived by the reader/Respondent and not as strictly written. Counsel emphasized that the Respondent has been operating under the three year retention rule forever. Counsel also inquired whether New Hampshire statutory law was intended to override a federal statute. The Respondent got rid of things every three years. No one ever told him not to destroy any documents. His insurance company did not tell him not to destroy anything but then cancelled his coverage. The Respondent followed the rules as he knew them. There was no testimony when the five year rule came into effect.

DELIBERATIONS AND FINDINGS

The Board convened on May 3, 2017 in public to deliberate on the above hearing. The Board first considered whether the Respondent committed professional misconduct by failing to comply with New Hampshire RSA 309-B:11 and RSA 309-B:10-a (f) and/or (j) and Administrative Rule Ac 404.03 (g). The Board ruled that the Respondent did not comply with the subpoena in that he did not provide the documents that were requested in the subpoena duces tecum dated October 16, 2016. In part, numerous 2008 documents were not provided as requested, in violation of RSA 309-B:11. Specifically, the Respondent was found in violation of

the foregoing. The Board determined that the Respondent could have retrieved at least some of the requested documents which he would have filed with the government for his audits of TCCAP. Vote: 3-1, violation.

The Board also voted unanimously that the Respondent committed professional misconduct by failing to retain work papers and/or all records of his work file for all audits conducted of TCCAP, in violation of RSA 309-B:10, I-a(g) and/or (j) and Board of Accountancy Rule Ac 404.03 (g), which states that *“A CPA shall ensure that the work product and the work papers created in the performance of an engagement for a client are retained for a minimum of 5 years after creation.”* Emphasis Added. Specifically, the Board determined that the Respondent was required to keep all records related to government audits for a minimum period of five (5) years. They determined that he received an email from Todd Fahey dated January 15, 2013 notifying him that a potential claim was going to be made against him by TCCAP for noncompliance regarding his audits. At that time, at a minimum, he should have ensured that no records were destroyed, including but not limited to his work file, that recorded his notes documenting the basis for his findings. Again, these records should have been retained for five years. However, the Respondent did not even ensure that the required work file for three years as he himself conceded. Vote: 4-0, violation.

The Respondent’s position that he deleted files from his computer was not acceptable. As the owner of the firm licensed to provide CPA services in New Hampshire he was obligated to be familiar and comply with the laws and rules of this state and other governing bodies. The Board discussed that Mr. Beaulieu is an experienced CPA and is also a Peer Reviewer and as such should clearly have known of the importance of retaining his work papers and not destroying them. He would be more aware of this obligation as a Peer Reviewer.

The Board voted unanimously that the Respondent was in violation of New Hampshire RSA 309-B:10, I-a (e) and/or (j) in that he committed professional misconduct in failing to properly conduct auditing services for TCCAP for fiscal years 2008 through 2011. Specifically, the Board referred to the States Exhibit 1, page 3, which sets forth the findings of the New Hampshire Department of Justice. More specifically, that report indicated that “many factors contributed to the agency’s financial failure. They included poor financial controls, borrowing from restricted funds, incomplete financial reporting, failure to address audit management letter recommendations, ongoing operating deficits, over-expansion of programming and unsustainable acquisition of real estate assets. . . ***In addition, the accounting firm retained by the agency to perform the annual financial audits for fiscal years 2008 through 2011 (Respondent) prepared incomplete and inaccurate reports and failed to detect or report internal control weaknesses and improper accounting procedures.***” Emphasis Added. For the four years in which the Respondent provided annual financial audits for TCCAP, there was no indication of non-compliance or deficits. Conversely, when the agency went into receivership and was audited by another independent auditor, the numerous foregoing noncompliance issues were identified.

The Board also discussed that TCCAP is charged with caring for the most vulnerable people in the State of New Hampshire, i.e. at risk children and adults. As a result of the audits from 2008 through 2011 not having been completed adequately, the State of New Hampshire was required to step in in order to save the agency. There was no evidence submitted by the Respondent to rebut this information.

Additionally, Presiding Officer Briggs emphasized that State’s Exhibit 1, page 11, paragraph 2 clearly states that the Respondent’s 2011 audit “misstated the financial condition of the agency resulting in over \$516,000.00 of unfavorable prior period adjustment for the FY 2012 audit, including overstatement of cash of \$460,000.00.”

Exhibit 1, page 12, also discloses that the agency misused guardianship funds, which was never identified by the Respondent. Again the Board found this egregious given that those funds were entrusted to the agency for the benefit of the people it served. This occurred at least twenty-four times. More specifically, the Board discussed that there were twenty plus material weaknesses found by the subsequent auditor for the years in question, while conversely the Respondent found no management concerns during that time period in his audits of TCCAP. The twenty plus findings of material weaknesses specifically related to the findings of systems of internal controls of the agency. The Respondent should have determined if the internal controls reflected: 1) that the system of internal controls was adequate; 2) whether the internal controls were properly followed. The Respondent's audit finding that TCCAP was low risk for those years was inaccurate. Moreover, the Respondent's own testimony disclosed that he did not perform the audit as required.

The Board again concurred that twenty plus deficiencies were found by the subsequent auditor; that on January 15, 2013 Mr. Fahey informed the Respondent of the numerous issues with the audit but at that point the Respondent did not have records or back-up of his work file. The Board concluded and voted unanimously that this was professional misconduct. There was no documentation of the process followed in destroying his records, i.e. by the Respondent. His testimony was that: 1) he could not recollect when he destroyed the records in this case; 2) he did not know any dates when they may have been destroyed; 3) he did not know what he had destroyed; 4) he did not notify the agency of audit deficiencies he should have been or was aware of, yet he continued to destroy records. Again the Board voted unanimously that with regard to this issue the Respondent's behavior was unprofessional in violation of RSA 309-B:10, I-a(g).
Vote: 4-0, violation.

CONCLUSIONS OF LAW

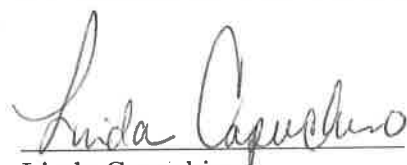
- A. The Respondent was in violation of failing to produce documents set forth in the subpoena duces tecum, as he could have, at a minimum, retrieved copies of the documents he had filed with the government during the years in question. Vote: 3 to 1 –violation.
- B. The Respondent was found to have committed professional misconduct by failing to retain work papers and/or records in violation of RSA 309-B:10, I-a (g) and/or (j) and Board of Accountancy Rule Ac 404.03(g). Respondent’s assertion that OMB Circular A-133 overrides New Hampshire RSA 309-B:10, I-a (f) and/or (g) is misplaced, as that is not a “statute” as referenced in New Hampshire RSA 309-B:19, III. Moreover, State’s Exhibit 3, page 4, which is a letter from the Respondent himself, states that regarding his audits of TCCAP “no opinion will be expressed in our report on internal controls issued pursuant to OMB Circular A-133.” Accordingly, he cannot now argue that his conduct in not retaining the records/work files he was legally required to maintain for a minimum period of five years under New Hampshire law should not be applied. Vote: 4 – 0, violation.
- C. The Respondent was found to have committed professional misconduct by failing to properly conduct auditing services for TCCAP for fiscal years 2008 through 2011, in violation of RSA 309-B:10, I-a (e) and/or (j). There was insufficient evidence, if any, submitted by the Respondent to rebut this evidence. Vote: 4 – 0, violation.
- D. The Board voted unanimously to impose the following sanctions as a result of the Respondent’s violations in this matter, particularly given the egregious effect his unprofessional conduct had on the agency, TCCAP, who was charged with ensuring the welfare of the most vulnerable children and adults in this state:

- a. The Respondent's license is suspended for a period of three years;
- b. Respondent is required to pay a fine in the amount of \$5000,00;
- c. Respondent is required to reimburse the State of New Hampshire for all of the costs related to this proceeding, including investigatory and prosecution costs as set forth in NH RSA 309-B:10, III and 332-G:11, not to exceed \$10,000.00;
- d. Respondent must pay all costs set forth above no later than one year from the date of this Order;
- e. Respondent must continue to complete the required CPE credits during his suspension period, to include 36 hours of education related to federal requirement of performance for audits for any federal or government agency, i.e. government auditing standards and principles; as well as 8 hours per year of auditing CPEs. No CPEs are to be self-study.
- f. If the Respondent fails to comply with the foregoing terms of this Order, including timely payment of the fine and costs assessed herein, his suspension shall be continued for a period of five years.
- g. If the Respondent fails to comply with the terms of this Order, said failure shall serve as a new basis for further action, including revocation.
- h. This Order shall become a permanent document in the Respondent's file which is maintained by the Board of Accountancy, Office of Professional Licensure and Certification.
- i. The Order shall take effect on the date it is signed by an authorized representative of the Board.
- j. A motion for rehearing, reconsideration or clarification shall be filed within thirty (30) days of the effective date of the Order. The motion shall be in

accordance with NH RSA 309-B:12, IX. Filing a motion for rehearing or reconsideration shall be a prerequisite to appealing the Order to a court of appropriate jurisdiction.

- k. Respondent may thereafter appeal this Order in accordance with New Hampshire RSA 309-B:12, X

BY ORDER OF THE BOARD

A handwritten signature in cursive script, appearing to read "Linda Capuchino", is written over a horizontal line.

Linda Capuchino,
Division Director
Off. of Prof. Lic. and Certification
NH Board of Accountancy

Dated: July 13, 2017

This Order was forwarded on the above date to Hearings Counsel, Michelle Heaton, NH Attorney General's Office, John Vanacore, Esquire, counsel for Respondent and the NH Board of Accountancy.