

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
Heber M. Wells Building  
160 East 300 South  
P O Box 146741  
Salt Lake City UT 84114-6741  
Telephone: (801) 530-6628

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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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IN THE MATTER OF THE LICENSE OF	.
<b>BRIAN KEITH SULLIVAN</b>	.
TO PRACTICE AS A	.
CERTIFIED PUBLIC ACCOUNTANT	.
IN THE STATE OF UTAH	:
	NOTICE OF AGENCY ACTION
	Case No. DOPL-2011-12

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THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO  
Brian Keith Sullivan ("Respondent"), , Salt Lake City  
UT 84109:

The Division of Occupational and Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of Pamela Bennett, Investigator, State of Utah, a copy of which is attached hereto and incorporated herein by reference

The adjudicative proceeding designated herein is to be conducted on a formal basis. **Within thirty (30) days of the mailing date of this Notice, you are required to file a written response with this Division.** The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition. Your written response should be mailed to the following address Division of Occupational and Professional Licensing, Attn Disciplinary Files, 160 East 300 South, PO Box 146741, Salt Lake City UT 84114-6741.

You may represent yourself or be represented by legal counsel, at your own expense, at all times while this action is pending. Your legal counsel shall file with the Division an Entry of Appearance and until that Entry of Appearance is filed, the presiding officer will deal directly with you.

You are entitled by law to an evidentiary hearing to determine whether your license to practice as a certified public accountant in the State of Utah should be subject to a

disciplinary action. Unless otherwise specified by the Director of the Division, the Utah Board of Accountancy will serve as fact finder in the evidentiary hearing. You will be notified by separate notice of the date, time, and place of that evidentiary hearing and of any other hearings.

During the evidentiary hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence to the fact finder. After the hearing, unless otherwise specified by the Director of the Division, the fact finder will issue findings of fact, conclusions of law and a recommended order to the Director of the Division of Occupational and Professional Licensing for his review and action.

The presiding officer for purposes of conducting hearings will be J. Steven Eklund, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney have any questions as to the procedures relative to the hearing, Judge Eklund can be contacted at P O Box 146701, Salt Lake City, UT 84114-6701 His telephone number is (801) 530-6648.

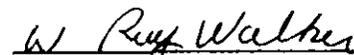
Counsel for the Division in this case is Judith Jensen, Assistant Attorney General at (801) 366-0310 or P O Box 140872, Salt Lake City, UT 84114-0872. Within ten (10) days after the filing of your response, Ms. Jensen will request the scheduling of a prehearing conference.

You, or if you have an attorney, your attorney, may attempt to negotiate a settlement of the case without proceeding to a hearing by contacting Ms. Jensen.

Should you fail to timely file a response, as set forth above, or fail to attend or participate in any scheduled hearing in this case, including prehearing conference(s), you may be held in default without further notice to you. If you are held in default, the maximum administrative sanction consistent with the terms of the Verified Petition may be imposed against you. The maximum administrative sanction in this case is revocation of licensure.

Please conduct yourself accordingly.

Dated this 11<sup>th</sup> day of January, 2011.

  
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W. Ray Walker  
Regulatory & Compliance  
Officer

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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
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IN THE MATTER OF THE LICENSE OF  
**BRIAN KEITH SULLIVAN**  
TO PRACTICE AS A  
CERTIFIED PUBLIC ACCOUNTANT  
IN THE STATE OF UTAH

**PETITION**

Case No DOPL 2011 - 12

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**PRELIMINARY STATEMENT**

These claims were investigated by the Utah Division of Occupational and Professional Licensing (the "Division") upon complaint that Brian Keith Sullivan ("Respondent") has engaged in acts, practices, and omissions which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann § 58-1-101 to 58-1-504 (West Supp 2009), and the Certified Public Accountant Licensing Act, Utah Code Ann § 58-26a-101 to 58-26a-602 (West Supp 2009)

The allegations against Respondent are based upon information and belief arising out of an investigation conducted by the Division under its authority as set forth in Utah Code Ann § 58-1-106(1) (West Supp 2010)

Each count in this Petition shall be deemed to incorporate by reference the allegations set forth in the other paragraphs of the Petition

### **PARTIES**

1 The Division is a division of the Department of Commerce of the State of Utah as established by Utah Code Ann § 13-1-2(2)(a) (West 2010)

2 Respondent obtained licensure in 2003 to practice as a Certified Public Accountant in the State of Utah and was so licensed at all times material to the allegations contained herein Respondent's license expired on September 30, 2010 based upon his failure to file an application for renewal of licensure

### **STATEMENT OF ALLEGATIONS**

3 In and about 2008 and 2009, Respondent maintained a practice as a Certified Public Accountant and provided certified public accounting services for clients in Salt Lake City, Utah Respondent, in the course of said practice, agreed to provide multiple clients with certified public accounting services including the preparation of tax returns and other accounting work and engaged in acts, practices, and omissions including the following

- a Respondent failed to complete said accounting services in a timely manner,
- b Respondent failed to respond to client inquiries in a timely manner regarding Respondent's progress towards completing said accounting services,
- c Respondent failed to notify clients in a timely manner of Respondent's inability and/or failure to complete said accounting services in a timely manner, and
- d Respondent failed to return client-provided records in a timely manner on the request of clients and/or on Respondent's inability or failure to complete the accounting services as agreed

- e Due to Respondent's failure to complete said certified public accounting services in a timely manner, clients were assessed, or risked assessment of, penalties by government authorities
- f Respondent reportedly attempted to practice as a Certified Public Accountant in a state of impairment affecting his professional competence

**APPLICABLE LAW**

4 At all times material hereto, the Division of Occupational and Professional Licensing Act, Utah Code Ann § 58-1-401, has provided in relevant part as follows

- (2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases
  - (a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title,

5 At all times material hereto, the Division of Occupational and Professional Licensing Act, Utah Code Ann § 58-1-501(2), has defined "unprofessional conduct" in relevant part as follows

- (b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title,
- (f) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so,
- (g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence,

6 At all times material hereto, the Certified Public Accountant Licensing Act, Utah Code Ann § 58-26a-502(1) has defined "unprofessional conduct" in relevant part as follows

- (a) undertaking an engagement when the licensee knows or should know that the licensee could not reasonably expect to complete it with professional competence,

7 At all times material hereto, the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct has provided as follows

**ET Section 56.01** The quest for excellence is the essence of due care. Due care requires a member to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform professional services to the best of a member's ability with concern for the best interest of those for whom the services are performed and consistent with the profession's responsibility to the public. [As adopted January 1988 ]

**ET Section 56.03** Competence represents the attainment and maintenance of a level of understanding and knowledge that enables a member to render services with facility and acumen. It also establishes the limitations of a member's capabilities by dictating that consultation or referral may be required when a professional engagement exceeds the personal competence of a member or a member's firm. Each member is responsible for assessing his or her own competence— of evaluating whether education, experience and judgment are adequate for the responsibility to be assumed. [As adopted January 1988 ]

**ET Section 56.04** Members should be diligent in discharging responsibilities to clients, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards. [As adopted January 1988 ]

**ET Section 501** A member shall not commit an act discreditable to the profession. [As adopted January 1988 ]

**Interpretations under Rule 501 - Acts Discreditable**

**.02 501-1** Where a member is required to return or provide records to the client, the member should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made. [Revised, effective April 30, 2006, by the Professional Ethics Executive Committee ]

**Count 1**

8 In or about 2008 and 2009, Respondent engaged in acts, practices, and omissions in the course of practice as a Certified Public Accountant as further described in Paragraph 3 herein

9 By engaging in said acts, practices, and omissions, Respondent violated the provisions of the AICPA Code of Professional Conduct as follows

- a Respondent failed to demonstrate due care in the course of Respondent's practice as a Certified Public Accountant by failing to discharge of Respondent's professional responsibilities with competence and diligence, in violation of the AICPA Code of Professional Conduct, ET Section 56 01,
- b Respondent failed to demonstrate due care in the course of Respondent's practice as a Certified Public Accountant by failing to refer clients to another Certified Public Accountant when Respondent's professional engagements exceeded Respondent's personal competence, in violation of the AICPA Code of Professional Conduct, ET Section 56 03,
- c Respondent failed to demonstrate due care in the course of Respondent's practice as a Certified Public Accountant by failing to be diligent in discharging his responsibilities to clients and by failing to render his certified public accounting services promptly, in violation of the AICPA Code of Professional Conduct, ET Section 56 04, and/or
- d Respondent committed acts discreditable to the profession by failing to return client-provided records in timely manner, in violation of the AICPA Code of Professional Conduct, ET Section 501

10 Based upon the foregoing, Respondent violated generally accepted professional and ethical standards applicable to the profession of the Certified Public Accountant and engaged in "unprofessional conduct" as defined by Utah Code Ann § 58-1-501(2)(b)

11 In accordance with UTAH CODE ANN § 58-1-401(2)(a), a sufficient basis exists for imposing disciplinary sanctions against the licensure of Respondent to practice as a Certified Public Accountant in the State of Utah and all residual interests Respondent may have to seek reinstatement of his license under Utah Code Ann § 58-1-308(5)

## **Count 2**

12 In or about 2008 and 2009, Respondent engaged in acts, practices, and omissions in the course of practice as a Certified Public Accountant as further described in Paragraph 3 herein

13 By engaging in said acts, practices, and omissions, Respondent practiced or attempted to practice as a Certified Public Accountant through gross incompetence, gross negligence, or a pattern of incompetency or negligence and engaged in "unprofessional conduct" as defined by Utah Code Ann § 58-1-501(2)(g)

14 In accordance with UTAH CODE ANN § 58-1-401(2)(a), a sufficient basis exists for imposing disciplinary sanctions against the licensure of Respondent to practice as a Certified Public Accountant in the State of Utah and all residual interests Respondent may have to seek reinstatement of his license under Utah Code Ann § 58-1-308(5)

## **Count 3**

15 In or about 2008 and 2009, Respondent engaged in acts, practices, and omissions in the course of practice as a Certified Public Accountant as further described in Paragraph 3 herein

16 By engaging in said acts, practices, and omissions, Respondent practiced or attempted to practice as a Certified Public Accountant despite being physically or mentally unfit to do so and thereby engaged in "unprofessional conduct" as defined by Utah Code Ann § 58-1-501(2)(f)

17 In accordance with UTAH CODE ANN § 58-1-401(2)(a), a sufficient basis exists for imposing disciplinary sanctions against the licensure of Respondent to practice as a Certified Public Accountant in the State of Utah and all residual interests

Respondent may have to seek reinstatement of his license under Utah Code Ann § 58-1-308(5)

#### **Count 4**

18 In or about 2008 and 2009, Respondent engaged in acts, practices, and omissions in the course of practice as a Certified Public Accountant as further described in Paragraph 3 herein

19 Based on the foregoing, Respondent undertook engagements to perform certified public accountant services when Respondent knew or should have known that Respondent could not reasonably expect to complete said services with professional competence and thereby engaged in "unprofessional conduct" as defined by Utah Code Ann § 58-26a-502(1)(a)

20 In accordance with UTAH CODE ANN § 58-1-401(2)(a), a sufficient basis exists for imposing disciplinary sanctions against the licensure of Respondent to practice as a Certified Public Accountant in the State of Utah and all residual interests Respondent may have to seek reinstatement of his license under Utah Code Ann § 58-1-308(5)

WHEREFORE, the Division requests an order granting the following relief

1 Determining that Respondent engaged in the acts, practices, and omissions alleged herein,

2 Determining that, by engaging in the above acts, practices, and omissions, Respondent violated the provisions of the Division of Occupational and Professional Licensing Act and the Certified Public Accountant Licensing Act, which are particularly referenced above,

3 Imposing appropriate disciplinary sanctions in accordance with UTAH CODE ANN § 58-1-401(2)(a) including revocation of Respondent's licensure to practice as a

