

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 31119

This is a summary of a Settlement Agreement entered into in connection with the October 2018 hearings of the Disciplinary and Ethics Commission (“the Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he falsely self-reported to CFP Board that he had completed more than 30 Continuing Education (“CE”) courses providing approximately 80 hours of credits during three CE reporting.

II. Findings of Fact

Background

In October 1987, Respondent passed the Series 6 (Investment Company Products/Variable Contracts Representative Examination). He became a registered broker with ABC Securities, Inc. the following month, and remained there until December 1989. In March 30, 2000, Respondent passed the Series 7 (General Securities Representative Examination). He became registered with a new broker-dealer – Firm XYZ - that same month. With the exception of a brief period in 2004/2005, Respondent has worked as a registered representative of XYZ since March 2000.

On April 28, 2000, Respondent passed the Series 66 Examination (Uniform Combined State Law Examination). On June 23, 2000, he became registered with the investment advisory firm of XYZ. He remains registered with XYZ to the present day. His CRD record identifies no customer complaints, disciplinary actions or other disclosable events.

On September 29, 2008, Respondent passed the Series 24 (General Registered Principal Examination), which allowed him to supervise other registered representatives.

Respondent first became certified as a CFP® professional on September 8, 2003, and has retained his certification since that date. He has had no prior disciplinary history with CFP Board.

Respondent Is Required to Complete CE Courses for Several Different Organizations

A. CFP Board – 30 CE hours

As a CFP® professional, Respondent is required to complete 30 CE credit hours each two-year CE Reporting Period, including two credit hours of CFP Board-approved Ethics CE and 28 credit hours of General CE. Section 1 of CFP Board’s Continuing Education Policies (“CE Policies”) states as follows:

CFP Board strongly recommends that CFP® professionals complete their General CE hours by taking pre-accepted CE programs that are registered with CFP Board by CE sponsors. Pre-accepted CE programs can be found using the Find a CE Program search tool (www.CFP.net/FindCE). Non-sponsor programs that have not been registered with CFP Board can be submitted for consideration of General CE credit, but submissions must still meet CFP Board's CE program requirements in order to be eligible for CE credit.

Respondent's three most recent two-year CE Reporting Periods covered the following dates:

CE Reporting Period 2012-2014:	4/1/2012 – 3/31/2014
CE Reporting Period 2014-2016:	4/1/2014 – 3/31/2016
CE Reporting Period 2016-2018:	4/1/2016 – 3/31/2018.

Respondent's email signature and websites list the following credentials following his name: Respondent, JD, CPA, CLU, CFP®. Most of Respondent's credentials and licenses require him to complete their own pre-approved continuing education courses or attend their own pre-approved CE seminars or presentations. (Hereinafter, all continuing education courses, seminars and presentations will be referred to as "courses".)

B. State Bar – 25 CE hours

In 1992, Respondent became licensed to practice law in State, and he has continued as a licensed attorney ever since.

The State Bar requires attorneys to complete 25 hours of Minimum Continuing Legal Education ("MCLE") courses every three years and file a report with the State Bar confirming the courses have been completed.

Respondent apparently preserved records documenting the coursework he completed for the MCLE requirements. On August 8, 2018, he produced to CFP Board the records for approximately 17 different MCLE-approved courses he completed between November 18, 2015 and April 25, 2018.

C. State Department of Insurance – 24 CE hours

In October 1999, Respondent obtained a license to sell insurance from the State Department of Insurance ("State DOI"). He has maintained that license ever since, and holds current appointments with approximately 18 insurance companies.

State DOI requires licensed insurance agents to complete 24 hours of Continuing Education courses for every two-year license term. Agents are not required to submit their CE coursework, because the continuing education providers are required to submit their student rosters directly to State DOI. One CE provider, provided documentation to CFP Board reflecting more than a dozen courses that Respondent took to satisfy his insurance CE requirements between 2009 and 2017. State DOI requires its CE providers to provide certificates of completion to all students who successfully complete each CE course. It directs the agents to retain the certificates for at least five years.

On August 8, 2018, Respondent produced to CFP Board a record he had downloaded from the website of the CE provider identifying eight different insurance CE courses he had completed between August 2013 and September 2017.

D. CLU® – Chartered Life Underwriter – 30 CE hours

Respondent is designated as a Charter Life Underwriter (CLU®) by the American College of Financial Services (“the College”). To renew the designation, he must complete the requirements of The College’s Professional Recertification Program.

A client-facing CLU® designees must complete 30 hours of CE every two years. Courses offered by The College are automatically added to the designee’s records. All other courses need to be self-reported by the designee by the end of the second year. The College’s website indicates that designees are “required to maintain appropriate documentation that substantiates the validity of any CE credit reported for the Professional Recertification Program. This is important in the event the designee is subject to The College’s audit process.”

CFP Board Audited Respondent’s Self-Reported CE for CE Reporting Period 2016-2018

On February 23, 2018, a CFP Board employee sent an email to Respondent stating that his CE account was “under Audit.” The email indicated that Respondent currently owed an outstanding balance of 30 credit hours for CE Reporting Period 2016-2018, which was scheduled to end on March 31, 2018. CFP Board included a chart listing the Course Name, CE Sponsor Name, and Date Completed for each of the six courses that Respondent had self-reported to CFP Board as having been completed between May 12, 2017 and January 11, 2018. The email stated:

The following [six CE courses totaling 24 credit hours] have not been accepted and require additional information. ... At this time, credit hours you self-reported to fulfill your CE requirement are under Audit. For the status of these credit hours to be changed to Accepted, we are requesting the Certificate of Completion for the courses identified above. Please respond directly to this email with the Certificate(s) of Completion attached, within seven (7) business days. Please note, if we have not received this information within 7 business days of this message, your General CE entry will be denied and you will need to make up any CE deficit.

On March 6, 2018, a CFP Board employee, ZZ, sent an email designated as “High Importance” to Respondent with the following subject line: “Audit of General CE courses.” ZZ listed all six of the self-reported courses that Respondent claimed to have completed during CE Reporting Period 2016-2018, and stated as follows:

At this time, the [six] courses below you self-reported ... cannot be accepted until we receive your Certificate of Completion. Please respond directly to this email with the Certificate of Completion for each course attached within three (3) business days. Please note, if we have not received this information within 3 business days of this message, your General CE entry will be denied.

Respondent did not respond to CFP Board’s February 23rd email within its seven-day deadline. He also failed to respond to CFP Board’s March 6th email within the three-day deadline, or at any point thereafter.

Nevertheless, the evidence indicates that Respondent received the emails and understood that CFP Board had rejected all six courses and denied all 24 CE hours that he had self-reported for CE Reporting Period 2016-2018. CFP Board’s records confirm that Respondent completed eight CFP Board-approved CE courses from March 15-23, 2018. Each of the eight CE courses was hosted by (and subsequently reported by) a CFP Board-approved CE Sponsor. None of the courses were self-reported.

On March 20, 2018, ZZ sent a follow-up email to Respondent stating:

During the course of our audit, we reviewed the CE credits from your current and previous reporting. None of the sponsors could provide evidence of your completion for any of the courses that were self-reported over the past two reporting periods. As a result, your case is being sent to Professional Standards for review.

Respondent again sent no response to CFP Board's request.

Respondent Falsified Self-Reported CE for Three Reporting Periods Between 2012 and 2018

CFP Board's records indicate that Respondent self-reported 24 hours of CE credits during CE Reporting Period 2016-2018 and 30 hours of CE credits during CE Reporting Period 2014-2016. When looked at together, CFP Board's records suggest that Respondent used self-reported CE hours to surpass the required minimum of 30 CE credits for the two CE Reporting Periods.

CFP Board requested that the CE Sponsors for the CE courses Respondent self-reported to provide evidence that Respondent had completed the CE courses. The CE Sponsors' replies consistently revealed that Respondent's claims were inaccurate and unsupported.

CFP Board's Notice of Investigation ("NOI") also asked Respondent to provide written responses to questions asking:

- a) whether Respondent had completed the courses he had self-reported on the date he had claimed;
- b) whether he had completed those same courses on different dates; and
- c) why he had reported course completions he had not completed and completion dates that were inaccurate.

On June 19, 2018, Respondent sent the following response to CFP Board's NOI:

I do not have paperwork supporting the CE credits listed in your recent letter to me. In the absence of those written records, I tried to guesstimate...

I apologize for the time spent looking into this, and will endeavor to be better about keeping the evidence of participation in these meetings going forward as it is probably easier in the long run than simply doing everything online after the fact.

On June 20, 2018, CFP Board requested a more detailed response:

Please go through and answer each numbered/lettered question in the Notice of Investigation. Please note that page two states "If you are unable to submit the requested information and documents, please explain what steps you took to obtain the information and documents, and why you were not successful in doing so.

On July 3, 2018, Respondent sent a follow-up email indicating that there was little to add to his previous response. Respondent specifically acknowledged that he could not produce any Completion Certificates, calendars or other documentation that would support his claims that he had completed the courses he self-reported on the dates claimed. He wrote:

- 1) I'm not sure. I've taken multiple courses from XYZ and ABC but had to guess titles and dates.
- 2) Same as above. I don't have sufficient records/calendars to provide specific courses and dates.
- 3) I don't have documentation. (*Emphasis added.*)

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Essentially, Respondent was conceding that his self-reports were fabricated, and that it was therefore impossible to provide documentation to support his false claims. But while Respondent appeared to be willing to concede he had not taken the precise courses he claimed, he seemed to be claiming that he had taken other CE courses that would have sufficiently satisfied CFP Board's CE requirements ... if he had simply preserved the paperwork. CFP Board staff concluded that Respondent was trying to suggest that his misconduct involved merely a record-keeping problem, rather than an actual failure to complete the CE courses which CFP Board requires as a condition of certification.

CFP Board staff sent a follow-up request on July 6, 2018. The email informed Respondent that he needed to obtain documents from his CE Sponsors that would prove he had attended their CE courses. The email explained that his failure to produce those documents to CFP Board could be a failure to cooperate with CFP Board's investigation and result in an "adverse inference."

On July 12, 2018 Respondent replied with only the following two-sentence email:

Seems like we're going in circles here. As advised, I went through my records and couldn't find the necessary documentation, hence the guestimation to attempt to reflect courses taken from the options listed.

On July 30, 2018, CFP Board sent a Request for Additional Information ("RFAI") indicating that CFP Board had now expanded the scope of its investigation to include CE Reporting Period 2012-2014. The RFAI directed Respondent to approach each of his CE Sponsors to obtain copies of any and all records that would confirm that he had completed CE courses that would satisfy CFP Board's CE requirements. The RFAI required Respondent to produce copies of any documentation he received from CE Sponsors showing that he had completed their courses.

Respondent failed to respond to the RFAI by the due date of August 1, 2018. On August 2, 2018, CFP Board contacted Respondent by phone and email to discuss the delinquent response. The staff was eventually able to schedule a phone call with Respondent for August 6, 2018.

On August 7, 2018, CFP Board sent a four-page email to Respondent summarizing the content of the staff's August 6th teleconference with Respondent. CFP Board asked Respondent to review the summary and send a reply email indicating whether it accurately reflected the substance of the discussion. The following day, Respondent sent a reply email stating: "[Y]our very detailed email does seem to fairly represent our conversation."

The following summary reflect what Respondent told CFP Board staff about the process he had followed when self-reporting his CE credits to CFP Board during the CE Reporting Periods of 2014-2016 and 2016-2018:

You indicated that you reported the self-reported courses by logging into your online CE account at CFP Board and locating a drop-down menu showing the various CE Sponsors that offered courses that were available for CFP Board credit. You indicated that when you selected that CE Sponsor, you were then shown a second drop-down menu listing the courses offered by that CE Sponsor that were eligible for CFP Board credit. You then selected the names of the courses that most closely matched the courses you remembered taking. You said that you then listed a completion date that approximated the date you recalled taking the CE course. You acknowledged, however, that both the names of the courses and the dates of completion were "guestimates."

...

With respect to the eight courses you reported taking with [a CE Sponsor] in the 2014-2016 reporting period, you told us during our phone call that [the CE Sponsor] offered a conference on tax and estate planning every year at a Los Angeles hotel that lasted two-and-a-half-days. You said that you attended that annual conference on multiple occasions and attended presentations that qualified for CFP Board CE credits. You indicated that you believe you attended the tax and estate planning conference in 2016, but you are not certain. You indicated that you believe you attended presentations similar to the ones you self-reported, but that you were only making a guestimate when you identified the name, because you did not have any records to show what presentations you attended.

CE Reporting Period 2012-2014

CFP Board's records indicate that Respondent self-reported 28 hours of CE credits during CE Reporting Period 2012-2014, and that three CE Sponsors reported that he had completed an additional four credit hours for the same period. When looked at together (as reflected in the two charts listed below), CFP Board's records suggest that Respondent surpassed the required minimum of 30 CE credits for CE Reporting Period 2012-2014.

Respondent Failed to Satisfy CFP Board's CE Requirements

Under Section 8 of CFP Board's CE policies, CFP® professionals are required to demonstrate full compliance with the CE requirement. If CFP Board requests documentation of any registered CE credits that were self-reported, CFP® professionals are required to provide documentation confirming that they completed the self-reported courses. CFP® professionals must retain documentation supporting all CE credits reported to CFP Board, including Certificates of Completion/Attendance, unofficial transcripts showing successful completion of the courses, copies of final assessment/examination results, program summaries, and course agendas.

Respondent has acknowledged that he does not have the required documentation for most, if not all, of the 38 courses that he self-reported to CFP Board during the three relevant CE Reporting Periods covering April 1, 2012-March 31, 2018.

CFP Board concluded that Respondent did not actually complete at least 12 of the 14 courses he had self-reported during CE Reporting Period 2012-2014. Without those 20 credit hours, Respondent's CE account would be left with only the 4 credit hours he'd earned from three CE Sponsor-reported courses. Therefore, when the CE Reporting Period ended on March 31, 2014, Respondent had not fulfilled the 30-credit-hour minimum required under Section 1 of CFP Board's CE policies. Without Respondent's false, misleading and unsupportable self-disclosures, his application to renew his certification would have been denied and CFP Board would have taken steps to prevent him from using the CFP® marks. However, by continuing to use the CFP® marks (for instance on his website and email signature) at a time when he had not satisfied CFP Board's CE requirements, Respondent misled clients and prospects into believing that he was a CFP® professional at a time when he was not.

Similarly, CFP Board concluded that Respondent did not actually complete any of the 18 courses he self-reported during CE Reporting Period 2014-2016. Without those 30 credit hours, Respondent's CE account would have been left with 0.0 credit hours. Therefore, when the CE Reporting Period ended on March 31, 2016, Respondent had not completed any of the 30 credit hours he would have needed to get his certification renewed. By providing the false, misleading and unsupportable self-disclosures to CFP Board, he was able to renew his certification at a time when he should have been denied. By continuing to use the CFP® marks, Respondent held himself out to clients and prospects as someone who had met all of CFP Board's arduous certification requirements, even when he knew he had failed to do so.

Finally, none of Respondent's self-reported courses reported for CE Reporting Period 2016-2018 were accurate. (As mentioned above, he had previously completed two of the courses during the preceding reporting period, and listed completion dates that were false and misleading in an effort to obtain credit for courses that did not properly qualify.) Without the 24 credit hours earned from these self-reported courses, Respondent's CE account would have had 0.0 credit hours at the time when CFP Board initiated its audit. After CFP Board alerted him about the serious deficiencies in his CE reporting activities, he rushed to complete all of the required 30-credit-hours in the final 16 days of his Reporting Period. But while Respondent did manage to complete the 30-hour minimum before March 31, 2018, he never successfully satisfied the 56-hour deficit in his CE account that would have carried over from the two preceding CE Reporting Periods. By making false, misleading and unsupportable self-disclosures to CFP Board, Respondent was able to successfully renew his certification and continue to use the CFP® marks. By holding himself out as a CFP® professional, he caused his clients and prospects to misleadingly assume that he'd satisfied CFP Board's certification requirements when he had not done so.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 2.1 of the *Rules of Conduct*, which provides that a certificant shall not communicate, directly or indirectly, to clients or prospective clients any false or misleading information directly or indirectly related to the certificant's professional qualifications or services.

In order to retain the right to use the CFP® marks, CFP Board requires its certificants to complete at least 30 hours of continuing education during each two-year CE Reporting Period. Respondent, a certificant, used the CFP® marks for at least four years despite knowing that he had failed to complete the minimum number of CE credit hours to satisfy CFP Board's certification requirements. By holding himself out as a CFP® professional at a time when he had not satisfied the CE requirements, Respondent misled clients, potential clients and the public into believing that he possessed professional qualifications and CE-derived knowledge that he did not possess, and thereby violated Rule 2.1 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 6.2 of the *Rules of Conduct*, which provides that a certificant shall meet all CFP Board requirements, including continuing education requirements, to retain the right to use the CFP® marks.

CFP Board requires its certificants to complete at least 30 hours of continuing education during each two-year CE Reporting Period. Certificants must satisfy this minimum continuing education requirement to retain the right to use the CFP® marks. Respondent, a certificant, failed to complete 30 CE credit hours over a two-year period for CE Reporting Periods 2012-2014 and 2014-2016. After being informed that his CE self-reporting activity was being audited and referred to Professional Standards for potential disciplinary action, Respondent rushed to complete 30 hours of CE Sponsor-reported credits in the final two weeks of CE Reporting Period 2016-2018. But since Respondent had not satisfied the 56-hour CE account deficit that had carried over from the previous two Reporting Periods, he failed to satisfy CFP Board's CE requirements for Reporting Period 2016-2018. By failing to complete the minimum required CE credit hours, Respondent failed to satisfy CFP Board's continuing education requirements, and thereby violated Rule 6.2 of the *Rules of Conduct*.

Third Ground for Discipline

Pursuant to Article 3(g) of the *Disciplinary Rules*, there are grounds to discipline Respondent for any false or misleading statement made to CFP Board.

Respondent, a certificant, filed online reports with CFP Board in which he “self-reported” that he completed more than 30 specific CE courses providing approximately 80 CE credit hours over a six-year period. The CE Sponsors who purportedly presented the courses reviewed their records and confirmed that Respondent had not completed most, if not all, of the courses he claimed to have completed. After CFP Board challenged the accuracy of his online CE self-reporting during an audit and subsequent investigation, Respondent eventually acknowledged that he had not actually completed the identified courses or any other courses on the specific dates he claimed in his online reports. By making false and misleading statements to CFP Board, Respondent violated Article 3(g) of the *Disciplinary Rules*.

Fourth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 6.5 of the *Rules of Conduct*, which provides that a certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.

Respondent, a certificant, filed online reports with CFP Board claiming that he completed more than 30 specific CE courses providing approximately 80 CE credit hours over a six-year period. Respondent later acknowledged that he had not actually completed most, if not all, of the identified courses or any other courses on the specific dates he identified in his online reports. By filing false and misleading online reports with CFP Board to gain CE credit for courses he had not actually taken, Respondent engaged in conduct that reflected adversely on his integrity and his fitness as a CFP® certificant.

IV. Discipline Imposed

The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Grounds for Discipline. Pursuant to the terms of the Settlement Agreement, the Commission issued to Respondent a suspension of six months and a requirement that Respondent complete an additional 30 hours of CE credits by the conclusion of his suspension period. as provided in Article 4 of the *Disciplinary Rules*.

The Commission found the following *Sanction Guidelines* relevant to its decision: (1) a Suspension for at least one year and one day for Fraud Involving Professional Activities (Conduct 20(a)); (2) a Public Letter of Admonition for Misrepresentation to Clients and Prospective Clients (Conduct 20(d)); (3) a Public Censure for a CE Violation; and (4) a Public Censure for Misrepresentation to Non-Clients (Conduct 20(c)).

In coming to its decision to enter into the Settlement Agreement, the Commission considered the following aggravating factors: 1) the conduct occurred over a six-year period, or three CE reporting periods; (2) Respondent is an attorney and a supervising principal, and, therefore, should have known better to not falsify documentation; and (3) Respondent intended to deceive CFP Board with respect to his reporting of his CE courses.

In mitigation, the Commission considered that: (1) Respondent had no previous disciplinary history; (2) there was no proof that Respondent's conduct caused financial harm to clients; and (3) Respondent cooperated with CFP Board's investigation

Additionally, the Commission consulted *Anonymous Case Histories* ("ACHs") 23408 and 22898. In ACH 23408, a CFP® professional's firm terminated him for directing a trainee to complete one portion of an ethics course the CFP® professional was required to take to satisfy CFP Board's CE credit requirements. The CFP® professional entered into a Letter of Acceptance, Waiver and Consent consenting to FINRA's findings that he had (a) allowed the trainee to take the course on his behalf, and (b) submitted the course to CFP Board to satisfy its CE credit requirements. FINRA imposed a ten-day suspension and a \$5,000 fine. The CFP® professional's state regulator also suspended him for ten days and imposed a \$5,000 fine for the same conduct. The CFP® professional failed to report both the FINRA and state regulator suspensions to CFP Board within 10 days. The CFP® professional entered into a Settlement Agreement with CFP Board and accepted a one-year suspension. The Commission considered the fact that the course was an ethics course to be an aggravating factor. No other aggravating or mitigating factors were considered.

In ACH 22898, a CFP® professional allowed his sales assistant to use the CFP® professional's CE vendor login ID to complete an online estate planning course that provided the CFP® professional with 28 CE credits and allowed him to fulfill CFP Board's CE requirements. After the sales assistant mentioned this to the CFP® professional's firm, the CFP® professional was questioned. He confessed to the lapse in judgment and explained that he had been extremely busy servicing 800 clients. The CFP® professional's firm terminated him in October 2012. After FINRA investigated the termination, it found that the CFP® professional had failed to observe high standards of commercial honor, in violation of FINRA Rule 2010. The CFP® professional agreed to a settlement imposing a ten-day suspension and \$5,000 fine. The Commission accepted a Settlement Agreement imposing a six-month suspension and a requirement to complete an additional 28 hours of remedial CE credits beyond the required CE hours. The Commission considered no mitigating factors. It concluded that the CFP® professional had intended to deceive CFP Board regarding the completion of his CE requirements, and considered that to be the only aggravating factor. The Commission found ACH 22898 particularly relevant with respect to the Respondent because of the finding of intent.