

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2018-0332

Ron L. Beaulieu & Company

v.

New Hampshire Board of Accountancy

Appeal from a Final Decision and Order
of the New Hampshire Board of Accountancy

**OPPOSING BRIEF OF THE
NEW HAMPSHIRE BOARD OF ACCOUNTANCY**

NEW HAMPSHIRE
BOARD OF ACCOUNTANCY

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QUESTIONS PRESENTED

I. The Board of Accountancy's findings of fact are presumed prima facie lawful and reasonable and, under New Hampshire law, this presumption may be overcome only by a showing that there was *no evidence* from which the Board could conclude as it did. The record before the Board contained evidence that Ron L. Beaulieu & Company, among other things, prepared incomplete and inaccurate reports and failed to detect or report internal control weaknesses and improper accounting procedures in connection with its audits of the Tri-County Community Action Program. Based on such evidence, was it unjust or unreasonable for the Board of Accountancy to conclude that the Company committed professional misconduct by failing to properly conduct auditing services in connection with the Company's audits of the Tri-County Community Action Program?

II. *N.H. Admin. Rules, Ac 404.03(g)* provides that a certified public accountant "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." In the Board adjudicatory/disciplinary proceeding, Ron L. Beaulieu & Company, which is licensed by the Board as a certified public accountant firm, did not contest the fact that it failed to retain relevant work papers for a minimum of five years after creation. Based on such evidence, was it unjust or unreasonable for the Board of Accountancy to conclude that the Company committed professional misconduct by failing to retain its work papers in accordance with the relevant administrative rule?

STATEMENT OF THE CASE AND FACTS

A. The Company's Engagement With TCCAP

Ron Beaulieu is a licensed certified public accountant in Maine and he is the owner of Ron L. Beaulieu & Company (the "Company"), which is licensed to do business in New Hampshire. This appeal arises out of an adjudicatory/disciplinary proceeding before the New Hampshire Board of Accountancy (the "Board"), in which the Board voted unanimously to sanction the Company in the form of a three-year suspension of the Company's license and a \$5,000 fine. App. at 490.¹ The Board's adjudicatory/disciplinary proceeding, in turn, arose out of a complaint filed with the Board by the New Hampshire Attorney General's Office relating to the professional services that the Company had provided to a Berlin-based community action agency known as the Tri-County Community Action Program, Inc. ("TCCAP"). App. at 4.

TCCAP is a non-profit organization that administers programs in northern New Hampshire designed to reduce poverty, revitalize low-income communities, and promote self-sufficiency among low-income families and individuals. App. at 43-70; *see generally* 42 U.S.C. §§ 9901-9926 (establishing the community services block grant program to provide assistance to States and local communities through a network of community action agencies). The record reflects that, for fiscal years 2008 through 2011, TCCAP engaged the Company to perform audits of its financial statements, which included expressing "an opinion about whether [TCCAP's] financial statements [were] fairly presented, in all material

¹ Citations to "App." are to the Appellant's Appendix (Vol. I of I).

respects, in conformity with U.S. generally accepted accounting principles.” App. at 52, 75. The Company also agreed to report on:

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with Government Auditing Standards; and
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.”

App. at 75. The Company’s audits of TCCAP were intended to “obtain an understanding of the design of the relevant controls and whether they have been placed in operation,” as well as an assessment of control risk. App. at 78. In agreeing to perform the audits, the Company advised TCCAP that:

[a]n audit is not designed to provide assurance on internal control or to identify reportable conditions. However, we will inform the governing body or audit committee of any matters involving internal control and its operation that we consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or

operation of the internal control that, in our judgment, could adversely affect the entity's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

App. at 78.

B. The Attorney General's Investigation and Report

In July 2015, the Attorney General's Office published a detailed report (the "AGO Report") containing its findings based on an extensive investigation of TCCAP. App. at 43-70. The Attorney General commenced the investigation after "receiv[ing] notice of serious financial conditions at TCCAP which put into question its ability to continue to provide services." App. at 45. The investigation identified "many factors that contributed to the agency's financial failure," including "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." App. at 45. As a central finding of the investigation, the Attorney General concluded that the Company "prepared incomplete and inaccurate reports and failed to detect or report internal control weaknesses and improper accounting procedures" in annual financial audits for fiscal years 2008 through 2011. App. at 45; *see also* App. at 57-58 (providing a summary of "auditor misconduct," including finding that the auditor had failed to communicate with the TCCAP board of directors, and finding that TCCAP's auditors reported no significant findings during the years 2005 through 2011 despite the existence of "on-

going practices that should have been detected and reported to the board during the annual audits”).

C. Board of Accountancy Proceedings and Superior Court Appeal

Upon reviewing the AGO Report, the Board commenced an adjudicatory/disciplinary proceeding against the Company relating to the Company’s performance of financial statement audits for TCCAP. App. at 471. In January 2017, the Board issued a Notice of Hearing, notifying the Company that the issues to be determined in the adjudicatory/disciplinary proceeding included whether it had engaged in professional misconduct by (a) failing to comply with a subpoena *duces tecum* issued by the Board; (b) failing to retain work papers and/or records in compliance with New Hampshire law; and (c) failing to properly conduct auditing services for TCCAP for fiscal years 2008 through 2011. App. at 471-72.

On February 2, 2017, the Board’s hearing counsel submitted witness and exhibit lists to the Board. App. at 37-41. The Board’s witness list contained two witnesses: Ron L. Beaulieu, as the Company’s representative, and Thomas Musgrave, the Board’s investigator. App. at 37. In addition, the Board’s hearing counsel listed the AGO Report as Exhibit 1 on its exhibit list. App. at 37. On April 11, 2017, the Company submitted its own witness and exhibit lists with the Board. App. at 474-75. On April 19, 2017, the Board held the disciplinary/adjudicatory hearing. App. at 472. Following the recusal of three of seven Board members, the four qualified members presided over the hearing. App. at 472.

On July 13, 2017, the Board issued its Final Decision and Order, in which the Board unanimously concluded that the Company had committed professional misconduct by failing to retain work papers and/or records in

violation of RSA 309-B:10, I-a and *N.H. Admin. Rules*, Ac 404.03(g); and failing to properly conduct auditing services for TCCAP for fiscal years 2008 through 2011 in violation of RSA 309-B:10, I-a. App. at 485-88. The Board also concluded, by a vote of 3-to-1, that the Company had failed to comply with a subpoena *duces tecum* issued by the Board. App. at 485-88. As a consequence of the violations, the Board voted unanimously to impose various sanctions on the Company, including a three-year suspension of the Company's license to do business in New Hampshire and a \$5,000 administrative fine. App. at 489-91. The Board concluded that the sanctions were appropriate "particularly given the egregious effect [the Company's] unprofessional conduct had on the agency, TCCAP, who was charged with ensuring the welfare of the most vulnerable children and adults in this state." App. at 489.

The Company subsequently moved for reconsideration of the Final Decision and Order. App. at 493. After the parties fully briefed that motion, the Board denied it. App. at 510, 521. The Company initially appealed the Board's Final Decision and Order to the superior court pursuant to RSA 309-B:12, X. In the superior court appeal, the record of the Board hearing was "presented to the superior court for its review pursuant to the procedures and standards of RSA 541." RSA 309-B:12, X. Although RSA 309-B:12, X provides that the superior court "may order a trial de novo," no party sought and the court did not order one. Instead, the superior court decided the appeal on the record and evidence transferred from the Board proceeding. The Company contended that the Board's Final Decision and Order suffered from various errors of law, that certain

factual findings were not supported by the record, and that the Board's sanctions were "unreasonably harsh." App. at 528-35.

On May 9, 2018, the superior court (Kissinger, J.) affirmed in part and reversed in part. The court reversed the Board's finding that the Company had failed to comply with the subpoena *duces tecum*. Appellant's Br. at 42. The court otherwise affirmed the Board's decision, concluding that the Company "failed to establish that it was unlawful or unreasonable for the Board to conclude that [the Company] was required to comply with the five-year retention requirement [for work papers] set forth in *N.H. Admin. Rules*, Ac 404.03(g); and that the Company "failed to establish[] it was unreasonable or unlawful for the Board to find that [the Company] committed professional misconduct by failing to properly conduct auditing services in violation of RSA 309-B:10, I-a(e) and/or (j)." Appellant's Br. at 44, 47. This appeal ensued.

ARGUMENT

I. Standard of Review

Under New Hampshire law, courts exercise limited review in appeals from Board decisions, and the Board's decision is accorded great deference. The governing statute provides that judicial review of Board decisions takes place "pursuant to the procedures and standards of RSA 541." RSA 309-B:12, X. Accordingly, a Board order "shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable." RSA 541:13. The Board's findings of fact "shall be deemed to be prima facie lawful and reasonable." RSA 541:13. "This presumption may be overcome only by a showing that there was *no evidence* from which the [B]oard could conclude as it did." *Appeal of Boulard*, 165 N.H. 300, 303 (2013) (quoting *Appeal of Huston*, 150 N.H. 410, 411 (2003)) (emphasis added); *accord Appeal of Basani*, 149 N.H. 259, 262 (2003); *Appeal of Briand*, 138 N.H. 555, 558 (1994).

II. It was not unjust or unreasonable for the Board to conclude that the Company committed professional misconduct by failing to properly conduct auditing services for TCCAP.

A. Ample evidence in the record supported the Board's conclusion that the Company engaged in professional misconduct by failing to properly conduct auditing services.

The Company's central argument on appeal is that "[i]t was error of law for the Board to have relied upon the [AGO Report's] conclusions without substantial evidence to support the conclusions." Appellant's Br. at 18. In support of this misplaced contention, the Company relies on several

cases from other jurisdictions, decided under federal law and California law, that apply a “substantial evidence” standard of review to administrative decisions, and argues that the Board’s findings were wrong because they were not supported by substantial evidence. *See* Appellant’s Br. at 24-28.

As explained above, New Hampshire law does not employ a substantial evidence standard, but rather reverses only if the record contains “no evidence from which the board could conclude as it did.” *Boulard*, 165 N.H. at 303. In any event, the cases applying the substantial evidence standard do not help the Company in this case. While the Company argues that the AGO Report did not constitute substantial evidence because it was “uncorroborated hearsay,” Appellant’s Br. at 28, “[t]here is no support for [the Company’s] claims that uncorroborated and untested [evidence] and hearsay [evidence] cannot constitute substantial evidence.”² *EchoStar*

² The Appellant’s Brief is also replete with argument that the Board improperly relied on the AGO Report because its admission into evidence did not comply with certain technical rules of evidence. *See, e.g.*, Appellant’s Br. at 24 (“There was no foundation laid in the Report for the statements and conclusions reached by its author or authors. A proper foundation would require authentication.”); at 25 (contending that the AGO Report contained expert opinions that should have been excluded under *Daubert*); at 27 (contending that the AGO Report contains uncorroborated hearsay). These arguments overlook the fundamental principle of New Hampshire administrative law that the Board has broad discretion to determine the admissibility of evidence, and the rules of evidence do not apply in Board proceedings. *See Ruel v. N.H. Real Estate Appraiser Bd.*, 163 N.H. 34, 45 (2011). As to the Company’s argument that the AGO Report should have been excluded because it provided “no relevant information,” Appellant’s Br. at 26 (citing *N.H. Admin. Rules*, Ac 210.04), the superior court correctly rejected this meritless argument: “Given that

Comme'ns Corp. v. F.C.C., 292 F.3d 749, 753 (D.C. Cir. 2002); *see Richardson v. Perales*, 402 U.S. 389, 407-08 (1971) (holding that the substantial evidence standard does not entail a “blanket rejection . . . of administrative reliance on hearsay irrespective of reliability and probative value. The opposite [is] the case.”).

Applying the proper standard, the Company otherwise has not demonstrated any basis to disturb the Board’s findings, because significant evidence in the record supports the Board’s conclusion that the Company committed professional misconduct by failing to properly conduct auditing services for TCCAP. In reaching this conclusion, the Board relied on various findings in the AGO Report that the audits for fiscal years 2008 through 2011 prepared by the Company were incomplete, inaccurate, and failed to detect or report internal control weaknesses and improper accounting procedures at TCCAP.³ The Board reasonably considered the

the [AGO] Report was created following the investigation and led to the Board’s complaint against Beaulieu, no logical argument could be made that the Report is irrelevant or immaterial.” Appellant’s Br. at 45. In the end, the Company’s attacks on the AGO Report go to its credibility and the weight that the Board should have afforded the Report, but these determinations are committed to the sound discretion of the Board. *See Harborside Assocs. v. Parade Residence Hotel*, 162 N.H. 508, 519-20 (2011).

³ There are several assertions in the Company’s brief that the AGO Report was “entered into evidence on a limited basis” during the disciplinary/adjudicatory proceeding, and that the Board should not have relied on the conclusions contained in the Report “because they had been excluded from evidence by ruling of the Board itself.” Appellant’s Br. at 16, 18. This assertion is belied by the Board’s Final Decision and Order, which clearly states that the AGO Report was “introduced into evidence and accepted into the record.” App. at 473. Indeed, at the conclusion of the

AGO Report as evidence that was reliable and probative, because the Report culminated from an extensive investigation conducted by the Charitable Trusts Unit (CTU) of the Attorney General's Office. App. at 45-46. The investigation included 40 interviews covering a broad range of topics, including financial systems and procedures. App. at 46. CTU staff "also reviewed documents relevant to the [investigation] including internal records, correspondence, contracts, financial reports, audit reports, and bank records." App. at 46.

The Board gave weight to findings in the AGO Report that "the accounting firm [*i.e.*, the Company] retained by the agency to perform the annual financial audits for fiscal years 2008 through 2011 prepared incomplete and inaccurate reports and failed to detect or report internal control weaknesses and improper accounting procedures"; "the financial statements prepared by TCCAP in 2011 and audited by [the Company] misstated the financial condition of the agency resulting in over \$516K of unfavorable prior period adjustments for the [fiscal year] 2012 audit, including an overstatement of cash of \$460K"; and that the "significant problems reported in 2012 did not manifest themselves over a twelve-month period, but rather were on-going practices [at TCCAP] that should have been detected and reported [by the Company] to the board during the annual audits." App. at 45, 53, 58.

In addition, while the AGO's Report was unquestionably an important piece of evidence in the Board proceeding, it was not the only

hearing, the Board Chair stated: "I'm going to rule that all exhibits from both sides are going to be admitted. And we will give the appropriate weight to them as we deem appropriate." App. at 438-39.

evidence that the Board relied on to support its finding that the Company engaged in professional misconduct by failing to properly conduct auditing services for TCCAP. The Board noted that Beaulieu's "own testimony disclosed that [the Company] did not perform the audit as required." App. at 488. For example, Beaulieu admitted in testimony that the Company made a disclosure error in its 2008 audit. App. at 430. The Board also found that the Company failed to properly conduct auditing services based on testimony regarding the Company's failure to document the process for destroying records relating to the TCCAP audits. App. at 488. Beaulieu himself supported this finding: he testified that he did not know when he had purged records relating to the TCCAP audits in question. App. at 436-37. Thus, Beaulieu's own testimony, in addition to the AGO Report, supported the Board's finding that the Company failed to properly conduct auditing services in respect of the TCCAP engagement.⁴

As the above demonstrates, ample evidence in the record supported the Board's conclusion that the Company engaged in professional misconduct by failing to properly conduct auditing services, and the Board's findings should therefore be affirmed. *See Boulard*, 165 N.H. at 303 (presumption that Board findings are lawful and reasonable may be overcome "only by a showing that there was no evidence from which the board could conclude as it did"); RSA 309-B:10, I-a(e) (dishonesty, fraud,

⁴ The Company's argument that the Board failed to comply with RSA 541-A:35, pursuant to which a final decision of the Board must "include findings of fact and conclusions of law, separately stated," is baseless. *See Appellant's Br.* at 21-22. The Board's findings of fact and conclusions of law are set forth under appropriate section headings in the Board's Final Decision and Order. App. at 485-91.

or gross negligence in the performance of services as a licensee constitutes professional misconduct); RSA 309-B:10, I-a(j) (any conduct reflecting adversely upon the licensee's fitness to perform services constitutes professional misconduct warranting discipline by the Board).

B. The Company's burden shifting argument is without merit.

The Company also argues that the Board "chose to unlawfully shift the burden to the [Company] to prove that his firm had not engaged in professional misconduct." Appellant's Br. at 22. The Company further argues that "no rebuttal [of the evidence against the Company] was possible" because the Company had "no clue as to what data and what facts contained in the [AGO Report] [were] the basis for the report's conclusions." Appellant's Br. at 24. The superior court correctly rejected these arguments:

In arguing that the Board failed to meet its burden, Beaulieu contends the Board unlawfully shifted the burden to Beaulieu to prove that he did not engage in professional misconduct. Beaulieu appears to base this argument on the following portion of the Board's Final Order: "[Beaulieu] 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 [Beaulieu] to rebut this evidence. [citation omitted] In light of the fact that RSA 309-B:12, III expressly permits for a licensee to present evidence and witnesses on the licensee's behalf, it was not improper for the Board to note that

Beaulieu did not present adequate evidence to rebut the evidence against Beaulieu.

Appellant's Br. at 46-47. Indeed, RSA 309-B:12, III permitted the Company to "examine witnesses and evidence presented in support of the complaint, and [to] present evidence and witnesses on the licensee's behalf." The statute also gave the Company "the right, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence." RSA 309-B:12, III. The Company had every opportunity to call as witnesses the authors of the AGO Report in an effort to challenge the Report's findings and attempt to rebut the case against it, but the Company did not do so. In sum, the Board did not improperly shift the burden of proof to the Company; instead, the Board found that the Board's hearing counsel had met her burden of proof, and that the Company failed to rebut the record evidence.

At bottom, Board proceedings, like the one at issue here, often present complex accounting issues and principles. Because the Board is comprised of licensees, *see* RSA 309-B:4, I, it was within the Board's sound discretion to determine whether the Company's inaccurate audits and failures to detect internal control weaknesses at TCCAP rose to the level of professional misconduct. This Court has recognized that "[t]he actions that constitute unfitness to practice are commonly established by the generally accepted practices and procedures within the professional community," *Matter of Bloomfield*, 166 N.H. 475, 481 (2014), and the Board's findings that the Company engaged in professional misconduct are therefore entitled to deference. Because there was evidence in the record from which the Board could conclude as it did, including but not limited to the findings in

the AGO Report, New Hampshire law dictates that the Board's Final Decision and Order be affirmed. *See Boulard*, 165 N.H. at 303.

III. It was not unjust or unreasonable for the Board to conclude that the Company committed professional misconduct by failing to retain work papers.

The Company also contends that the superior court erred in failing to reverse the Board's finding that the Company failed to retain work papers relating to the TCCAP engagement for at least five years in accordance with *N.H. Admin. Rules*, Ac 404.03(g). Appellant's Br. at 28. At the hearing before the Board, Beaulieu did not dispute that the Company failed to maintain the relevant work papers for five years. App. at 410, 412, 416-17. To the contrary, he testified that he was unaware that New Hampshire law had such a requirement, and that the work papers at issue had been deleted or purged before the expiration of the five-year period. App. at 410, 412, 416-17.

Confronted with undisputed facts confirming the Company's failure to retain work papers for five years and its representative's lack of knowledge of the applicable law, the Company first argues that it retained "proprietary Audit Work Papers for at least a three year period as mandated by the Federal Single Audit Act of 1984, Federal Circular A-133," and that nothing in New Hampshire law requires an auditor to retain such work papers beyond this three-year period. Appellant's Br. at 29. Contrary to the Company's contention, however, the applicable administrative rule states that certified public accountants "*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 five years* after creation unless the

[certified public accountant] is required by law to retain such records for a longer period.” *N.H. Admin. Rules*, Ac 404.03(g) (emphasis added). The administrative rule could not be clearer: it expressly applies to work papers created by a certified public accountant in the performance of any engagement for a client, and it requires that the work papers at issue be retained for a minimum of five years.

The Company’s compliance with its obligations under the Federal Single Audit Act is irrelevant. As the superior court correctly recognized:

[T]he Federal Single Audit Act was “enacted for the purposes of setting uniform requirements for audits, to improve financial management of state and local government use of federal financial assistance, and to promote efficient and effective uses of federal financial assistance.” *County of Elk v. Highland Tp.*, 677 A.2d 398, 399 (Pa. 1996); *see* 31 U.S.C. §§ 7501-7506. Similarly, OMB Circular A-133 ‘sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.’ 2 C.F.R. 200.100(d). Neither the Single Audit Act nor the relevant federal regulations prohibit the state’s legislature or a state agency from creating and implementing separate standards for licensed certified public accountants that practice within the state.

Additionally, the Court finds no conflict between the federal regulations relied on by Beaulieu and the Board’s administrative rules. The federal regulation requires that ‘[t]he auditor must retain audit documentation and reports *for a minimum* of three years after the date of issuance of the auditor’s report(s) to the

auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to ***extend the retention period.***” 2 C.F.R. 200.517 (emphasis added). This regulation not only expresses the possibility that the three-year retention period could be extended, but it also does not conflict with the Board’s administrative rules as the federal regulation sets a minimum retention period. Retaining the relevant documents for a period of five years would satisfy both rules.

Appellant’s Br. at 43-44. Thus, there is nothing in the cited federal regulations that would “preclude supplementary state regulation” of the time periods for which certified public accountants must retain their audit work papers. *Carberry v. State Bd. of Accountancy*, 33 Cal. Rptr. 2d 788, 790-791, 28 Cal. App. 4th 770, 773-74 (Cal. Ct. App. 1994).

The Company further argues that *N.H. Admin. Rules*, Ac 404.03(g) “requires a five year retention period of Client’s Records, [and] does not define a retention period for auditors’ proprietary Audit Work Papers,” but if the rule “covers both Licensees’ Work Papers and Client’s Records,” the Board exceeded its statutory authority in promulgating such a rule.

Appellant’s Br. at 30-31. This argument is equally unavailing. To begin with, and as discussed above, the rule expressly requires five-year retention of all “work product and the ***work papers*** created in the performance of an engagement for a client.” *N.H. Admin. Rules*, Ac 404.03(g) (emphasis added). Despite the Company’s repeated assertions to the contrary, the administrative rule expressly defines a five-year retention period for any

work papers, which includes so-called “proprietary audit work papers,” created by a certified public accountant in the course of an audit.

Moreover, the Board acted entirely within its statutory authority in promulgating such a rule. RSA 309-B:4, VIII authorizes the Board to “adopt rules, pursuant to RSA 541-A, governing its administration, the enforcement of this chapter and the conduct of licensees.” “Such rules shall include, but not be limited to: . . . (d) [r]ules of professional conduct directed to controlling the quality and integrity of the practice of public accountancy by licensees, including, but not limited to, matters relating to independence, integrity, objectivity, competence, technical standards, responsibilities to the public, and responsibilities to clients[;] [and] (k) [r]ules for records retention, outsourcing disclosures, and the severance of connections.” RSA 309-B:4, VIII. The Legislature gave the Board a broad mandate to create rules related to the retention of records, and left it to the Board to “fill in the details to effectuate the purpose of the statute.” *Appeal of Anderson*, 147 N.H. 181, 183 (2001) (citation and internal quotations omitted). Within the broad mandate, the Legislature specifically contemplated rules governing records retention. That is exactly what the Board did when implementing the five-year retention requirement in *N.H. Admin. Rules*, Ac 404.03(g).

Based on the above, the Company has not demonstrated any error of law or otherwise established that it was unlawful or unreasonable for the Board to conclude that the Company committed professional misconduct by failing to retain work papers relating to its TCCAP audits, in violation of RSA 309-B:10, I-a(g) and/or (j) and *N.H. Admin. Rules*, Ac 404.03(g).

CONCLUSION

For the foregoing reasons, the Board respectfully submits that the Board's Final Decision and Order should be affirmed.⁵

Respectfully submitted,

NEW HAMPSHIRE BOARD OF
ACCOUNTANCY

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Dated: January 25, 2019

⁵ Assistant Attorney General Seth Zoracki requests 15 minutes of oral argument before the full court.

CERTIFICATE OF SERVICE

I certify that two copies of the foregoing brief were sent by first-class mail on January 25, 2019, postage prepaid, to:

John G. Vanacore, Esq.
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A handwritten signature in blue ink, appearing to read "Seth M. Zoracki", written over a horizontal line.

Seth M. Zoracki