

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3

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**FILED**

JUL 27 4 45 PM '01

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Board of Accountancy TITLE NUMBER: 1

CITE AUTHORITY: W. Va. Code section 30-9 et. seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

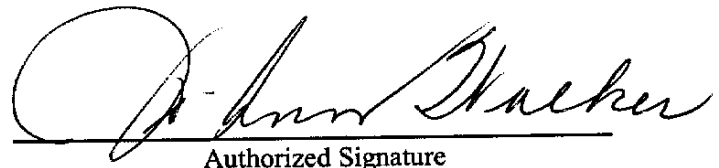
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: Board Rules and Rules of Professional Conduct

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

■  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 1 Legislative Rule Board of Accountancy

Type of Rule:  Legislative     Interpretive     Procedural

Agency: Board of Accountancy

Address: 122 Capitol Street, Suite 100

Charleston, WV 25301-2695

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	n/a	n/a	n/a	n/a	n/a
PERSONAL SERVICES	n/a	n/a	n/a	n/a	n/a
CURRENT EXPENSE	n/a	n/a	n/a	n/a	n/a
REPAIRS & ALTERATIONS	n/a	n/a	n/a	n/a	n/a
EQUIPMENT	n/a	n/a	n/a	n/a	n/a
OTHER	n/a	n/a	n/a	n/a	n/a

2. Explanation of Above Estimates:

At this time, the Board does not anticipate a measurable increase or decrease in costs, services, expenses and alterations, or need for equipment resulting from these rules.

3. Objectives of These Rules:

These Rules change and improve the method by which in-state and out-of-state accountants receive authority to practice in this state.

Rule Title: Board Rules and Rules of Professional Conduct

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The Board will continue to collect various fees and collect certain new fees which will permit the Board to continue to sustain itself.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

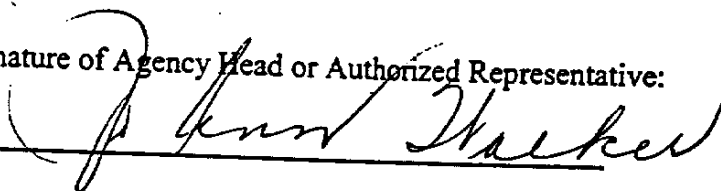
Such fees will be charged to individual accountants and to accounting firms.

C. Economic Impact on Citizens/Public at Large.

No impact on the citizens/public at large is anticipated.

Date: June 26, 2001

Signature of Agency Head or Authorized Representative:



## STATEMENT OF CIRCUMSTANCE

The proposed "Board Rules and Rules of Professional Conduct," Title 1, Legislative Rule, Series 1, Board of Accountancy, arise out of substantial changes to W. Va. Code § 30-9 et seq. as a result of the passage of H. B. 2503 in the 2001 Legislative session. The enrolled bill authorized the Board of Accountancy to propose:

rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article, including, but not limited to, the following:

- (1) The education required of an applicant;
- (2) The experience required of an applicant;
- (3) The examination administered under this article;
- (4) Issuing or renewing a certificate, registration, permit or authorization;
- (5) Denying, suspending, revoking, or reinstating a certificate, registration, permit or authorization;
- (6) The conduct of investigations;
- (7) Firm ownership requirements;
- (8) Accounting corporations;
- (9) Substantial equivalency requirements;
- (10) Continuing professional education requirements for licensees, including exemptions;
- (11) Peer review requirements;
- (12) Professional conduct requirements;
- (13) Identifying professional services required to be performed in accordance with the applicable statements on standards;
- (14) Use of the titles "certified public accountant," "CPA," "public accountant" and "PA";
- (15) Use of commissions, referral fees and contingent fees;
- (16) Fees for the issuance and renewal of a certificate, registration, permit or authorization and other fees authorized by this article; and
- (17) Other rules the board considers necessary for implementing the provisions of this article.

Pursuant to this charge, the Board has promulgated the attached proposed rule.

## SUMMARY:

### Title 1 Legislative Rule Board of Accountancy Series 1 Board Rules and Rules of Professional Conduct

#### §1-1-1: General:

Additions to this section are minor and largely procedural reflecting the emphasis of H.B. 2503 on certification, permitting, registration, and substantial equivalency as means for the lawful practice of accountancy.

#### §1-1-2: Definitions:

Authorizing section: W. Va. Code § 30-9-2. HB 2503 adds numerous definitions to the statute. These have been added to the rule. Additionally, several definitions from the Uniform Accountancy Act (UAA) and its Rules have been added to the Rule.

#### §1-1-3: Board Organization and Proceedings:

This section is unchanged from the previous rule.

#### §1-1-4: Registration of Public Accountants:

This section is removed in its entirety.

#### §1-1-5: Certification.

Authorizing section: W. Va. Code § 30-9-7 and 30-9-8. This section has undergone significant revision. In particular, note that the experience requirement located in section 7 of the prior Rule is now in this section reflecting the one-tier approach to certification; i.e., that examination, education, and experience requirements must all be fulfilled prior to issuance of a certificate.

Specific changes reflected in the new Rule:

(1) § 5.2 and 5.4 of the new Rule: Age and domicile requirements have been removed;

(2) § 5.3: Educational requirements in old Rule have been retained;

(3) § 5.5: Experience: This section has been moved from section 7 of the prior Rule. This subsection has undergone an extensive change pursuant to W. Va. Code § 30-9-8(3) as follows:

a. HB 2503 provides that only one years experience is required for certification. This is reflected in the rule changes.

b. The UAA provides rules on verification of experience that have been incorporated in this section.

#### **§1-1-6: Substantial Equivalency Certificate Requirements.**

Authorizing Section: W. Va. Code § 30-9-9. This section reflects the addition of certification through substantial equivalency in HB 2503. The Rule provides methods for issuance of a substantial equivalency certificate. A certification will be granted where the applicant holds certification in a state with certification requirements substantially equivalent as determined by the NASBA National Qualification Appraisal Service.

#### **§1-1-7: Not Substantially Equivalent Certificate Requirements.**

Authorizing Section: W. Va. Code § 30-9-10. This rule permits one who does not meet the substantially equivalent requirements to meet alternate requirements for certification. The proposed Rule outlines these requirements which are taken largely from the UAA.

#### **§1-1-8: Foreign Designation Certificate Requirements.**

Authorizing Section: W. Va. Code § 30-9-11. This rule permits an individual who holds a foreign designation to obtain certification if certain requirements are met. The proposed Rule reflects UAA §6(g).

#### **§1-1-9: Examination for Certificate.**

Authorizing Section: W. Va. Code § 30-9-5(a)(3). The proposed Rule includes several additions and deletions. First, the proposed rule permits the board to use the AICPA Exam and Grading Service (9.3.4). Second, it includes extensive provisions on cheating (9.3.6). Third, the Rule includes allowance for computerized testing as a means for administering the examination. The Rule deletes certain notice provisions and obsolete language regarding retention of credits by those who passed portions of the examination prior to May, 1994.

**§1-1-10: Certificate Renewal; Condition of Renewal.**

Authorizing section: W. Va. Code § 30-9-12. Much of the old rule is retained. Note changes that require an applicant to list out-of-state denials, revocations, and other disciplinary actions (10.2.1). Also note changes to continuing education exceptions which broaden those who do not need to maintain CPE. (10.3.4)

**§1-1-11: Duty to Inform Board of Denials, Suspensions, Revocations, Limitations.**

Authorizing section: W. Va. Code § 30-9-13. This is a new section that essentially mirrors HB 2503.

**§1-1-12: Peer Review.**

This section carries over the language from the old rule. Note also that W. Va. Code § 30-9-19 discusses an applicant under going "peer review." Additional requirements for peer review have been included in section 16 of the proposed Rule.

**§1-1-13: Holder of Out-of-state Certificate Establishing Principal Place of Business in State.**

Authorizing section: W. Va. Code § 30-9-14. This is a new rule reflecting HB 2503.

**§1-1-14: Public Accountants.**

Authorizing section: W. Va. Code § 30-9-15. This rule emphasizes that PA's are subject to rules governing CPA's reflecting the language in the statute.

**§1-1-15: Substantial Equivalency Practice Privileges.**

Authorizing section: W. Va. Code § 30-9-16. This proposed rule permits those with certifications from other states to practice in West Virginia without certification if their out-of-state licensing requirements were substantially similar to the UAA requirements. This language is taken from UAA Section 23. The proposed Rule provides a fee of \$10.00 for a practitioner from a substantially equivalent state and a fee of \$50.00 from a practitioner from a state that is not substantially equivalent

**§1-1-16: Issuance and Renewal of Permits.**

Authorizing section: W. Va. Code § 30-9-17 and 30-9-18. This rule expands on the newly granted authority to issue permits to firms. It adds section 7.2 of the UAA relating to notification of firm changes. This rule also provides for a fee of \$65.00 for a permit.

**§1-1-17: Issuance and Renewal of Authorizations.**

Authorizing section: W. Va. Code § 30-9-19. This rule outlines the issuance and renewal of authorizations for attest and compilation services. It also includes peer review requirements drawn from the UAA. Finally, it includes a fee of \$65.00 to perform both attest and compilation services and fee of \$50.00 to perform attest or compilation services.

**§1-1-18: Refusal to Issue or Renew; Suspension, Revocation or License; Disciplinary Action.**

Authorizing section: W. Va. Code § 30-9-20. This section changes the old rule to the extent that HB2503 added, revised grounds for denial or disciplinary action. The board is required to notify other jurisdictions in which a certificant, SE practitioner, or firm who has been discipline or denied licensure practices.

**§1-1-19: Contingency Fee Contracts; Commissions; Referral Fees.**

Authorizing section: W. Va. Code § 30-9-25. This carries over the old rule. It has been moved within the rule to reflect its location in HB 2503.

**§1-1-20: Confidentiality of Information.**

This section establishes standards for treatment of confidential client information.

**§1-1-21: Accounting Corporations and Other Forms of Business.**

Authorizing section: W. Va. Code 30-9-30. This section carries over the old rule. It has been moved within the rule to reflect its location in HB 2503.

**§1-1-22: Fees.**

Authorizing section: W. Va. Code § 30-9-5(a)(16). The following fees have been added in this section:

- (a) a fee of \$65.00 for renewal of a firm permit;
- (b) a fee of \$65.00 for authorization to perform attest and compilation services;
- (c) a fee of \$50.00 to perform attest or compilation services;
- (d) a fee of \$10.00 to practice in West Virginia a substantially equivalent practitioner from a substantially equivalent state;
- (e) a fee of \$50.00 to practice in West Virginia as a substantially equivalent practitioner from a non-substantially equivalent state.

**§1-1-23: Rules of Professional Conduct.**

Authorizing section: W. Va. Code § 30-9-5(a)(12). Note addition of recognized professional standards section.



- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 27, 2001

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jo Ann Walker, Executive Director, Board of Accountancy, 122 Capitol Street,  
Suite 100, Charleston, West Virginia 25301, Phone (304) 558-3557; Fax (304)  
558-1325

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

same

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

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b. Date of hearing or comment period:

n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

## Public Comments and Board Responses

The Board of Accountancy has received three comments during the pendency of the public comments period. Those comments will be set forth in pertinent part below followed by the agency response. For ease of reference, the comments have been attached hereto in their entirety.

**Comment 1:** By letter dated July 13, 2001, James J. Fraser, CPA, stated in pertinent part:

I am not sure why the age of 62 is so important to those not having to place the word (inactive) or any other word adjacent to this or her CPA title on any business card, telephone listing, etc.

I believe that the profession should be capable of keeping tabs on those who are practicing CPA's and those who violate the ethics should be accountable to the Board of Accountancy.

If a person retires at the age prior to 62 (under your new rules) it appears he/she is considered a different kind of CPA. I can not believe that the Board wants another class of CPAS.

If a lawyer or doctor retires from practice prior to age 62, are they considered (inactive)?

I recommend that all reference to any age (as to exemptions" be deleted and the Board take other means to regulate the profession.

**Board response:** The rule at issue, 1-1-9.3.4(b) falls within the context of continuing education exceptions and specifically tracks the language of the statute. Specifically, W. Va. Code § 30-9-12(b)(2) provides in pertinent part:

[A] certified public accountant receiving the exemption from continuing professional education requirements who has completely discontinued his or her performance of professional services, who has no active management or supervisory responsibilities in a firm, and who is at least sixty-two years of age is not required to place the word "inactive" or any other word adjacent to his or her "CPA" title . . .

Thus, no change has been made to this section of the rule based on this comment.

**Comment 2:** By letter dated July 19, 2001, E. Marc Abraham commented as follows:

(1) A certificate holder should not be required to receive authorization from the Board to perform compilation services, especially compilations without disclosures. Any licensed practicing CPA through passing the uniformed examination and maintaining the 40 hour per year CPE requirement should be competent enough to perform the service without additional requirements.

(2) If a licensed individual or firm is required to undergo a peer review program than there should be options other than the one offered by the AICPA. Will the Board offer a peer review program of its own or will there be other organizations that will provide this service that will be acceptable to the Board?

**Board response:**

1) The requirement that a CPA receive authorization to perform compilations is a function of the W. Va. Code § 30-9-1 et seq. Specifically, W. Va. Code § 30-9-19 provides as follows:

[N]o person may provide attest or compilation services without having first obtained an authorization issued by the board.

Because the new statute mandates that the certificant providing attest or compilation services must first obtain authorization, the regulations reflect this requirement. No change has been made to this rule with regard to this comment.

(2) The Board is continuing to discuss the peer review options that will be made available to practitioners. The Board is considering the inclusion of peer review other than that offered by the AICPA. No change has been made to this rule with regard to this comment.

**Comment 3:** Comments of the West Virginia Society of Certified Public Accountants

**Board response:** With regard to the comments provided by the Society of Accountants, those comments were provided in the form of substantive changes of a substantial nature, as well as non-substantive, technical changes. These comments were received by the Board on July 26, 2001. With such significant comments outstanding and insufficient time in which to consider and, potentially, incorporate

these comments in the rule, the Board will continue to consider these proposals and work with the Society and any other interested party to attempt to reach satisfactory resolutions to the issue raised in the comments. Thus, the process of reviewing and incorporating these comments is ongoing.

# JAMES J. FRASER CPA

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140 Cleveland Ave.  
Charleston, WV 26301  
JFRASER@AOL.COM  
JFRASER@AOL.COM

July 13, 2001

Legislative Rules - Comment Period  
West Virginia Board of Accountancy  
122 Capitol Street, Suite 100  
Charleston, WV 25301

I would like to address my comments to the proposed actions on page 19 as they apply to Continuing Education Exceptions.

I am not sure why the age of 62 is so important for those not having to place the word (inactive) or any other word adjacent to his or her CPA title on any business card, telephone listing, etc.

I believe that the profession should be capable of keeping tabs on those who are practicing CPA's and those who violate the ethics should be accountable to the Board of Accountancy.

If a person retires at the age prior to 62 (under your new rules) it appears he/she is considered as a different kind of CPA. I can not believe that the Board wants another class of CPAS.

If a lawyer or doctor retires from practice prior to age 62, are they considered (inactive)?

I recommend that all reference to any age (as to exemption) be deleted and the Board take other means to regulate the profession

Sincerely,



James J. Fraser, CPA

DOBBS, ABRAHAM & COMPANY  
CERTIFIED PUBLIC ACCOUNTANTS  
400 MORTON AVENUE  
P.O. BOX 248  
MOUNDSVILLE, WV 26041  
304-845-7914  
FAX 304-843-1905

July 19, 2001

Legislative Rules - Comment Period  
West Virginia Board of Accountancy  
122 Capital Street, Suite 100  
Charleston, WV 25301

Re: Comments on Title 1, Series 1, Board Rules  
and Rules for Professional Conduct

I have two comments to the above proposed rules:

- (1) A certificate holder should not be required to receive authorization from the Board to perform compilation services, especially compilations without disclosures. Any licensed practicing CPA through passing the uniformed examination and maintaining the 40 hour per year CPE requirement should be competent enough to perform the service without any additional requirements.
- (2) If a licensed individual or firm is required to undergo a peer review program than there should be options other than the one offered by the AICPA. Will the Board offer a peer review program of its own or will there be other organizations that will provide this service that will be acceptable to the Board?

Your immediate attention and reply in these two matters are very much appreciated.

Sincerely,



E. Marc Abraham, CPA  
WV001473

EMA/dlc

# JACKSON & KELLY PLLC

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July 26, 2001

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FAIRMONT, WEST VIRGINIA 26554  
TELEPHONE 304-368-2000

## Via hand delivery

West Virginia Board of Accountancy  
Attention: Jo Ann Walker  
122 Capitol Street, Suite 100  
Charleston, West Virginia 25301

Re: Comments on Proposed Series 1 Rule Submitted by the  
West Virginia Society of Certified Public Accountants

Dear Ms. Walker:

We are counsel to the West Virginia Society of Certified Public Accountants ("Society"). The Society has requested that we prepare and file comments on the proposed changes filed on June 26, 2001 to the West Virginia Board of Accountancy's "Board Rules and Rules of Professional Conduct," 1 WVCSR 1 (the "Proposed Rules"). Enclosed with this letter is the suggested revision to the Proposed Rule (the "Revision"). We have provided the Revision both in printed form and on a diskette in WordPerfect format.

This transmittal letter is intended to guide the Board and its counsel through the significant recommended changes included in the Revision. You will note that while the Proposed Rule used strike-throughs and redlining to show changes from the existing rule, the Revision is a "clean" version that does not show these changes. During our preparation of the Revision, we noticed that it was almost impossible to show these changes and still maintain the strike-through and underscoring conventions normally used by legislative staff counsel.

We will divide our commentary on the Revision into two sections. Section A of this letter details certain stylistic and other minor changes included in the Revision that we believe improve the Proposed Rule's readability, internal consistency and adherence to the requirements of H.B. 2503 (as codified at W. Va. Code § 30-9-1, *et seq.*, the "Act"). Section B of this letter addresses certain substantive changes recommended in the Revision. Please keep in mind that this letter is not a comprehensive list of all the differences between

the Revision and the Proposed Rule: there are other stylistic and minor changes that we have not addressed.

### Section A. Stylistic and conforming changes

#### 1. Numbering.

In many instances, the Revision makes numbering, lettering and heading designation changes from the Proposed Rule to improve readability and to promote a logical flow of the rule provisions.

#### 2. Use of "licensure" and "license."

In the Revision, we have used the words "licensure" or "license" only in instances in which we intend to refer non-specifically to a certificate, registration, permit or authorization, or where the text of a rule is intended to apply to all of them. Where a rule is specifically intended to address fewer than all of these four categories, the specific terms are used.

Two additional notes on this subject. In many of the certificate renewal provisions, we have chosen to use only the term "certificate," although those provisions apply with equal force to public accountants (for instance, in connection with the renewal of registrations) by virtue of Section 13 of the Revision. Second, in many instances we had used the phrase "licensee or substantial equivalency practitioner" so as not to lend the impression that the various restrictions in the Revision apply to licensees but not also to substantial equivalency practitioners.

#### 3. Conformed references.

In the Revision, we have used the following terms: (i) "the Act" to refer to W. Va. Code § 30-9-1, *et seq.*; (ii) "this Rule" to refer to the entire Series 1 rule; (iii) the capitalized word "Board" rather than the lower case usage appearing from time to time in the Proposed Rule and (iv) the capitalized phrase "Uniform Accountancy Act."

#### 4. Use of "professional services."

In previous versions of the Act, a licensee's activities were generally described as the "practice of public accountancy." H.B. 2503 moved away from this concept,

replacing it with the concept of a licensee's offer of "professional services" to the public. In nearly every instance in which "the practice of public accountancy" is used in the Proposed Rule, we have replaced it with a reference to "professional services."

## **Section B. Substantive recommendations**

1. Definitions of "AICPA" and "NASBA" (§§ 2.3 and 2.26; pp. 1, 3).

We have modified these definitions to add the language "or any successor organization as determined by the Board."

2. Definitions of "attest services," "audit," "compilation services," "examination" and "review" (§§ 2.5, 2.6, 2.14, 2.16 and 2.38; pp. 2-4).

These definitions do not precisely reference the various statements on standards applicable to the defined services. We have included references to the applicable statement on standards for each defined service as well as a the phrase "or any applicable successor statement on standards published by the AICPA" to capture any changes to these standards in the future.

3. Definition of "NQAS" (§ 2.26; p. 3).

We have added the definition for NASBA's National Qualification Appraisal Service because this term is used several times in the Revision.

4. Definition of "professional services" (§ 2.32; p. 4).

We have added the definition for this term as it appears in the Act. See item A..4 above.

5. Time frame for work experience (§ 4.5; p. 7).

Section 7.4(a) of the current rule requires that an applicant's work experience be obtained within the immediate four years prior to successful completion of the examination. The Proposed Rule did not include any period within which the one year of experience must be obtained. We have proposed that the applicant demonstrate that he or she has obtained one full year of experience during the four year period immediately preceding the application for a certificate.

6. Verification of experience for certification (§ 4.5(b); p. 7).

The Proposed Rule permitted an applicant to have his experience verified by a "licensee" or a "licensee from another state." Recognizing that only an individual should perform this verification, we have permitted experience to be verified "by the holder of a certificate, registration or out-of-state certificate."

7. Application requirements (§ 8.1; p. 9).

The Proposed Rule required that an applicant meet the requirements of subsections 4.1, 4.2, 4.3, 4.4 and 4.5 before applying for the examination. Only three of these subsections -- 4.2, 4.3 and 4.5 -- are truly prerequisites to eligibility for the exam. We have made this change.

8. Computerized examinations (§ 8.3; p. 12).

We have included a subsection that authorizes the Board to develop a written policy under which it may offer a computerized examination in addition to or in lieu of the current non-computerized examination. The new subsection would allow the Board to administer a computerized examination during the period between its initial availability from the AICPA or NASBA and the Legislature's first opportunity to consider and approve legislative rules relating to it. If the Board adopts a written policy, it would address and supercede certain items in earlier subsections of Section 8 that now relate only to the current non-computerized examination.

9. Continuing professional education exceptions (§ 9.3.4(a); p. 15).

We have revised the CPE exception language to make it more closely track the Act.

10. CPE phase-in (§ 9.3.4(c); pp. 15-16).

Section 12(b)(3) of the Act authorizes the Board to "phase in" CPE requirements for persons who as of July 1, 2001 were not offering professional services to the public and who subsequently chose to do so during the three year phase-in period. We have included language to implement this phase-in period.

11. Holders of out-of-state certificates establishing a principle place of business in West Virginia (§ 12; p. 16).

Section 12 of the Proposed Rule provides that the holder of an out-of-state certificate who intends to establish a principle place of business in West Virginia must first apply for the issuance of a certificate, and may only offer professional services in West Virginia as a substantial equivalency practitioner. We have clarified this language to indicate that this limitation applies only until he or she has applied for and received a certificate, and that an applicant who is not issued a certificate must also cease offering professional services as a substantial equivalency practitioner.

12. Substantial equivalency practice privileges (§ 14.1.3(a); p. 17).

The Proposed Rule provides that the Board shall develop and maintain a list of those states whose certification requirements are substantially "similar" to the certification requirements of the Uniform Accountancy Act. We have modified this provision to change the word "similar" to "equivalent" and also to limit the list to those substantially equivalent states that also extend similar privileges to holders of West Virginia certificates.

13. Corrective action for non-compliant firms (§ 15.6; p. 19).

Section 18(b) of the Act provides that the Board shall suspend or revoke the permit of any firm that ceases to meet firm ownership requirements and it fails to take "corrective action in the manner and during the time period specified by rule." The Proposed Rule did not address this subject. We have added language that allows "a non-compliant firm" to take corrective action within a one-year period beginning on the date of the event that caused the non-compliant firm to cease to meet firm ownership requirements.

14. Competency standards for firm authorization (§ 16.3.4; p. 20).

Section 16.3.4 of the Proposed Rule requires that a business entity applying for an authorization must provide, among other things, verification that any CPA or PA who signs or authorizes someone to sign a report of financial statements must meet the competency requirements set forth in the applicable professional standards as set forth in section 22 of the Proposed Rule. We have instead included in § 16.3.4 the specific competency requirements applicable to attest services and compilation services.

15. Peer review requirements for authorizations (§ 16.4; p. 20).

Section 16.2.5 of the Proposed Rule outlined a peer review program that apparently would be administered entirely by the Board. It is our understanding that this does not accurately reflect how the peer review process is expected to be administered. We have included a new subsection on peer review that addresses this issue. In § 16.4, the Board indicates that it will accept the peer review program offered by the AICPA and administered by the Society or any other peer review program that the Board deems comparable in terms of quality, fairness and reliability to the AICPA peer review program. The new rule encourages applicants who wish to use peer review programs other than the AICPA program to submit information about them to the Board in advance.

16. Fees (§ 21; pp. 26-27).

The Society proposes a few small changes to the fee section. In addition to rewording some of the provisions, we have deleted a few fee provisions (subsections (g) and (h) in the Proposed Rule, for example) in favor of new rules incorporating H.B. 2503 innovations such as the firm permit. We have also removed other language that appears not to make sense in light of new definitions (such as the "active certificate holder registration fee" in subsection (i) of the Proposed Rule).

We direct the Board's attention to Section 21.1(e), providing for a "certificate fee" of \$30. This fee is separate from the fees for the initial issuance or renewal of a certificate. The Society assumes that the \$30 fee represents the cost of the CPA certificate itself. If this understanding is incorrect, we question whether this provision should be included.

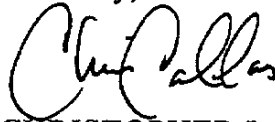
17. Recognized professional standards (§ 22.2(b)(1) of the Proposed Rule; p. 28).

Section 22.2(b)(1) of the Proposed Rule lists several recognized professional standards. We have deleted this language in favor of references to specific statements on standards in the appropriate locations in the Revision.

West Virginia Board of Accountancy  
Attention: Jo Ann Walker  
July 26, 2001  
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On behalf of the Society, we wish to thank the Board for its support of the enactment of H.B. 2503 and its assistance to the Society in preparing these comments. Should you have any questions or comments, we invite you to call me directly or to contact Pat Moyers, Executive Director of the Society, at 342-5461.

Sincerely,



CHRISTOPHER L. CALLAS

CLC/dgc

Enclosures

cc: Pat Moyers (w/enc)  
Louis S. Southworth (w/o enc)

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**WVSCPAs – Suggested Revisions to  
Proposed Series 1 Rule Filed July 26, 2001**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE 1  
LEGISLATIVE RULE  
BOARD OF ACCOUNTANCY

SERIES 1  
BOARD RULES AND RULES OF PROFESSIONAL CONDUCT

**§1-1-1. General.**

1.1. Scope. -- This Legislative rule establishes general rules for the regulation and licensure of certified public accountants, public accountants and firms.

1.2. Authority. -- W.Va. Code §§ 29A-3 et seq., 30-9-4(8) and 30-9-5.

1.3. Filing Date. -----

1.4. Effective Date. -----

b. New England Association of Schools and Colleges;

c. North Central Association of Colleges and Secondary Schools;

d. Northwest Association of Schools and Colleges;

e. Southern Association of Colleges and Schools; or

f. Western Association of Schools and Colleges.

**§1-1-2. Definitions.**

As used in this Rule, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

2.1. "Accredited school" means any four-year, degree-granting college or university accredited at the time of an applicant's degree or attendance by the:

a. Middle States Association of Colleges and Secondary Schools;

2.2. "Act" means the provisions of W. Va. Code §30-9-1, *et seq.*

2.3. "AICPA" means the American Institute of Certified Public Accountants or any successor organization as determined by the Board.

2.4. "Assurance" means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards.

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2.5. "Attest services" means providing any audit, review or examination, as those terms are defined in this Rule.

2.6. "Audit" means an audit or other engagement that expresses an opinion about the fairness of presentation of financial statements that is performed in accordance with the Statements on Auditing Standards published by the AICPA or any applicable successor statement on standards published by the AICPA.

2.7. "Authorization" means an authorization issued pursuant to the Act and this Rule that entitles a permit holder or an individual practitioner to perform attest services or compilation services or both.

2.8. "Board" means the West Virginia Board of Accountancy.

2.9. "Business entity" means any corporation, partnership, limited partnership, limited liability partnership, professional limited liability partnership, limited liability company, professional limited liability company, joint venture, business trust or any other form of business organization. The term "business entity" includes a firm.

2.10. "Certificate" means a certificate as a certified public accountant issued by the Board pursuant to the Act or corresponding provisions of prior law.

2.11. "Certified public accountant" or "CPA" means the holder of a certificate.

2.12. "Client" means a person or entity that contracts with or retains a licensee or substantial equivalency practitioner for the performance of professional services.

2.13. "Commission" means compensation, except a referral fee, for recommending any product or service to be supplied by another person.

2.14. "Compilation services" means providing a service (i) that presents, in the form of a financial statement, information that is the representation of management without an expression of assurance on the statement and (ii) that is performed in accordance with the Statements on Standards for Accounting and Review Services published by the AICPA or any applicable successor statement on standards published by the AICPA: Provided, That this definition does not apply to the use of the term "compilation" in W. Va. Code § 30-9-31.

2.15. "Contingency Fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service. A fee fixed by a court, taxing authority or other public authority is not a contingency fee.

2.16. "Examination," when used with reference to prospective financial statements, means an engagement that expresses an opinion about the fairness of presentation of financial information and that is performed in accordance with the Statements on Standards for Attestation

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Engagements published by the AICPA or any applicable successor statement on standards published by the AICPA.

2.17. "Financial Statement" means a written document or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position or cash flow of any person, corporation, partnership or other entity.

2.18. "Firm" means any business entity, including an accounting corporation, in which two or more certified public accountants or public accountants hold an ownership or membership interest, in terms of the financial interests and voting rights of all partners, officers, shareholders, members or managers, and the primary business activity of which is the provision of professional services to the public by certified public accountants or public accountants.

2.19. "Firm ownership requirements" means, with respect to any firm, the requirements that: (A) Sixty percent of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs either to certified public accountants or public accountants who have met the continuing professional education requirements of Section 9 of this Rule and who are not subject to the exemption set forth in Section 9 of this Rule, but not a combination of certified public accountants and public accountants; and (B) all owners of the firm who are not certified public accountants or public accountants are active participants in the firm.

2.20. "Foreign" means any country other than the United States.

2.21. "Good moral character" means lack of a history of dishonesty or felonious activity.

2.22. "Individual practitioner" means a certified public accountant or a public accountant who offers professional services to the public but who does not practice in a firm.

2.23. "License" means a certificate, registration, permit or authorization.

2.24. "Manager" means a manager of a limited liability company.

2.25. "Member" means a member of a limited liability company.

2.26. "NASBA" means the national Association of State Board of Accountancy or any successor organization as determined by the Board.

2.27. "NQAS" means the National Qualification Appraisal Service operated by NASBA or any successor or comparable service as determined by the Board.

2.28. "Out-of-state certificate" means a valid certificate as a certified public accountant or equivalent designation issued or renewed under the laws of another state: Provided, That "out-of-state certificate" does not include any certificate as a certified public accountant or equivalent designation that was issued or renewed solely by virtue of a holder's prior status

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as a public accountant or its equivalent in the state of issuance and not by virtue of the holder's having met the certification requirements of the state of issuance.

2.29. "Out-of-state permit" means a valid permit as a firm of certified public accountants or another designation equivalent to a permit issued or renewed by the Board and that is issued or renewed under the laws of another state.

2.30. "Peer Review" means a study, appraisal, or review of one or more aspects of the professional work of a licensee by a person who holds a certificate or an out-of-state certificate and who is not affiliated with the licensee being reviewed.

2.31. "Permit" means a permit issued to a firm pursuant to the Act and this Rule.

2.32. "Professional services" means those services that involve the specialized knowledge and skills of a certified public accountant or public accountant.

2.33. "Public accountant" means a person holding a registration who is not a certified public accountant.

2.34. "Referral Fee" means compensation for recommending or referring any service of a licensee to any person.

2.35. "Registrant" means a person registered pursuant to the Act and this Rule.

2.36. "Registration" means a registration as a public accountant issued by the Board pursuant to prior law governing the registration of public accountants and renewed by the Board pursuant to the Act and this Rule.

2.37. "Report" or "reports," when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation which states or implies any form of assurance or denial of assurance.

2.38. "Review" means a review of a financial statement that is performed in accordance with the Statements on Standards for Accounting and Review Services published by the AICPA or any applicable successor statement on standards published by the AICPA.

2.39. "Rule" means any rule proposed for legislative approval by the Board pursuant to the Act.

2.40. "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands or Guam, and "this State" means the State of West Virginia.

2.41. "Substantial equivalency" or "substantially equivalent" means or refers to a determination by the Board that the education, examination and experience requirements contained in the statutes or rules of another state are comparable to or exceed the a education, examination and experience requirements contained in the Uniform Accountancy Act, or that an individual certified public accountant's education, examination and experience qualifications are comparable to or exceed the

education, examination and experience requirements contained in the Uniform Accountancy Act.

2.42. "Substantial equivalency practitioner" means any individual holding an out-of-state certificate who has notified the Board of his or her intent to practice accountancy in the state under the provisions of this Rule and has complied with the provisions of W. Va. Code § 30-9-16 and Section 14 of this Rule.

2.43. "Uniform Accountancy Act" means the Uniform Accountancy Act, third edition, revised (November 1999), jointly published by the AICPA and NASBA.

### **§1-1-3. Board Organization and Proceedings.**

3.1. Officers.-- At its first meeting after July 1 of each year, the Board shall elect a president, a vice president, a secretary, and an assistant secretary from among its members. All officers shall be elected for a term of one (1) year and each shall continue in office until his or her successor has been elected and qualified or until his or her term as a member of the Board expires.

3.2. Meetings. -- The Board shall meet in Charleston or elsewhere in West Virginia as it may elect, at least twice each year, and shall remain in session as long as necessary in order to transact its business. Meetings shall be held upon notice by the president of the Board or by joint call of any three (3) of its members and may be held at any reasonable time or place designated in the notice of the meeting.

3.3. Quorum. -- A majority of the Board constitutes a quorum for the transaction of business.

3.4. Office and Employees. -- The Board shall establish an office in West Virginia, if it is considered necessary and desirable, to transact the day-to-day business of the Board and for the maintenance of its files and records. The Board shall designate one (1) of its principal officers or any other person as the executive officer in charge of its office and shall arrange his or her compensation in the form of a per diem allowance or as a salary. The executive officer, with the approval of the Board, may employ such assistance as may be necessary for the efficient performance of his or her duties.

3.5. Records. -- The Board shall designate and cause to have prepared those forms it considers necessary or expedient to the discharge of its duties, the convenience of applicants for licensure and the compilation of proper records. As soon as practicable after July 1 of each year the Board shall publish a roster showing the names and addresses of all holders of certificates, registrations, permits and authorizations during the fiscal year beginning on that date.

### **§1-1-4. Certification.**

4.1. The Board shall issue a certificate to any applicant who satisfies each of the requirements of this section. A certificate will only be issued when an applicant meets all of the requirements listed in this section.

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4.2. Good moral character. -- An applicant for certification shall have fiscal integrity and no history of acts involving dishonesty or acts that would constitute a violation of this Rule. The Board may deny certification upon a finding supported by clear and convincing evidence of a lack of good moral character.

4.3. Education. -- An applicant for certification shall have completed the following educational requirements:

(a) If the initial application for examination is made prior to February 15, 2000, the obtainment of a baccalaureate or equivalent degree conferred by an accredited school with a concentration in accounting or its equivalent. A qualified candidate shall submit an application on Board approved forms with the required documentation.

(b) If the initial application for examination is made on or after February 15, 2000, the satisfactory completion of one hundred fifty (150) semester hours or their equivalent at an accredited school, including the obtainment of baccalaureate or higher degree.

(i) As part of the required one hundred fifty semester hours, an applicant shall have completed the following credit hours at the upper-division baccalaureate and/or graduate levels at an accredited college or university:

(A) at least twenty-seven (27) credit hours or equivalent quarter hours in accounting, excluding introductory accounting courses covering the principles of accounting

components, including the minimum requirements in each of the following subject areas:

(1) six (6) credit hours in financial or intermediate accounting;

(2) six (6) credit hours in auditing or accounting information systems with a minimum of three (3) credit hours in auditing;

(3) three (3) credit hours in taxation;

(4) three (3) credit hours in cost accounting, managerial accounting, governmental accounting or not-for-profit accounting; and

(5) nine (9) credit hours in accounting electives.

Accounting internships or independent studies not exceeding three (3) credit hours may satisfy this accounting elective requirement;

(B) six (6) credit hours in business law; and

(C) a minimum of twenty-seven (27) credit hours in business courses, excluding required accounting and business law courses, with a minimum requirement in each of the following subject areas:

(1) three (3) credit hours in economics;

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(2) three (3)  
credit hours in finance;

(3) three (3)  
credit hours in marketing;

(4) three (3)  
credit hours in statistics;

(5) three (3)  
credit hours in management; and

(6) twelve (12)  
credit hours in business-related electives, excluding the introductory principles of accounting components and the required six (6) credit hours in business law. Business-related courses include, but are not limited to, quantitative application in business, business ethics, business communication skills and organizational behavior.

(c) Foreign academic credentials shall be accompanied by a written evaluation from the Foreign Academic Credentials Service, Inc., or any other credentialing agency that is a member of the National Association of Credential Evaluation Service, Inc., regarding equivalency to the requirements of this Rule.

4.4. An applicant shall satisfactorily complete the examination provided for in section 8 of this Rule.

4.5. An applicant shall demonstrate that during the four years immediately preceding the application for a certificate, he or she has had one year of experience in providing any type of service or advice involving the use of accounting,

attestation, compilation, management advisory, financial advisory, tax or consulting skills.

(a) Experience may include private, government, industry or public practice, as well as experience in academia. In evaluating the experience of the applicant, the Board shall consider the complexity and diversity of the work performed as well as any other factor the Board may deem relevant.

(b) The applicant shall have his or her experience verified to the Board by the holder of a certificate, registration or out-of-state certificate.

(i) Any person who has been requested by the applicant to provide evidence of the applicant's experience shall comply with such a request. Any person who refuses to provide such evidence shall, upon request of the Board, explain in writing or in person the basis for his or her refusal.

(ii) The Board may require any person who has furnished evidence of an applicant's experience to substantiate the information. The Board may require the applicant and/or person to provide documentation supporting the evidence of experience for review by the Board.

(iii) The Board may require any applicant to appear before it or its representative to supplement, explain, or verify the evidence of experience.

4.6 Prior Certificants. -- No person who, on July 1, 1989, held a certificate

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previously issued by the Board shall be required to obtain an additional or substitute certificate or to fulfill an experience requirement in order to maintain or renew a certificate.

### **§ 1-1-5. Substantial Equivalency Certificate Requirements.**

5.1 The Board shall issue a certificate to an applicant of good moral character who holds a valid out-of-state certificate if the state of issuance extends similar privileges to holders of certificates under circumstances similar to those described in this section and if the Board determines that:

(a) The state of issuance of the out-of-state certificate has certified public accountant certification requirements that are substantially equivalent to the certified public accountant certification requirements of the Uniform Accountancy Act; or

(b) The applicant has individual qualifications that are substantially equivalent to the certified public accountant certification requirements of the Uniform Accountancy Act.

5.2. In determining whether the out-of-state requirements for certification held by the individual or the individual qualifications of the individual are substantially equivalent to the certification requirements of the Uniform Accountancy Act, the Board is authorized to use the NQAS.

### **§1-1-6. Not substantially equivalent certificate requirements.**

6.1. The Board shall issue a certificate to an applicant of good moral character who holds a valid out-of-state certificate but who does not qualify for a certificate under the provision of W. Va. Code § 30-9-9 and section 5 of this Rule if the applicant meets the following education, experience, examination and continuing education requirements:

(a) The applicant passed the examination required for the issuance of the applicant's out-of-state certificate with grades that would have been passing grades at the time in this state;

(b) Within the ten year period immediately preceding the application and after passing the examination upon which the applicant's out-of-state certificate was based, the applicant has had one year of experience outside of this state of the type described in W. Va. Code §30-9-8(c) and section 4.5 of this Rule; and

(c) If the applicant's out-of-state certificate was issued more than four years prior to the application for issuance of a certificate under this section, that the applicant has fulfilled the continuing professional education requirements that would have been applicable under W. Va. Code § 30-9-12(b) and section 9.3 of this Rule.

### **§1-1-7. Foreign designation certificate requirements.**

7.1. The Board shall issue a certificate to an applicant of good moral character who holds a foreign designation in public accountancy if:

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(a) The foreign authority that granted the designation makes similar provision to allow a person who holds a valid certificate issued by this State to obtain the foreign authority's comparable designation;

(b) The foreign designation:

(1) was duly issued by a foreign authority that regulates the practice of public accountancy and has not expired or been revoked or suspended;

(2) entitles the holder to issue reports upon financial statements; and

(3) was issued upon the basis of educational, examination, and experience requirements established by the foreign authority or by law; and

(c) The applicant:

(1) received the designation, based on educational and examination standards substantially equivalent to those in effect in this State at the time the foreign designation was granted;

(2) (A) has completed an experience requirement, substantially equivalent to the requirement set out in Section 4.5 of this Rule, in the jurisdiction which granted the foreign designation; (B) has completed four years of professional experience in this state; or (C) meets equivalent requirements prescribed by the Board by rule within the ten years immediately preceding the application; and

(3) passed a uniform qualifying examination in national standards and an examination on the laws, regulations and code of ethical conduct in effect in this state acceptable to the Board.

(d) An applicant under this section shall in the application list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy, and each holder of a certificate issued under this subsection shall notify the Board in writing, within thirty days after its occurrence, of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

(e) The Board has the sole authority to interpret the application of the provisions of Section 7 of this Rule.

**§1-1-8. Examination for Certificate.**

8.1. Application. -- An applicant for certificate examination shall meet the requirements of sections 4.2, 4.3, and 4.5 of this Rule and shall complete the application form prescribed by the Board and furnish all information, documentation, references, and fees required in section 21 of this Rule. An applicant shall file a complete application with the Board at least three (3) months prior to the examination which the applicant for certification desires to take. If the candidate fails to attend three consecutive examinations, he or she shall complete a new application for examination under the requirements existing at the time the new application is completed.

8.2. Examination Subjects; Grading; Reexaminations; Cheating. –

8.2.1. The Board may make use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the AICPA and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties hereunder.

8.2.2. The candidate is required to make a grade of not less than seventy-five percent (75%) in each examination subject to pass the examination. If a candidate is sitting for the examination for the first time and passes two or more but not all sections, then the Board shall give the candidate credit for those sections that the candidate has passed and he or she need not sit for reexamination in those sections, provided that:

(a) the candidate wrote all sections of the examination at that sitting;

(b) the candidate attained a minimum grade of 50 on each section not passed at that sitting;

(c) the candidate passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;

(d) at each subsequent sitting at which the candidate seeks to pass any additional

sections, the candidate writes all sections not yet passed; and

(e) in order to receive credit for passing additional sections in any subsequent sitting, the candidate attains a minimum grade of 50 on sections written but not passed at that sitting.

8.2.3. Cheating

(a) Cheating by an applicant in applying for or taking the examination will be deemed to invalidate any grade otherwise earned by a candidate on any part of the examination, and may warrant summary expulsion from the examination room and disqualification from taking the examination for a specified number of subsequent sittings.

(b) For purposes of this Rule, the following actions, among others, may be considered cheating: –

(1) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;

(2) Communication between candidates inside or outside the examination room or copying another candidate's answers while the examination is in progress;

(3) Communication with others outside the examination room while the examination is in progress;

(4) Substitution of another person to sit in the examination room in the stead of a candidate; and

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(5) Reference to crib sheets, text books or other material inside or outside the examination room while the examination is in progress.

(c) In any case where it appears to the Board, while the examination is in progress, that cheating has occurred or is occurring, the Board may either summarily expel the candidate involved from the examination or move the candidate to a position in the room away from other examinees where the candidate can be watched more closely.

(d) In any case where the Board believes that it has evidence that a candidate has cheated on the examination, or where a candidate has been expelled from the examination, the Board shall conduct a hearing expeditiously following the examination session for the purpose of determining whether or not there was cheating, and if so what remedy should be applied. In such hearings, the Board shall decide:

(1) Whether the candidate shall be given credit for any portion of the examination completed in that session; and

(2) Whether the candidate shall be barred from taking the examination in future sittings, and if so, for how many sittings.

(e) In any case where the Board permits a candidate to continue taking the examination, it may, depending on the circumstances:

(1) Admonish the candidate;

(2) Seat the candidate in a segregated location for the rest of the examination;

(3) Keep a record of the candidate's seat location and identification number, and the names and identification numbers of the candidates on either side of the candidate; and/or

(4) Notify the AICPA of the circumstances, furnishing the candidate's identification number, so that after the initial grading is completed the candidate's papers can be compared for unusual similarities with the papers of others who may have been involved.

(f) In any case where a candidate is refused credit for parts of the examination taken, or is disqualified from taking other parts, the Board shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal rehearing by the Board, with right of appeal, pursuant to Title 1, Procedural Rule, West Virginia Board of Accountancy, Series 2, Contested Case Hearing Procedures.

(g) In any case where a candidate is refused credit for any part of an examination taken, disqualified from taking any part of the examination, or barred from taking the examination in future sittings, the Board will provide to the board of accountancy of any other state to which the candidate may apply for the examination information as to the Board's findings and actions taken.

8.3. Computerized examinations.

8.3.1. In the event that the AICPA and NASBA authorize computerized testing, the Board shall be permitted to develop a written policy under which the Board may offer the computerized examination in addition to or in lieu of the current non-computerized examination. The written policy may address any procedural and substantive detail relating to the computerized examination, including without limitation (i) the timing, frequency and location of administration of the examination; (ii) the procedure and timing for the filing of an application to sit for all or a portion of the examination; (iii) the fees associated with such an application; (iv) the passing grades required for each section of the examination; (v) the method for grading the examination; and (vi) the violations that will constitute as cheating on the examination and the actions and remedies available to the Board when cheating is suspected.

8.3.2. The purpose of the written policy authorized in subdivision 8.3.1 of this Rule is to permit the Board to recognize and administer a computerized examination during the period between the initial availability of the computerized examination from the AICPA and NASBA and the Legislature's first opportunity to consider and approve legislative rules relating to the computerized examination. If the Board wishes to use a computerized examination, it shall submit for legislative approval proposed rules for the administration of a computerized examination as soon as is practical after the computerized examination becomes available. Until the legislative rules are considered by the Legislature and become effective, the Board shall maintain

the written policy on its website and shall provide a copy to all applicants for the computerized examination.

**§1-1-9. Certificate Renewal; Condition of Renewal.**

9.1. Certificate renewal required. -- All holders of certificates shall annually renew their certificates from the Board in order to continue to offer professional services to the public. Certificates are valid for a period of one (1) year (or portion thereof) ending on June 30 of each year.

9.2. Application. -- Applicants for renewal of a certificate shall complete the forms prescribed by the Board and furnish all information and documentation required in the form, as well as the fee provided for in section 21 of this Rule.

9.2.1 An applicant must list all states in which he or she has applied for or holds an out-of-state certificate and any past denial, revocation or suspension of an out-of-state certificate.

9.2.2. Applications will not be considered unless the fee provided by this Rule is received.

9.3. Continuing education. -- Certificate holders applying for renewal shall have completed 120 hours of continuing education as provided for in this subsection within the preceding three calendar years, with at least 20 hours in each calendar year.

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9.3.1. Continuing education program guidelines. The Board shall determine if a continuing education program satisfies the requirements of this subsection. In its evaluation of continuing education programs, the Board shall apply the following standards:

(a) The program should contribute directly to the professional competence of the individual;

(b) The stated objectives of a program should include the enhancement of the ability of the participant that the program is intended to accomplish;

(c) The education and/or experience prerequisites for the program should be stated;

(d) Materials used in programs should be developed by qualified individuals for use with specified teaching methods;

(e) Program content should be current;

(f) Programs should be reviewed by persons other than the preparer to ensure compliance with this subdivision;

(g) Qualifying programs include, but are not necessarily limited to:

(1) Courses and mini-courses sponsored by national or state professional organizations. The Board may approve programs sponsored by other groups if they meet the same educational objectives;

(2) University and college courses (other than courses in principles of accounting) which contribute to the professional competence of the individual;

(3) Formal home study courses;

(4) Firm "in house" programs sponsored by accounting firm associations, other than basic, "on-the-job" training;

(5) Published books and articles, to a maximum of 60 hours credit per publication; and

(6) Technical sessions at meetings of professional organizations or other organizations of direct interest and application to the practice of public accountancy, such as the West Virginia Tax Institute; and

(h) Qualifying programs do not include, for example, time spent in:

(1) Providing services to clients;

(2) Presentations to nonprofessional groups such as schools, civic, religious, or community organizations; and

(3) Informal review of professional journals.

9.3.2. Continuing education program preapproval, credits and administration; additional credit for instruction.

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(a) The Board encourages licensees, program sponsors, and other interested persons to seek prior approval of continuing education programs in order to facilitate the administration of and compliance with this subsection.

(b) The Board shall award one hour of credit for the completion of each 50 minutes of actual participation in the program, or its lesson equivalent in a home study course, as indicated on the certificate of completion. The Board shall not award credit for programs less than 50 minutes in length or partial hours of program participation.

(c) The Board shall grant credit for university or college courses at accredited schools as follows:

(1) Applicants shall receive 15 hours credit for each semester credit hour earned and ten hours credit for each quarter credit hour earned; and

(2) Applicants attending non credit courses shall receive credit at the rate of one hour of credit for each 50 minutes in-class participation.

(d) An applicant may claim credit only for programs completed during the relevant calendar years, except for good cause shown.

(e) Instructors in an approved program shall receive three hours credit for each hour taught for the first time they teach a course, to a maximum of 60 hours credit per course per

year. The Board shall not give credit for subsequent teaching of the same course, unless the course has been substantially updated. If the same course is taught again in less than three years, the instructor must receive prior approval from the Board for additional credit.

### 9.3.3. Compliance monitoring.

(a) The Board shall measure compliance with this subsection by the calendar year. All licensees shall return an annual continuing education reporting form to the Board by January 31 of the following year.

(b) Reporting forms shall contain the certificate holder's certificate number.

(c) The Board shall enter hours reported into the record of the certificate holder licensee in a master file with the designation of the year and the number of credits and maintain in the master file the certificate holder's record of the current year and the past two years. In addition, The Board shall maintain a file of continuing education reporting forms for each certificate holder for four years.

(d) The Board shall annually provide a mailing to each certificate holder which will provide a confirmation or the record for review by the certificate holder so that corrective action can be taken if there is an error or dispute.

(e) Fraudulent reporting of CPE credits is a basis for disciplinary action by the Board.

9.3.4. Continuing education exceptions.

(a) The following persons are exempt from the requirements of this subsection:

(1) Any certified public accountant who does not perform or offer to perform any professional service to the public, either directly or indirectly through his or her employer.

(2) Any certified public accountant who demonstrates good cause for and exemption to the Board. A certified public accountant seeking an exemption from continuing professional education pursuant to this subsection must apply to the Board and present sufficient evidence that due to extenuating circumstances, such as accident, illness, pregnancy, military service or any other circumstance as determined appropriate by the Board, he or she should be granted an exemption. This request must be received by the Board by January 31 following the reporting period, except for good cause shown.

(b) (1) Any person receiving the exemption set forth in subdivision (a) of this subsection must place the word "inactive" adjacent to his or her CPA title on any business card, letterhead or any other document or device, with the exception of the certificate on which his or her CPA title appears.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision (b), a certified public accountant receiving the exemption from continuing education

requirements who has completely discontinued his or her performance of professional services, who has no active management or supervisory responsibilities in a firm, and who is at least sixty-two years of age is not required to place the word "inactive" or any other word adjacent to his or her "CPA" title on any business card, telephone directory listing, letterhead or any other similar document or device.

(c) (1) Notwithstanding the requirements of subsection 9.3 of this Rule, during the period beginning on July 1, 2001 and ending on June 30, 2004 (the "Phase-In Period"), any certified public accountant who (i) is not subject to continuing professional education requirements as of July 1, 2001 because he or she has not performed or offered to perform professional services to the public; and (ii) who elects to offer to perform any professional service to the public during the Phase-In Period, may satisfy the requirements of subsection 9.3 of this Rule by obtaining continuing professional education hours on the phase-in schedule set forth in paragraph (2) of this subdivision (c).

(2) If the certified public accountant elects to offer professional services to the public during the certificate renewal period beginning on:

(A) July 1, 2001, then he or she may satisfy the continuing professional education requirement by obtaining (i) 20 hours during calendar year 2001; (ii) 30 hours during calendar year 2002; and (iii) 40 hours during calendar year 2003;

(B) July 1, 2002, then he or she may satisfy the continuing professional education requirement by obtaining (i) 30 hours during calendar year 2002; and (ii) 40 hours during calendar year 2003; and

(C) July 1, 2003, then he or she may satisfy the continuing professional education requirement by obtaining 40 hours during calendar year 2003.

(3) Any certified public accountant who wishes to take advantage of the phase-in specified in paragraph 1 of this subdivision shall so inform the Board in his or her annual continuing professional education reporting form.

**§1-1-10. Duty to inform Board of denials, suspensions, revocation and limitations.**

10.1 Each licensee and each substantial equivalency practitioner must notify the Board, within thirty days of its occurrence of any denial, suspension or revocation of or any limitation, including probation or censure, placed on a license or out-of-state certificate.

10.1.1 Upon notification to the Board, the Board may request any additional information for its review.

**§1-1-11. Peer Review of Individuals.**

11.1. Peer Review. -- The Board may, at its discretion, provide for the review of any certificate holder (i) applying for certificate renewal or (ii) who the Board has reason to believe may be in violation of section 22 of this

Rule. In these cases, the Board may provide for reimbursement and payment of those persons conducting the review and shall set forth in writing the scope and procedures of the review. Nothing in this subsection is a prerequisite to any other Board action under this Rule, including but not limited to section 17 of this Rule.

**§1-1-12. Holder of out-of state certificate establishing principal place of business in State.**

12.1. A holder of an out-of-state certificate who intends to establish his or her principal place of business in this state must first apply for the issuance of a certificate.

12.1.1 Until he or she has applied for and received a certificate, he or she may only offer professional services in this state only upon compliance with the substantial equivalency notice provisions set forth in Section 14 of this Rule.

12.1.2. If the applicant is not issued a certificate under the provisions of this Rule, the applicant shall cease offering professional services in this state as a substantial equivalency practitioner upon notice of denial of his or her application for a certificate.

**§1-1-13. Public Accountants.**

13.1. A person who on July 1, 2001, holds a registration as a public accountant issued under prior law is entitled to have the registration renewed under the same terms upon fulfillment of the same continuing professional education requirements, on the same renewal schedule; and

upon payment of fees required under W. Va. Code § 30-9-12 and Section 21 of this Rule.

13.2. All provisions of this Rule that are specifically applicable to certified public accountants are also applicable to the same extent to public accountants.

**§1-1-14. Substantial equivalency practice privileges.**

14.1. An individual whose principal place of business is not in this state and who holds an out-of-state certificate shall have all of the rights and privileges of a certificate holder of this state without the need to obtain a certificate if:

14.1.1. the other state extends similar privileges to a holder of a certificate in this state; and

14.1.2. the Board has determined:

(a) that the state that issued the out-of-state certificate has certification requirements that are substantially equivalent to the certification requirements of the Uniform Accountancy Act; or

(b) that the individual's qualifications are substantially similar to the certification requirements of the Uniform Accountancy Act.

14.1.3. In determining whether the certification requirements of the other state or the individual are substantially equivalent to the

certification requirements of the Uniform Accountancy Act, the Board is authorized to use the NQAS.

(a) The Board shall develop and maintain a list of those states whose certification requirements are substantially similar to the certification requirements of the Uniform Accountancy Act and that extend similar privileges to holders of certificates in this state.

14.2. An individual seeking to practice under this section shall file notice with the Board not fewer than ten days prior to performing or offering any professional service in the state that:

14.2.1. Includes the individual's name, principal business address, out-of-state certificate number and state of issuance;

14.2.2. Discloses any pending disciplinary action or any past denial, revocation or suspension of the out-of-state certificate; and

14.2.3. Attaches the fee specified in Section 21 of this Rule.

14.3. In order to continue practicing in this state as a substantial equivalency practitioner, no later than the first day of July of the second calendar year following the substantial equivalency practitioner's most recent filing of the notice required under subsection 14.2 of this Rule, a substantial equivalency practitioner shall file a notice with the Board and attach the fee specified in Section 21 of this Rule.

14.4. Any individual performing or offering to perform any services in the state as a

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substantial equivalency practitioner is subject to the following:

14.4.1. Jurisdiction of the Board concerning all matters within the scope of the Act and this Rule;

14.4.2. Compliance with the provisions of the Act and this Rule;

14.4.3. The appointment of the secretary of state as his or her agent upon whom process may be served in any action or proceeding against the individual arising out of any transaction or operation connected with or incidental to services performed in this state;

14.4.4. The appointment of the Board of accountancy of the state of issuance of his or her out-of-state certificate as his or her agent upon which process may be served in an action or proceeding by the Board; and

14.4.5. The voluntary disclosure of any and all documentation necessary to conduct an investigation under this Rule.

### **§1.1.15. Issuance and renewal of permits.**

15.1. The Board shall issue a permit to a firm that demonstrates that:

15.1.1. Each partner, officer, shareholder, member or manager of the firm whose principal place of business is in this state and who performs or offers to perform professional services in this state hold a certificate or a registration; and

15.1.2. The firm meets firm ownership requirements.

15.2. An application for the issuance of a permit must include the following information:

15.2.1. The names of all partners, officers, shareholders, members or managers of the firm whose principal place of business is in this state;

15.2.2. The location of each office of the firm within the state and the name of the certified public accountant or public accountant in charge of each office; and

15.2.3. Any issuance, denial, revocation, suspension, probation, or censure of an out-of state permit.

15.3. Permits will initially be issued for a period to expire on the thirtieth day of June following the date of issuance.

15.3.1. The Board shall renew a permit for a period of one year beginning on the first day of July of each year after initial issuance in accordance with this section.

15.4. A firm receiving a permit pursuant to this section shall file with the Board a written notification of any of the following events within thirty (30) days after its occurrence:

- (a) Formation of a new firm;
- (b) Addition of a partner, member, manager or shareholder;

(c) Retirement, withdrawal or death of a partner, member, manager or shareholder;

(d) Any change in the name of the firm;

(e) Dissolution of the firm;

(f) Change in the management of any branch office in this State;

(g) Establishment of a new branch office or the closing or change of address of a branch office in this State; or

(h) The occurrence of any event or events that would cause such firm not to be in conformity with the provisions of the Act or this Rule.

15.5. In the event of any change in legal form of a firm, the new firm shall within thirty (30) days of the change file an application for the issuance of a permit in accordance with this Rule and pay the fee required by this Rule.

15.6 The Board shall suspend or revoke the permit of any firm that ceases to meet firm ownership requirements due to changes in firm ownership or personnel due to the death or retirement of a partner, officer, shareholder, member or manager (a "non-compliant firm") and that fails to take corrective action within a one-year period beginning on the date of the event that caused the non-compliant firm to cease to meet firm ownership requirements (the "event"). If a non-complaint firm has not taken corrective action prior to the June 30 next following the

event, the non-compliant firm must notify the Board in its permit application of the first anniversary of the event and detail its plan to become compliant by that date.

**§1-1-16. Issuance and renewal of authorizations.**

16.1. Beginning on July 1, 2001, no person or business entity may provide attest or compilation services without first having obtained an authorization issued by the Board.

16.1.2. An applicant may apply for authorization to perform attest or compilation services or both.

16.2. The Board shall issue an authorization to an individual practitioner who tenders the fee specified in Section 21 of this Rule and provides the following information:

16.2.1. The name of the individual practitioner applying and the individual practitioner's certificate or registration number;

16.2.2. The location of each office within the state from which the individual practitioner performs professional services;

16.2.3. Any issuance, denial, revocation, suspension, probation, or censure of any certification issued by this state or an out-of-state accountancy board;

16.2.4. Verification that he or she signs attest and compilation reports as a certified public accountant or public accountant; and

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16.2.5. Verification that he or she is undergoing a peer review program that conforms with the requirements of subsection 16.4 of this Rule.

16.3. The Board shall issue an authorization to the holder of or applicant for a permit who tenders the fee specified in Section 21 of this Rule and provides the following information:

16.3.1. The names of all partners, officers, shareholders, members or managers of the firm whose principal place of business is in this state and each individual's certificate or registration number;

16.3.2. The location of each office of the firm within the state and the name of the certified public accountant or public accountant in charge of each office;

16.3.3. Any issuance, denial, revocation, suspension, probation, or censure of a permit or an out-of state permit;

16.3.4. Verification that any certified public accountant or public accountant who signs or authorizes someone to sign a report on financial statements on behalf of the permit holder meets the competency requirements set forth in the Generally Accepted Auditing Standards published by the AICPA (for attest services) and/or the Statements on Standards for Accounting and Review Services published by the AICPA (for compilation services); and

16.3.5. Verification that the permit holder is undergoing a peer review program that

conforms with the requirements of subsection 16.4 of this Rule.

16.4. Peer review requirements. For purposes of subdivisions 16.2.5 and 16.3.5 of this section, the Board shall accept (i) the peer review program offered by the AICPA and administered by the West Virginia Society of Certified Public Accountants or (ii) any other peer review program that the Board deems comparable in terms of quality, thoroughness and reliability to the AICPA peer review program. If an applicant intends to use a peer review program other than the AICPA peer review program, the Board strongly encourages the applicant submit detailed information concerning the peer review program (including but not limited to the sponsor of the program, the standards used, the identity and qualifications of the expected reviewers, and similar information) to the Board. The Board will promptly evaluate the proposed peer review program and inform the applicant whether the program is acceptable.

16.5. A firm may simultaneously apply for the issuance or renewal of a permit and the issuance or renewal of an authorization.

16.6. The Board shall renew an authorization for a period of one year beginning on the first day of July of each year after initial issuance in accordance with the requirements for initial issuance under this section.

### **§1-1-17. Refusal to Issue or Renew; Suspension, Revocation of License; Disciplinary Action**

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17.1. Authority and grounds for refusal to issue or renew a license or to suspend, revoke and/or fine a licensee. -- The Board may refuse to issue, refuse to renew, suspend, revoke or limit any license or practice privilege of any licensee, substantial equivalency practitioner or firm and may take disciplinary action against a licensee or substantial equivalency practitioner practicing in this state who, after hearing held pursuant to W. Va. Code § 30-1-1, *et seq.*, has been adjudged by the Board as unqualified for any of the following reasons:

(a) Fraud or deceit in obtaining or maintaining a license or substantial equivalency practice privilege;

(b) Cancellation, revocation, suspension or refusal to renew an out-of-state certificate, an out-of-state permit or substantial equivalency practice privilege for disciplinary reasons in any other state for any cause other than failure to pay an annual fee for the renewal of an out-of-state certificate or out-of-state permit in the other state;

(c) Failure by any licensee to maintain compliance with requirement for issuance or renewal of a license or to timely notify the Board as required under W. Va. Code § 30-9-18;

(d) Revocation or suspension of the right of the licensee or substantial equivalency practitioner to practice before any state or federal agency;

(e) Dishonesty, fraud, professional negligence in the performance of services as a

licensee or substantial equivalency practitioner or in the filing or failure to file the licensee's or substantial equivalency practitioner's own income tax returns, or a willful departure from accepted standards of professional conduct applicable to licensees and substantial equivalency practitioners;

(f) Violation of any provision of this article, any lawful order of this Board, or any Rule, including the violation of any professional standard or rule of professional conduct;

(g) Conviction of a felony or any crime an element of which is dishonesty or fraud under the laws of the United States or this state, or conviction of any similar crime under the laws of any other state if the underlying act or omission involved would have constituted a crime under the laws of this state;

(h) Performance of any fraudulent act by any licensee or substantial equivalency practitioner;

(i) Any conduct reflecting adversely upon the licensee's or substantial equivalency practitioner's fitness to perform professional services;

(j) Making any false or misleading statement or verification in support of an application for a license filed by another person or firm; or

(k) Engaging in the unlawful practice of law as defined by the West Virginia supreme court of appeals.

17.2. If the Board renders a decision to deny issuance or renewal of a license, suspending or revoking of a license, or the Board takes disciplinary action, the Board shall determine whether the licensee, substantial equivalency practitioner or firm holds an out-of-state certificate or permit, and, if so, the Board shall notify the board of accountancy of the state of issuance of its decision.

17.2.1. The Board will affect notification of the decision 30 days from the time the decision becomes final including the final determination of any appeals that may be made.

17.2.2. Upon expiration of this time period, the Board shall provide a certified copy of its decision and any decision of a circuit court or the West Virginia Supreme Court of Appeals issued in the matter.

17.3. When the Board has suspended, revoked or refused to renew a license or has revoked the practice privileges of a substantial equivalency practitioner, the licensee, firm, or substantial equivalency practitioner against whom the action has been taken shall be afforded an opportunity to demonstrate the qualifications to resume practice or regain licensure.

17.3.1. A request for reinstatement shall be made in writing and directed to the Board. It shall state with specificity the reason(s) that the party believes that he or she is qualified to resume practice or regain licensure. The party requesting reinstatement may also request to address the Board at a future Board meeting. The Board may also request such a meeting and may require

any additional information that it deems necessary to issue a decision.

17.3.2. Upon a determination with regard to the request for reinstatement, the Board shall notify the requesting party of its decision in writing.

17.3.3. The provisions of this subsection are separate and distinct from the contested case hearing procedure provided for in Title 1, Series 2, Contested Case Hearing Procedure for the West Virginia Board of Accountancy. A request for reinstatement shall not meet the petition requirements set forth in that Rule.

#### **§1-1-18. Contingency Fee Contracts; Commissions; Referral Fees.**

18.1. All contingency fee contracts shall be in writing and signed by both the licensee or substantial equivalency practitioner and the client.

18.2. Before entering into a contingency fee contract, the licensee or substantial equivalency practitioner shall disclose, to the prospective client, in writing; the percentage to be retained by the licensee or substantial equivalency practitioner in the event a favorable result is attained.

18.3. In determining the reasonableness of a contingency fee contract, the Board shall consider the following factors:

18.3.1. The time and labor expended in attaining the result;

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18.3.2. The difficulty of the work performed;

18.3.3. The level of skill required to perform the work;

18.3.4. Whether acceptance of this client's work precluded the licensee or substantial equivalency practitioner from accepting work from other clients;

18.3.5. The standard contingency fee charged in the area;

18.3.6. Time limitations imposed by the work or the client;

18.3.7. The amount involved and the results obtained;

18.3.8. The experience, reputation and ability of the licensee or substantial equivalency practitioner; and

18.3.9. The nature and length of the relationship with the client;

18.4 A licensee or substantial equivalency practitioner shall not charge or accept a contingency fee for:

18.4.1 preparing an original or amended tax return or claim for a tax refund;

18.4.2 serving as an expert witness;

18.4.3 performing an audit or review of a financial statement;

18.4.4 performing a compilation of a financial statement when the licensee or substantial equivalency practitioner expects, or reasonably might expect that a third party will use the financial statement and the compilation report does not disclose a lack of independence; or

18.4.5 performing an examination of prospective financial information.

18.4.6. The prohibition in this subsection applies during the period in which the licensee or substantial equivalency practitioner is engaged to perform any of the services listed in this subsection and the period covered by any historical statements involved in the services.

18.5. A licensee or substantial equivalency practitioner may utilize a contingency fee contract when representing a client before a taxing authority Provided, that nothing in this Rule shall be construed either to limit or expand the scope of professional services. This Rule shall not be construed to promote the unauthorized practice of law.

18.6. Prohibited Commissions. No licensee or substantial equivalency practitioner shall recommend or refer to a client any product or service for a commission or recommend or refer to a client any product or service to be supplied by a client for a commission or receive a commission, when the licensee or substantial equivalency practitioner also performs the following services for that client:

18.6.1. an audit or review of a financial statement;

18.6.2. a compilation of a financial statement when the licensee or substantial equivalency practitioner expects; or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence; or

18.6.3 an examination of prospective financial information;

18.7. The prohibition in this subsection applies during the period in which the licensee or substantial equivalency practitioner is engaged to perform any of the services listed in this subsection and the period covered by any historical financial statements involved in the listed services.

18.8. Disclosure of Permitted Commission. A licensee or substantial equivalency practitioner who is not prohibited by this Rule from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact in writing to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

18.9. Referral Fees. Any licensee or substantial equivalency practitioner who accepts a referral fee for recommending or referring any service of the licensee or substantial equivalency practitioner to any person or entity or who pays a referral fee to obtain a client shall disclose the acceptance or payment to the client in writing.

#### **§1-1-19. Confidentiality of information.**

19.1. Except by permission of the client for whom a licensee or substantial equivalency practitioner performs services or the heirs, successors, or personal representatives of such a client, a licensee or substantial equivalency practitioner shall not voluntarily disclose information communicated to the licensee or substantial equivalency practitioner by the client relating to and in connection with services rendered to the client by the licensee or substantial equivalency practitioner. Such information shall be deemed confidential: *Provided*, That this section shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings under this article, in ethical investigations conducted by private professional organizations, in the course of peer reviews, to other persons on a need-to-know basis when such persons are active in the firm and performing services for such client, or to persons in the firm who need the information for the sole purpose of assuring quality control within the firm.

#### **§1-1-20. Accounting Corporations and Other Forms of Business.**

20.1. One or more certified public accountants or public accountants may organize and become shareholders of an accounting corporation subject to the requirements of this section.

20.2. No accounting corporation shall exist or transact business as an accounting corporation without the prior authorization of the

Board. Applicants for authorization shall complete an application form, furnish all other documents and information requested by the Board, and pay the fee set forth in section 21 of this Rule.

20.3. The Board shall not authorize the organization of an accounting corporation unless, in addition to the other requirements set forth in this Rule, the applicants comply with the following requirements:

(a) The sole purpose and business of the corporation shall be to furnish to the public, services not inconsistent with the Act or this Rule: Provided, That the corporation may invest its funds in a manner not incompatible with the performance of professional services.

(b) The principal officer of the corporation and any officer or director having authority over the provision of professional services by the corporation shall be a certified public accountant or public accountant.

(c) At least one shareholder of the corporation shall be a certified public accountant or public accountant.

(d) The accounting corporation is domiciled in this State.

(e) The accounting corporation meets firm ownership requirements.

(f) Each resident manager in charge of an office of the corporation in this State and each shareholder or director personally engaged within this State in the provision of

professional services to the public shall be a certified public accountant or public accountant.

(g) When not inconsistent with this section, the organization and procedures of accounting corporations shall conform to the requirements of W.Va. Code §31-1-1, *et seq.*

20.4. When the Board determines that an accounting corporation meets the requirements of this Rule and W. Va. Code §30-9-11, the Board shall notify the Secretary of State that a certification of authorization has been issued to the person or persons making application for the accounting corporation.

20.5. Upon receipt of the certificate of authorization required by subsection 10.2 of this Rule, an accounting corporation shall promptly cause to be filed in the office of the Secretary of State a certified copy of the certificate of authorization. No accounting corporation shall transact business until it has received (i) a certificate of incorporation from the Secretary of State and (ii) filed a certified copy of the certificate of incorporation with the Board.

20.6. The Secretary of State, upon receipt of a certificate of authorization shall attach the Certificate of Authorization to the corporation's application and, upon compliance with the applicable provisions of chapter thirty of the West Virginia Code, the Secretary of State may issue to the incorporators a certificate of incorporation for the accounting corporation. Once the accounting corporation receives the certificate of incorporation from the Secretary of State's Office it may begin offering professional services to the public.

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20.7. The person or persons making application for the accounting corporation shall send a copy of the Certification of Authorization to the Secretary of State's office.

**§1-1-21. Fees.**

21.1. The Board shall charge the following fees:

(a) An examination application fee of one hundred seventy dollars (\$170.00), provided, however, that the Board may adjust this fee pursuant to subdivision 8.3.4 of this Rule;

(b) A re-examination fee of forty dollars (\$40.00) per part of the examination retaken, provided, however, that the Board may adjust this fee pursuant to subdivision 8.3.4 of this Rule;

(c) – A transfer of credit and examination application for as follows:

(1) A transfer of credit application fee of one hundred fifty-five dollars (\$155.00);

(2) An examination fee of one hundred seventy dollars (\$170.00);

(3) A minimum transfer fee of one or more parts of the examination of seventy-five dollars (\$75.00);

(4) A minimum transfer fee of three parts of the examination of one hundred fifteen dollars (\$115.00); and

(5) A minimum transfer fee of four parts of one hundred fifty-five dollars (\$155.00);

(d) A fee for an authorization to release information form of thirty dollars (\$30.00);

(e) A certificate fee of thirty dollars (\$30.00);

(f) A fee for the initial issuance of a certificate of sixty-five dollars (\$65.00);

(g) A fee for the renewal of a certificate or registration of sixty-five dollars (\$65.00);

(h) An accounting corporation registration application fee of fifty-five dollars (\$55.00);

(i) An additional fee of fifty dollars (\$50.00) for the filing of an application for the renewal of a certificate, registration, permit and authorization that is postmarked after the annual renewal deadline date of June 30;

(j) A fee for a copy of the directory of all licensees of one hundred ten dollars (\$110.00);

(k) A fee for a copy of the list of all scheduled examination candidates of not more than one hundred ten dollars (\$110.00);

(l) A late fee for filing of a continuing professional education report, if filed

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after January 31, of one hundred ten dollars (\$110.00);

(m) A fee for a request for an extension of time to file a continuing professional education report postmarked prior to January 31, of fifty-five dollars (\$55.00);

(n) A fee for a request for an extension of time to file a continuing professional education report postmarked subsequent to January 31, of one hundred ten dollars (\$110.00);

(o) A fee for request for extension of time to file continuing professional education report postmarked after June 30, of fifty-five dollars (\$55.00) per month;

(p) A fee for reinstatement of a license of sixty-five dollars (\$65.00);

(q) A fee for the initial issuance or renewal of a firm permit of sixty-five dollars (\$65.00);

(r) A fee for the issuance or renewal of an authorization to perform both attest and compilation services of sixty-five dollars (\$65.00);

(s) A fee for the issuance or renewal of an authorization to perform attest or compilation services of fifty dollars (\$50.00);

(t) A fee of ten dollars (\$10.00) for an applicant who wishes to practice in this state pursuant to Section 14 of this Rule and whose out-of-state requirements or individual

qualifications are found to be substantially equivalent by the NQAS; and

(u) A fee of fifty dollars (\$50.00) an applicant whose out-of-state requirements or individual qualifications are not found to be substantially equivalent by the NQAS, but are required to be verified independently by the Board.

21.2. All fees are non-refundable and shall not be prorated. The Board may, in its discretion, return all or part of a fee accompanying a filing which the Board declines to process and returns it to the applicant.

**§1-1-22. Rules of Professional Conduct.**

22.1. Independence, Integrity, and Objectivity.

(a) A licensee or substantial equivalency practitioner shall be independent in the performance of professional services.

(b) In the performance of any professional service, a licensee or substantial equivalency practitioner shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

22.2. General Standards; Accounting Principles.

(a) A licensee or substantial equivalency practitioner shall:

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(1) Undertake only those professional services that the licensee or substantial equivalency practitioner can reasonably expect to be completed with professional competence;

(2) Exercise due professional care in the performance of professional services;

(3) Adequately plan and supervise the performance of professional services; and

(4) Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(b) A licensee or substantial equivalency practitioner who performs auditing, review, compilation, management advisory, tax, or other professional services shall comply with the recognized professional standards applicable to the services.

(c) A licensee or substantial equivalency practitioner shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principals or (2) state that he or she is not aware of any material modifications that should be made to the statements or data in order for them to be in conformity with generally accepted accounting principles, if the statements or data contain any departure from any accounting principle promulgated by bodies designated to establish the principles that has material effect on the statements or data taken as

a whole. If, however, the statements or data contain such a departure and the licensee or substantial equivalency practitioner can demonstrate that due to unusual circumstances the financial statements or data would otherwise have been misleading, the licensee or substantial equivalency practitioner may comply with the rule by describing the departure, its approximate effects with the principle would result in a misleading statement.

### 22.3. Responsibilities to Clients.

(a) Except as provided in section 19 of this Rule, a licensee or substantial equivalency practitioner shall not disclose any confidential client information without the specific consent of the client. This Rule shall not be construed (i) to relieve a licensee or substantial equivalency practitioner of the professional obligations under subdivisions 22.2 (b) and (c) of this Rule, (ii) to affect in any way the obligation to comply with a validly issued and enforceable subpoena or summons, (iii) to prohibit review of a licensee's or substantial equivalency practitioner's professional practice under subsection 11.1 of this Rule, or (iv) to preclude a licensee or substantial equivalency practitioner from initiating a complaint with or responding to any inquiry made by a recognized investigative or disciplinary body. Members of a recognized investigative or disciplinary body and professional practice reviewers shall not use to their own advantage or disclose any licensee's or substantial equivalency practitioner's confidential client information that comes to their attention in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with a recognized

investigative or disciplinary body or affect, in any way, compliance with a validly issued and enforceable subpoena or summons.

22.4. Other Responsibilities and Practices.

(a) A licensee or substantial equivalency practitioner shall not commit an act discreditable to the public accounting profession.

(b) A licensee or substantial equivalency practitioner shall not seek to obtain clients by advertising or other forms of solicitation that are false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited.

(c) The holder of a certificate or registration (other than an individual practitioner or substantial equivalency practitioner) may offer professional services to the public only in a firm. A firm shall not offer professional services to the public under a firm name that is misleading. Names of one or more past partners or shareholders may be included in the firm name of a successor partnership or corporation. Also, a partner or shareholder surviving the death or withdrawal of all other partners or shareholders may continue to practice under a name which includes the name of past partners or shareholders for up to two years after becoming an individual practitioner.

## Corrections and Revisions to Series 1 Rule

The Board further notes that it has reviewed the initial Series 1 Rule filed with the Secretary of State on June 26, 2001, and has made the following corrections, deletions of extraneous language and revisions to the Rule:

-2.6: deleted "SSARS" from definition.

-2-23: added language with regard to "authorization" in order to mirror statutory definition of "license."

-4.5: added the following language: "in the three year period immediately preceding his or her application" .

-8.3.1: modified language to include the following: "and may implement and regulate it by emergency rule, if necessary."

-15.4(h)(ii): added the following language: "consistent with this rule within one year from the time that the firm has ceased to comply with this Rule."

-21.1(e): Strikeouts and additions to this sub-section reflect cost of initial certificate fee of \$90.00.

-21.1(f): Changed license reference to "certificate" and maintained non-resident application fee, while removing extraneous language.

-21.1(g) and (h): removed because this fee is subsumed in 21.1(s).

-21.1(i): This sub-section has been removed at the direction of the Board in part because it is subsumed by 21.1(f).

-21.1(j): Added "inactive" and removed "active."

-21.1(r): Added language for late date and removed extraneous language.

-21.1(t) and (u): subsection t is removed and subsection u is revised to require a \$65.00 fee for initial and renewal authorization to perform attest and/or compilation services. This changes reflects the Board's decision to remove the two-tiered fee structure and to reflect statutory changes with regard to authorizations.

-21.1(v) and (w): removed proposed language "or individual qualifications" and "by NQAS."

-21.1(x): This is an addition that places the cost of an appraisal service for substantial equivalency on the applicant.

-21.1(l): Replaced "licensees" with "certificants."

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TITLE 1  
LEGISLATIVE RULE  
BOARD OF ACCOUNTANCY

SERIES 1  
BOARD RULES AND RULES OF PROFESSIONAL CONDUCT

§1-1-1. General.

1.1. Scope. -- This Legislative rule establishes revises general rules for the regulation of the practice of public accounting, including of certification, registration, permitting and licensure of certified public accountants and the registration and licensure of public accountants.

1.2. Authority. -- W. Va. Code §§ 29A-3 et seq., 30-9-4(8) and 30-9-5.

1.3. Filing Date. -- -----

1.4. Effective Date. -- -----

§1-1-2. Definitions.

As used in this Rule, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

2.1. "Accredited school" means any four-year, degree-granting college or university accredited at the time of an applicant's degree or attendance by the:

a. Middle States Association of Colleges and Secondary Schools;

b. New England Association of Schools and Colleges;

c. North Central Association of Colleges and Secondary Schools;

d. Northwest Association of Schools and Colleges;

e. Southern Association of Colleges and Schools; or

f. Western Association of Schools and Colleges;

2.2. "Act" means the provisions of W. Va. Code §30-9-1 et. seq.;

2.3. "AICPA" means the American Institute of Certified Public Accountants or any successor organization.

2.4. "Assurance" means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards;

2.5. "Attest services" means providing any audit or review of a financial statement or any examination of prospective financial information performed in accordance with the Statements on Auditing Standards (SAS), the Statements on Standards for Accounting and Review Services (SSARS)

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and/or the Statements on Standards for Attestation Engagements (SSAE).

2.6. "Audit" means expressing an opinion about the fairness of presentation of financial statements in accordance with the SAS and/or SSARS;

2.7. "Authorization" means an authorization issued pursuant to this article that entitles a permit holder or an individual practitioner to perform attest or compilation services;

2.8. "Board" means the West Virginia Board of Accountancy;

2.9. "Business entity" means any corporation, partnership, limited partnership, limited liability partnership, professional limited liability partnership, limited liability company, professional limited liability company, joint venture, business trust or any other form of business organization. The term "business entity" includes a firm;

2.10. "Certificate" means a certificate as a certified public accountant issued by the board pursuant to the Act or corresponding provisions of prior law or a corresponding certificate as a certified public accountant issued after examination under the laws of any other state;

2.11. "Certified public accountant" or "CPA" means the holder of a certificate.

2.12. "Client" means a person or entity that contracts with or retains a certificant, permittee, licensee, or substantial equivalency practitioner firm for performance

of professional services public accounting services;

2.13. "Commission" means compensation, except a referral fee, for recommending any product or service to be supplied by another person.

2.14. "Compilation services" means providing a service performed in accordance with the SSARS that presents, in the form of a financial statement, information that is the representation of management without an expression of assurance on the statement. Provided, That this definition does not apply to the use of the term "compilation" in W. Va. Code § 30-9-31.

2.15. "Contingency Fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service. A fee fixed by a court, taxing authority or other public authority is not a contingency fee.

~~2.16. "Domicile" means the situs of the applicant's permanent residence, even though he or she may, at the time of making application, be residing elsewhere. Domicile is a question of fact in each case and is established only by concurrence of the actual residence coupled with intent to make the residence the applicant's permanent residence;~~

2.16. "Examination," when used with reference to prospective financial statements, means expressing an opinion about the fairness of presentation of financial information in accordance with the SSAE.

2.17. "Financial Statement" means a written document or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position or cash flow of any person, corporation, partnership, or other entity;

2.18. ~~"Firm" means a sole proprietorship, corporation, partnership, professional association, or any combination thereof practicing public accountancy in West Virginia;~~ "Firm" means any business entity, including an accounting corporation, in which two or more certified public accountants or public accountants hold an ownership or membership interest, in terms of the financial interests and voting rights of all partners, officers, shareholders, members or managers, and the primary business activity of which is the provision of professional services to the public by certified public accountants or public accountants;

2.19. "Firm ownership requirements" means, with respect to any firm, the requirements that: (A) Sixty percent of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs either to certified public accountants or public accountants who have met the continuing professional education requirements of Section 9 of this Rule and who are not subject to the exemption or limitation set forth in Section 9 of this Rule, but not a combination of certified public accountants and public accountants; and (B) all owners of the firm who are not certified public accountants or public accountants are active participants in the firm;

2.20. "Foreign" means any country other than the United States;

2.21. "Good moral character" means lack of a history of dishonesty or felonious activity;

2.22. "Individual practitioner" means a certified public accountant or a public accountant who offers professional services to the public but who does not practice in a firm;

2.23. "License" means a certificate issued under Section 4 of this Rule or a permit issued under Section 15 of this Rule, or, in each case, a certificate or permit issued under corresponding provisions of prior law. ~~license to practice public accounting issued annually under the Act and this Rule and "licensee"~~ means a person holding a license;

2.24. "Manager" means a manager of a limited liability company;

2.25. "Member" means a member of a limited liability company;

2.26. "NASBA" means the national Association of State Board of Accountancy or any successor organization;

2.27. "Out-of-state certificate" means a valid certificate as a certified public accountant or equivalent designation issued or renewed under the laws of another state. Provided, That "out-of-state certificate" does not include any certificate as a certified public accountant or equivalent designation that was issued or renewed solely by virtue of a holder's prior status as a public accountant or

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its equivalent in the state of issuance and not by virtue of the holder's having met the certification requirements of the state of issuance;

2.28. "Out-of-state permit" means a valid permit as a firm of certified public accountants or another designation equivalent to a permit issued or renewed by the board and that is issued or renewed under the laws of another state;

2.29. "Peer Review" means a study, appraisal, or review of one or more aspects of the professional work of a licensee by a person who holds a certificate or an out-of-state certificate and who is not affiliated with the licensee being reviewed;

2.30. "Permit" means a permit issued to a firm pursuant to this article;

~~2.32. "Place of business" means the location within the State of West Virginia where a person is actually engaged in a lawful business;~~

~~2.14. "Practice of public accountancy" or "public accounting" means (i) the giving of an assurance, in a report or otherwise, whether expressly or implicitly or (ii) in the case of a person holding himself or herself out as certificate holder or for purposes of subsection 7.4 of this Rule, the performance or offering to perform any service involving the use of accounting or auditing skills, including, but not limited to, management advisory or consulting services, the preparation of tax returns, the rendering of tax services, the keeping of books of account and related accounting records, and the preparation of financial statements without the~~

~~expression of an assurance. Provided, That an employee giving assurances to or performing these services for an employer shall not be considered to be practicing public accountancy;~~

2.31. "Public accountant" means a person holding a registration who is not a certified public accountant;

2.32. "Referral Fee" means compensation for recommending or referring any service of a licensee to any person.

2.33. "Registrant" means a person registered pursuant to W. Va. Code § 30-9-1, et seq. and this Rule. "Registered" or "registrant" means a person registered, but not certified, by the Board under prior law as a public accountant before January 1, 1967, and "registration" means that registration;

2.34. "Registration" means a registration as a public accountant issued by the board pursuant to prior law governing the registration of public accountants and renewed by the board pursuant to this article;

2.35. "Report" or "reports," when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation which states or implies any form of assurance or denial of assurance;

2.36. "Review" means a review of a financial statement to be performed in accordance with the SSARS;

2.37. "Rule" means any rule proposed for legislative approval by the board pursuant to this article;

2.38. "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands or Guam, and "this State" means the State of West Virginia;

2.39. "Substantial equivalency" or "substantially equivalent" means or refers to a determination by the board that the education, examination and experience requirements contained in the statutes or rules of another state are comparable to or exceed the education, examination and experience requirements contained in the uniform accountancy act, or that an individual certified public accountant's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the uniform accountancy act;

2.40. "Substantial equivalency practitioner" means any individual holding an out-of-state certificate who has notified the board of his or her intent to practice accountancy in the state under the provisions of this Rule and has complied with the provisions of W. Va. Code § 30-9-16 and Section 14 of this Rule;

2.41. "Uniform accountancy act" means the uniform accountancy act, third edition, revised (November 1999), jointly published by the AICPA and NASBA.

§1-1-3. Board Organization and Proceedings.

3.1. Officers.-- At its first meeting after July 1 of each year, the Board shall elect a president, a vice president, a secretary, and

an assistant secretary from among its members. All officers shall be elected for a term of one (1) year and each shall continue in office until his or her successor has been elected and qualified or until his or her term as a member of the Board expires.

3.2. Meetings. -- The Board shall meet in Charleston or elsewhere in West Virginia as it may elect, at least twice each year, and shall remain in session as long as necessary in order to transact its business. Meetings shall be held upon notice by the president of the Board or by joint call of any three (3) of its members and may be held at any reasonable time or place designated in the notice of the meeting.

3.3. Quorum. -- A majority of the Board constitutes a quorum for the transaction of business.

3.4. Office and Employees. -- The Board shall establish an office in West Virginia, if it is considered necessary and desirable, to transact the day-to-day business of the Board and for the maintenance of its files and records. The board shall designate one (1) of its principal officers or any other person as the executive officer in charge of its office and shall arrange his or her compensation in the form of a per diem allowance or as a salary. The executive officer, with the approval of the Board, may employ such assistance as may be necessary for efficient performance of his or her duties.

3.5. Records. -- The Board shall designate and cause to have prepared those forms it considers necessary or expedient to the discharge of its duties, the convenience of applicants for registration or examination, and

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the compilation of proper records. As soon as practicable after July 1 of each year the board shall publish a roster showing the names and addresses of all certificate holders and registrants who hold licenses during the fiscal year beginning on that date.

### ~~§1-1-4. Registration of Public Accountants.~~

~~4.1. Registrants shall continue to be recognized as such as provided in the Act. No registrant needs to register or take other action to continue the effectiveness of the registration upon the effective date of this Rule. Nothing in this Rule shall be construed to require the certification of registrants.~~

### §1-1-4. Certification.

4.1. The board shall issue a certificate to any applicant who satisfies each of the requirements of this section. A certificate will only be issued when all of the requirements listed in this section are met by the applicant.

~~4.2. Age. -- An applicant for certification shall be over the age of eighteen (18) years.~~

5.34.2. Good moral character. -- An applicant for certification shall have fiscal integrity and no history of acts involving dishonesty or acts which would constitute a violation of this Rule. The board may deny certification upon a finding supported by clear and convincing evidence of a lack of good moral character.

~~5.4. An applicant for certification shall be domiciled or employed on a full-time basis in West Virginia.~~

5.54.3. Education. -- An applicant for certification shall have completed the following educational requirements:

(a) If the initial application for examination is made prior to February 15, 2000, the obtainment of a baccalaureate or equivalent degree conferred by an accredited school with a concentration in accounting or its equivalent. A qualified candidate shall submit an application on Board approved forms with the required documentation. ~~The Board will consider an applicant to be in compliance with the educational requirement of this subsection as long as the applicant otherwise continues to meet the qualifications for certification examination under subsection 6.1 of this Rule.~~

(b) If the initial application for examination is made on or after February 15, 2000, the satisfactory completion of one hundred fifty (150) semester hours or their equivalent at an accredited school, including the obtainment of baccalaureate or higher degree.

(i) As part of the required one hundred fifty semester hours, an applicant shall have completed the following credit hours at the upper-division baccalaureate and/or graduate levels at an accredited college or university:

(A) at least twenty-seven (27) credit hours or equivalent quarter hours in accounting, excluding introductory accounting courses covering the principles of accounting components, including the minimum requirements in each of the following subject areas:

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(1) six (6)  
credit hours in financial or intermediate  
accounting;

(2) six (6)  
credit hours in auditing or accounting  
information systems with a minimum of three  
(3) credit hours in auditing;

(3) three (3)  
credit hours in taxation;

(4) three (3)  
credit hours in cost accounting, managerial  
accounting, governmental accounting or  
not-for-profit accounting; and

(5) nine (9)  
credit hours in accounting electives.

Accounting internships or independent studies  
not exceeding three (3) credit hours may  
satisfy this accounting elective requirement;

(B) six (6) credit  
hours in business law; and

(C) a minimum of  
twenty-seven (27) credit hours in business  
courses, excluding required accounting and  
business law courses, with a minimum  
requirement in each of the following subject  
areas:

(1) three (3)  
credit hours in economics;

(2) three (3)  
credit hours in finance;

(3) three (3)  
credit hours in marketing;

(4) three (3)  
credit hours in statistics;

(5) three (3)  
credit hours in management; and

(6) twelve  
(12) credit hours in business-related electives,  
excluding the introductory principles of  
accounting components and the required six  
(6) credit hours in business law.  
Business-related courses include, but are not  
limited to, quantitative application in business,  
business ethics, business communication skills  
and organizational behavior.

(c) Foreign academic credentials  
shall be accompanied by a written evaluation  
from the Foreign Academic Credentials  
Service, Inc., or any other credentialing  
agency which is a member of the National  
Association of Credential Evaluation Service,  
Inc., regarding equivalency to the  
requirements of this rule.

4.64. An applicant shall satisfactorily  
complete the examination provided for in  
section 6.8 of this Rule. ~~The Board may, in its  
discretion, issue a certificate to any person,  
who (a) is the holder of a certificate issued  
under the laws of any state which extends  
similar privileges to certificate holders of this  
State. Provided. That the requirements for the  
certificates in the state which has granted the  
certificate are, in the opinion of the board,  
equivalent to those required by this rule, or (b)  
is the holder of a certificate, or the equivalent  
of a certificate, granted under the authority of  
a foreign nation.~~

4.5. An applicant shall demonstrate that he or she has one year of experience in providing any type of service or advice involving the use of accounting, attestation, compilation, management advisory, financial advisory, tax or consulting skills.

(a) Experience may include private, government, industry, or public practice, as well as experience in academia. In evaluating the experience of the applicant, the board shall consider the complexity and diversity of the work performed as well as any other factor the board may deem relevant.

(b) The applicant shall have his or her experience verified to the board by a licensee as defined in this Rule or a licensee from another state.

(i) Any licensee who has been requested by the applicant to provide evidence of the applicant's experience shall comply with such a request. Any licensee who refuses to provide such evidence shall, upon request of the board, explain in writing or in person the basis for his or her refusal.

(ii) The board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information. The board may require the applicant and/or the licensee to provide documentation supporting the evidence of experience for review by the board.

(iii) The board may require any applicant to appear before it or its representative to supplement, explain, or verify the evidence of experience.

4.76. Prior Certificants. -- Persons who, on July 1, 1989, held certificates previously issued by the board are not required to obtain additional certificates; but are otherwise subject to all provisions of this Rule. The certificates shall, for all purposes, be considered certificates issued under and subject to this Rule. No experience shall be required for a licensee who on July 1, 1989, held certification for licensure.

~~5.8. Practice by nonresidents. -- A person holding a certificate or registration issued by the accountancy board or commission of another state or jurisdiction may temporarily practice in this state on professional business incident to his or her regular practice. Provided, That he or she shall in the practice be governed by this Rule and shall pay the fee for a current license to practice, as provided in section 12 of this Rule. The Board shall submit evidence of a violation of any Rule to the accountancy board or commission of the state from which the nonresident holds his or her certificate or registration, and proceedings shall be instituted by the Board only in the event that the out of state board or commission fails or is unable to take appropriate action.~~

#### § 1-1-5. Substantial Equivalency Certificate Requirements.

5.1 The board shall issue a certificate to an applicant who holds a valid out-of-state certificate if the state of issuance extends similar privileges to holders of certificates under circumstances similar to those described in this section and if the board determines that:

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(a) The state of issuance of the out-of-state certificate has certified public accountant certification requirements that are substantially equivalent to the certified public accountant certification of the uniform accountancy act, or

(b) The applicant has individual qualifications that are substantially equivalent to the certified public accountant certification requirements of the uniform accountancy act.

(c) In determining whether the out-of-state requirements for certification held by the individual or the individual qualifications of the individual are substantially equivalent to the certification requirements of the uniform accountancy act, the board is authorized to use the NASBA National Qualification Appraisal Service.

§1-1-6. Not substantially equivalent certificate requirements.

6.1. The board shall issue a certificate to an applicant of good moral character who holds a valid out-of-state certificate but who does not qualify for a certificate under the provision of W. Va. Code § 30-9-9 and section 5 of this Rule if the applicant meets the education, experience, examination and continuing education requirements that follow:

(a) The applicant passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in this state;

(b) Within the ten year period immediately preceding the application and after passing the examination upon which the applicant's certificate in the other state was based, the applicant:

(i) has had one year of experience outside of this state of the type described in W. Va. Code §30-9-8(c) and/or section 4.5 of this Rule; and

(c) If the applicant's certificate was issued more than four years prior to the application for issuance of a certificate under this section, that the applicant has fulfilled the continuing professional education requirements that would have been applicable under W. Va. Code § 30-9-12(b)(3) and 9.3 of this Rule.

7.4. — Work experience.

~~(a) Certificate holders applying for licensure shall have two years of public accounting experience, satisfactory to the Board, or experience of such length and character which, in the opinion of the Board, is considered the equivalent of the public accounting experience. The applicant shall obtain the qualifying experience~~

~~(i) within the immediate 4 years prior to successfully completing the examination provided for in section 6 of this Rule if the experience was obtained prior to completing the examination;~~

~~(ii) or if the experience was obtained after completing the examination, within the immediate 4 years prior to licensure. Persons holding certificates prior to July 1, 1991, and registrants are~~

~~exempt from the requirements of this subsection.~~

~~(b) The record of the applicant's experience shall be verified by notarized statements from the applicant's present or former employers or others who are familiar with the experience. The statements shall set forth the specific nature and exact length of each type of qualifying experience. Proper documentation is essential in order that the record of experience may properly be evaluated by the Board.~~

§1-1-7. Foreign designation certificate requirements.

7.1. The board shall issue a certificate to a an applicant of good moral character who holds a foreign designation in public accountancy if:

(a) the foreign authority which granted the designation makes similar provision to allow a person who holds a valid certificate issued by this State to obtain such foreign authority's comparable designation; and

The foreign designation:

(i) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(ii) entitles the holder to issue reports upon financial statements; and

(iii) was issued upon the basis of educational, examination, and experience requirements established by the foreign authority or by law; and

(b) The applicant:

(i) received the designation, based on educational and examination standards substantially equivalent to those in effect in this State, at the time the foreign designation was granted;

(ii) completed an experience requirement, substantially equivalent to the requirement set out in Section 4.5 of this Rule, in the jurisdiction which granted the foreign designation or has completed four years of professional experience in this state; or meets equivalent requirements prescribed by the board by rule, within the ten years immediately preceding the application; and

(iii) passed a uniform qualifying examination in national standards and an examination on the laws, regulations and code of ethical conduct in effect in this state acceptable to the board;

(c) An applicant under this section shall in the application list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy, and each holder of a certificate issued under this subsection shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

(d) The board has the sole authority to interpret the application of the provisions of Section 7 of this Rule.

§1-1-8. Prohibited Acts:

8.1. ~~A person who does not hold a valid license shall not (a) claim to hold one, (b) practice or offer to practice public accountancy or public accounting, or make any other claim of licensure or approval related to the preparation of financial statements or expression of assurances on the financial statements which is false or misleading.~~

~~8.2. Except as set forth in this subsection, a person who does not hold a valid certificate shall not claim to hold one or describe himself or herself as or assume any of the following titles or designations: "certified public accountant," "CPA," "public accountant," "PA," "certified accountant," "CA," "chartered accountant," "LA," "registered accountant," "independent auditor," "auditor," or similar designation. However, registrants may use the titles "public accountant," or "PA." Partnerships practicing accountancy in this State may use the designations in this subsection or practice as such, only if all the members of the partnership who practice in this State are licensed.~~

8.3. ~~A person who does not hold a valid license shall not claim to have used "generally accepted accounting principles," "generally accepted accounting standards," "public accountancy standards," "public accountancy principles," "generally accepted auditing principles," or "generally accepted~~

~~auditing standards," in connection with his or her preparation of any financial statement, nor shall he or she use these terms in describing any complete or partial variation from these standards or principles or to imply complete or partial conformity with these standards or principles.~~

8.4. ~~A person who does not hold a valid license shall not use the words "audit," "audit report," "independent audit," "attest," "attestation," "examine," "examination," "opinion," or "review," in a report on a financial statement.~~

8.5. ~~A person who does not hold a valid license shall neither state nor imply that he or she is tested, competent, qualified, or proficient in financial standards established by (i) the American Institute of Certified Public Accountants or agency of the institute, (ii) the Governmental Accounting Standards Board or any agency of the Board, (iii) the Securities and Exchange Commission or any agency of the Commission, (iv) the Financial Accounting Standards Board, or (v) any successor entity to an entity named in this subsection.~~

8.6. ~~No person who holds a valid license shall engage in the practice of public accounting under a professional or firm name or designation that contains a name or term other than past or present partners, officers, or shareholders of the firm or of a predecessor firm, nor shall any such person engage in the practice of public accounting under professional or firm name which is deceptive or misleading.~~

§1-1-68. Examination for Certificate. §1-1-9. Inapplicability of Rules:

68.1. Application. -- An applicant for certificate examination shall meet the requirements of subsections 54.1, 54.2, 54.3, 54.4, and 54.5 of this Rule and shall complete the application form prescribed by the Board and furnish all information, documentation, and references, and fees required for in section 21 of this Rule. An applicant shall file a complete application with the Board at least three (3) months prior to the examination which the applicant for certification desires to take. If the candidate fails to attend three consecutive examinations he or she shall complete a new application for certification examination under the requirements existing at the time the new application is completed.

~~9.1. Nothing contained in this Rule shall be construed to prevent any person from describing himself or herself as an "accountant" or a "bookkeeper" or from stating that he or she practices accountancy or bookkeeping. Nor, subject to the licensure requirements imposed by this rule on persons holding themselves out as certificate holders, shall this Rule be construed to prevent any person from performing services involving the use of accounting skills, rendering tax services, management advisory or consulting services, or in the keeping of books of account and related accounting records, or from preparing financial statements without the expression of an assurance.~~

6.2. ~~Notice and Procedure.~~  
~~-- The board shall conduct an examination in May and November of each year for applicants for certification approved by the Board. The Board shall notify the applicants approved as candidates for examination in writing to the address stated in their applications of the exact place of the~~

~~examination and the dates and hours at which the subjects specified in subsection 6.3 of this Rule will be given. A candidate for exam shall complete all examination answers on materials provided by the Board. The board shall preserve all examination papers for a period of six (6) months after each examination. The examiners shall give candidates for examination a card bearing a number. After the card is completed, the candidate shall hand it to the examiners at the beginning of the examination. The number is for identification only and shall be used on all papers submitted by the candidate. If any candidate signs his or her name or writes initials or other identification marks upon his or her examination papers, the Board shall consider that action as misconduct and the Board may reject his or her examination papers.~~

~~9.2. Nothing contained in this Rule shall be construed to prevent any person from stating that he or she has prepared, compiled, assembled, or drafted a financial statement if he or she does not use any additional language which comprises an assurance.~~

68.3. Examination Subjects. Grading. Reexaminations. Cheating. -

~~Examinations shall include questions or problems on accounting practice, theory of accounts, auditing, commercial law, and any other areas the board may prescribe. The examination is a two-day examination comprising 15 1/2 hours.~~

~~The Board shall administer the examination every May and November on the first Wednesday and Thursday.~~

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~~The examination sections consist of, Financial Accounting & Reporting Business Enterprises; Accounting & Reporting Taxation, managerial, and Governmental and Not-for-Profit Organization; Auditing, and Business Law & Professional Responsibilities.~~

8.3.1. The board may make use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the AICPA and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties hereunder. In the event that the AICPA and NASBA authorize computerized testing, the Board shall be permitted to offer such testing and may implement it by written policy.

8.3.2. The candidate is required to make a grade of not less than seventy-five percent (75%) in each examination subject to pass the examination. If a candidate is sitting for the examination for the first time and passes two or more but not all sections, then the Board shall give the candidate credit for those sections that the candidate has passed and he or she need not sit for reexamination in those sections, provided that:

(a) the candidate wrote all sections of the examination at that sitting;

(b) the candidate attained a minimum grade of 50 on each section not passed at that sitting;

(c) the candidate passes the remaining sections of the

examination within six consecutive examinations given after the one at which the first sections were passed;

(d) at each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate writes all sections not yet passed; and

(e) in order to receive credit for passing additional sections in any subsequent sitting, the candidate attains a minimum grade of 50 on sections written but not passed at that sitting.

~~A candidate who sat for and passed part of the examination prior to May, 1994, shall retain the credits and the Board shall give the candidate credit for sections passed on the May, 1994 examination or subsequent examinations provided that:~~

~~(a) the candidate wrote all remaining sections of the examination at the May, 1994 and subsequent examinations;~~

~~(b) the candidate attained a minimum grade of 50 on each section not passed at that sitting; and~~

~~(c) the candidate passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed. The Board shall give a candidate credit for any and all sections of an examination passed in another state if credit would have been given, under then applicable requirements, if the candidate had taken the examination in this State. The Board~~

~~may in particular cases waive or defer any of the requirements regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the candidate's control, the candidate was unable to meet the requirement.~~

### 8.3.3. Cheating

(a) Cheating by an applicant in applying for or taking the examination will be deemed to invalidate any grade otherwise earned by a candidate on any part of the examination, and may warrant summary expulsion from the examination room and disqualification from taking the examination for a specified number of subsequent sittings.

(b) For purposes of this Rule, the following actions, among others, may be considered cheating:

(1) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;

(2) Communication between candidates inside or outside the examination room or copying another candidate's answers while the examination is in progress;

(3) Communication with others outside the examination room while the examination is in progress;

(4) Substitution of another person to sit in the examination room in the stead of a candidate;

(5) Reference to crib sheets, text books or other material inside or outside the examination room while the examination is in progress.

(c) In any case where it appears to the board, while the examination is in progress, that cheating has occurred or is occurring, the Board may either summarily expel the candidate involved from the examination or move the candidate to a position in the room away from other examinees where the candidate can be watched more closely.

(d) In any case where the board believes that it has evidence that a candidate has cheated on the examination, or where a candidate has been expelled from the examination, the board shall conduct a hearing expeditiously following the examination session for the purpose of determining whether or not there was cheating, and if so what remedy should be applied. In such hearings, the Board shall decide:

(1) Whether the candidate shall be given credit for any portion of the examination completed in that session; and

(2) Whether the candidate shall be barred from taking the examination in future sittings, and if so, for how many sittings.

(e) In any case where the Board permits a candidate to continue taking the examination, it may, depending on the circumstances:

(1) Admonish the candidate;

(2) Seat the candidate in a segregated location for the rest of the examination;

(3) Keep a record of the candidate's seat location and identification number, and the names and identification numbers of the candidates on either side of the candidate; and/or

(4) Notify the AICPA of the circumstances, furnishing the candidate's identification number, so that after the initial grading is completed the candidate's papers can be compared for unusual similarities with the papers of others who may have been involved.

(f) In any case where a candidate is refused credit for parts of the examination taken, or is disqualified from taking other parts, the board shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal rehearing by the board, with right of appeal, pursuant to Title 1, Procedural Rule, West Virginia Board of Accountancy, Series 2, Contested Case Hearing Procedures.

(g) In any case where a candidate is refused credit for any part of an examination taken, disqualified from taking any part of the examination, or barred from taking the examination in future sittings, the board will provide to the board of accountancy of any other state to which the candidate may apply for the examination

information as to the board's findings and actions taken.

~~9.3. The prohibitions of section 8 of this Rule and the other provisions of this Rule shall not be construed to preclude the use of the following or substantially similar language. "I (We) have compiled the accompanying (financial statements) of (Name of entity) as of (time period) for the (period) then ended. A compilation is limited to presenting in the form of financial statements information that is the representation of management (owners). I (We) have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them. Management has elected to omit substantially all (or certain) required disclosures (and the statement of changes in financial position or cash flows). If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the (entity's) financial position, results of operation, and changes in financial position (or cash flows). Accordingly, these financial statements are not designed for those who are not informed about these matters."~~

~~9.4. Nothing contained in this Rule shall be construed to prohibit an employee from furnishing services to his or her employer.~~

~~§1-1-7. Licensure. §1-1-9. Certificate Renewal. Condition of Renewal.~~

7.9.1. License required. -- All registrants and certificants shall annually renew their licenses from the board in order to practice public accounting offer professional

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services. Licenses are valid for a period of one (1) year (or portion thereof) ending on June 30 of each year.

79.2. Application. -- Applicants for licensure or licensure renewal shall complete the forms prescribed by the board and furnish all information and documentation required in the form, as well as the license fee provided for in section 21 of this Rule.

9.2.1 An applicant must list all states in which he or she has applied for or holds an out-of-state certificate and any past denial, revocation or suspension of an out-of-state certificate.

9.2.2 Applications will not be considered unless the fee provided by this Rule is received.

79.3. Continuing education. -- Certificate holders applying for licensure renewal shall have completed 120 hours of continuing education as provided for in this subsection within the three preceding calendar years, with at least 20 hours in each calendar year. Any certificate holder applying for licensure who has not been engaged in the practice of public accountancy during the prior calendar year shall be considered to have complied with the hourly requirements set forth in this subsection: Provided, That the certificate holder completes 40 hours of continuing education during the subsequent calendar year and thereafter satisfies all otherwise applicable provisions of this subsection. ~~Registrants are exempt from the requirements of this subsection.~~

79.3.1. Continuing education program guidelines. The board shall determine if a continuing education program satisfies the requirements of this subsection. In its evaluation of continuing education programs, the board shall apply the following standards:

(a) The program should contribute directly to the professional competence of the individual;

(b) The stated objectives of a program should include the enhancement of the ability of the participant which the program is intended to accomplish;

(c) The education and/or experience prerequisites for the program should be stated;

(d) Materials used in programs should be developed by qualified individuals for use with specified teaching methods;

(e) Program content should be current;

(f) Programs should be reviewed by persons other than the preparer to ensure compliance with this subdivision;

(g) Qualifying programs include, but are not necessarily limited to:

(1) Courses and mini-courses sponsored by national or state professional organizations. The board may approve programs sponsored by other

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groups if they meet the same educational objectives;

(2)

University and college courses (other than courses in principles of accounting) which contribute to the professional competence of the individual;

(3) Formal

home study courses;

(4) Firm "in

house" programs sponsored by accounting firm associations, other than basic, "on-the-job" training;

(5)

Published books and articles, to a maximum of 60 hours credit per publication; and

(6)

Technical sessions at meetings of professional organizations or other organizations of direct interest and application to the practice of public accountancy, such as the West Virginia Tax Institute; and

(h) Qualifying

programs do not include, for example, time spent in:

(1)

Providing services to clients;

(2)

Presentations to nonprofessional groups such as schools, civic, religious, or community organizations; and

(3) Informal

review of professional journals.

79.3.2. Continuing

education program preapproval, credits and administration; additional credit for instruction.

(a) The board

encourages licensees, program sponsors, and other interested persons to seek prior approval of continuing education programs in order to facilitate the administration of and compliance with this subsection.

(b) The board shall

award one hour of credit for the completion of each 50 minutes of actual participation in the program, or its lesson equivalent in a home study course, as indicated on the certificate of completion. The Board shall not award credit for programs less than 50 minutes in length or partial hours of program participation.

(c) The board shall

grant credit for university or college courses at accredited schools as follows:

(1)

Applicants shall receive 15 hours credit for each semester credit hour earned and ten hours credit for each quarter credit hour earned; and

(2)

Applicants attending non credit courses shall receive credit at the rate of one hour of credit for each 50 minutes in-class participation.

(d) A licensee may

claim credit only for programs completed during the relevant calendar years, except for good cause shown.

(e) Instructors in an

approved program shall receive three hours

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credit for each hour taught for the first time they teach a course, to a maximum of 60 hours credit per course per year. The board shall not give credit for subsequent teaching of the same course, unless the course has been substantially updated. If the same course is taught again in less than three years, the instructor must receive prior approval from the board for additional credit.

79.3.3. Compliance monitoring.

(a) The board shall measure compliance with this subsection by the calendar year. All licensees shall return an annual continuing education reporting form to the board by January 31 of the following year.

(b) Reporting forms shall contain the licensee's board certificate and licensee numbers.

(c) The board shall enter hours reported into the record of the licensee in a master file with the designation of the year and the number of credits and maintain in the master file the licensee's record of the current year and the past two years. In addition, The board shall maintain a file of continuing education reporting forms for each licensee for four years.

(d) The board shall annually provide a mailing to each licensee which will provide a confirmation or the record for review by the licensee so that corrective action can be taken if there is an error or dispute.

(e) Fraudulent reporting of CPE credits is a basis for disciplinary action by the board.

79.3.4. Continuing education exceptions.

The following persons are exempt from the requirements of this subsection:

(a) ~~Licensees over the age of 65, all of whose services are rendered to an accounting firm. Provided, That the services shall be reviewed and approved by another licensee who satisfied the requirements of this subsection. The result of all services going to the public shall be presented under the firm name. This exemption shall be based on a written request from the licensee and is subject to approval by the Board, and~~

(a) Other persons who demonstrate good cause for exemption to the Board. A person not meeting the requirements of this subsection may apply to the Board for a waiver due to extenuating circumstances, such as accident, illness, pregnancy, military service or any other circumstance as determined appropriate by the Board. This request be received by the Board by January 31 following the reporting period, except for good cause shown.

(b) Certificants granted such an exception by the board must place the word "inactive" adjacent to their CPA title or PA title on any business card, letterhead or any other document or device, with the exception of their CPA

certificate or PA registration, on which their CPA or PA title appears.

( i )

A certified public accountant receiving the exemption from continuing education requirements who has completely discontinued his or her performance of professional services, who has no active management or supervisory responsibilities in a firm, and who is at least sixty-two years of age is not required to place the word "inactive" or any other word adjacent to his or her "CPA" title on any business card, telephone directory listing, letterhead or any other similar document or device.

§1-1-10. Duty to inform board of denials, suspensions, revocations, limitations.

10.1 Each licensee and each substantial equivalency practitioner must notify the board, within thirty days of its occurrence of any denial, suspension or revocation of or any limitation, including probation or censure, placed on a license or out-of-state certificate.

10.1.1 U p o n notification to the board, the board may request any additional information for its review.

§1-1-11. Peer Review

11.1. 7-5: Peer Review. -- The board may, at its discretion, provide for the review of any certificate holder (i) applying for licensure renewal or (ii) who the Board has reason to believe may be in violation of section 22 of this Rule. In these cases, the

board may provide for reimbursement and payment of those persons conducting the review and shall set forth in writing the scope and procedures of the review. Nothing in this subsection is a prerequisite to any other board action under this Rule, including but not limited to section 17 of this Rule.

§1-1-12. Holder of out-of state certificate establishing principal place of business in state.

12.1. A holder of an out-of-state certificate who intends to establish his or her principal place of business in this state must first apply for the issuance of a certificate.

12.1.1 He or she may only offer professional services only upon compliance with the substantial equivalency notice provisions set forth in Section 15 of this Rule.

12.1.2. If the applicant is not issued a certificate under the provisions of this Rule, the applicant shall cease offering professional services upon notice of denial of his or her application.

§1-1-13. Public Accountants.

13.1. A person who on the first day of July, two thousand one, holds a registration as a public accountant issued under prior law is entitled to have the registration renewed under the same terms upon fulfillment of the following:

13.1.2. fulfillment of the same continuing professional education requirements;

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13.1.3. on the same renewal schedule;

13.1.4. and upon payment of fees required under W. Va. Code § 30-9-12 and Section 22 of this Rule.

13.2. All Rules contained herein are applicable to public accountants.

§1-1-14. Substantial equivalency practice privileges.

14.1. An individual whose principal place of business is not in this state and who holds an out-of-state certificate shall have all of the rights and privileges of a certificate holder of this state without the need to obtain a certificate if:

14.1.1. the other state extends similar privileges to a holder of a certificate in this state; and

14.1.2. the board has determined:

(a) that the state that issued the out-of-state certificate has certification requirements that are substantially equivalent to the certification requirements of the uniform accountancy act; or

(b) the board has verified that the individual's qualifications are substantially similar to the certification requirements of the uniform accountancy act.

14.1.3. In determining whether the certification requirements of the other state or the individual are substantially equivalent to the certification requirements of the uniform accountancy act, the board is authorized to use the NASBA National Qualification Appraisal Service.

(a) The board shall develop and maintain a list of those states whose certification requirements are substantially similar to the certification requirements of the uniform accountancy act.

14.2. An individual seeking to practice under this section, shall file notice with the board no less than ten days prior to performing or offering any services in the state that includes:

14.2.1. The individual's name, principal business address, out-of-state certificate number and state of issuance, and any other information the board may require.

14.2.2. disclose any pending disciplinary action or any past denial, revocation or suspension of the out-of-state certificate; and

14.2.3. attach the fee as provided by Section 21 of this Rule.

14.3. In order to continue practicing in this state as a substantial equivalency practitioner, no later than the first day of July of the second calendar year following the substantial equivalency practitioner's most recent filing of the notice required under subsection 10.2 of this Rule, a substantial equivalency practitioner shall file a notice with the board and attach the required fee.

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14.4. Any individual performing or offering to perform any services in the state as a substantial equivalency practitioner is subject to the following:

14.4.1. Jurisdiction of the board concerning all matters within the scope of this article;

14.4.2. Compliance with the provisions of this Rule and W. Va. Code § 30-9 et seq.

14.4.3. The appointment of the secretary of state as his or her agent upon whom process may be served in any action or proceeding against the individual arising out of any transaction or operation connected with or incidental to services performed in this state;

14.4.4. The appointment of the board of accountancy of the state of issuance of his or her out-of-state certificate as his or her agent upon which process may be served in an action or proceeding by the board; and

14.4.5. Disclosure of any and all documentation necessary to conduct an investigation under this Rule.

### §1.1.15. Issuance and renewal of permits.

15.1. The board shall issue a permit to a firm that demonstrates that:

15.1.1. Each partner, officer, shareholder, member or manager of the firm whose principal place of business is in this state and who performs or offers to perform

professional services in this state hold a certificate or a registration; and

15.1.2. The firm meets firm ownership requirements.

15.2. An application for the issuance of a permits must be made in the following information:

15.2.1. The names of all partners, officers, shareholders, members or managers of the firm whose principal place of business is in this state;

15.2.2. The location of each office of the firm within the state and the name of the certified public accountant or public accountant in charge of each office; and

15.2.3. Any issuance, denial, revocation, suspension, probation, or censure of an out-of state permit.

15.3. Permits will initially be issued for a period to expire on the thirtieth day of June following the date of issuance.

15.3.1. The board shall renew a permit for a period of one year beginning on the first day of July of each year after initial licensure in accordance with this Section.

15.4. A firm registered pursuant to this section shall file with the board a written notification of any of the following events concerning the practice of public accountancy within this State within thirty (30) days after its occurrence:

(a) Formation of a new firm;

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- (b) Addition of a partner, member, manager or shareholder;
- (c) Retirement, withdrawal or death of a partner, member, manager or shareholder;
- (d) Any change in the name of the firm;
- (e) Termination of the firm;
- (f) Change in the management of any branch office in this State;
- (g) Establishment of a new branch office or the closing or change of address of a branch office in this State; and
- (h) The occurrence of any event or events which would cause such firm not to be in conformity with the provisions of W. Va. Code § 30-9 et seq. or these Rules.
- (i) In the event of any change in legal form of a firm, such new firm shall within thirty (30) days of the change file an application for an initial permit in accordance with these rules and pay the fee required by these rules.
- (ii) The board shall suspend or revoke the permit of any firm that ceases to meet firm ownership requirements due to changes in firm ownership or personnel due to the death or retirement of a partner, officer, shareholder, member or manager and that fails to take corrective action in the manner and during the time period specified by this Rule.

§1-1-16. Issuance and renewal of authorizations.

16.1. Beginning on the first day of July, two thousand one, on person or business entity may provide attest or compilation services without first having obtained an authorization issued by this board.

16.1.2. An applicant may apply for authorization to perform attest or compilation services or both.

16.2. A person applying for authorization under this section shall provide the following information in its application:

16.2.1. The name of the individual applying and the individual's certification number;

16.2.2. The location of each office within the state from which the individual perform accounting services;

16.2.3. Any issuance, denial, revocation, suspension, probation, or censure of any permit or certification issued by this state or an out-of-state accountancy board;

16.2.4. Verification that he or she signs attest and compilation reports as a certified public accountant or public accountant; and

16.2.5. Verification that he or she is undergoing a peer review program that conforms with the following:

(i) On and after January 1, 2003, each applicant for renewal of its authorization under this Section who provides

compilation and/or attest services to the public other than through a CPA firm and each applicant for renewal of a firm permit to practice under Section 7 of the Act shall furnish in connection with their application, with respect to each office maintained by the applicant in this State, one copy of each of the following kinds of reports, together with their accompanying financial statements, issued by the certificate holder or office during the twelve month period next preceding the date of application, if any report of such kind was issued during such period:

- (I) A compilation report;
- (II) A review report;
- (III) An audit report;
- (IV) A report of the examination of prospective financial information.

(ii) The Board may also solicit for review reports of licensees and related financial statements from clients, public agencies, banks, and other users of financial statements.

(iii) Any documents submitted in accordance with subsection (b) may have the name of the client, the client's address and other identifying facts omitted, provided that the omission does not render the type or nature of the enterprise undeterminable. The identities of the sources of financial statements and reports received by the board from other than the licensees who issued the reports shall be preserved in confidence. Reports submitted to the board pursuant to this subsection, and comments of reviewers

and of the board on such reports or workpapers relating thereto, also shall be preserved in confidence except that they may be communicated by the board to the licensees who issued the reports.

(iv) The review of financial statements and reports of the licensees thereon shall be directed toward the following:

(I) Presentation of financial statements in conformity with generally accepted accounting principles;

(II) Compliance by licensees with generally accepted auditing standards;

(III) Compliance by licensees with other professional standards; and

(IV) Compliance by licensees with the Rules of the board and other regulations relating to the performance of compilation and attest services as herein defined.

(v) In gathering information about the professional work of licensees, the board may make use of investigators, either paid or unpaid, who are not members of the board.

(vi) In any instance where the board finds a deficiency in the professional work of a licensee, it shall advise the licensee in writing of the deficiency. The board may request the licensee to meet with it to discuss deficiencies. If the board determines that a report is substandard or seriously questionable, the board may direct that a review of the workpapers be conducted by an

independent reviewer other than the person who performed the review of the report. The findings of any such review of the workpapers shall be transmitted by the reviewer to the board.

16.2.6. The board shall issue an authorization to an individual providing the information required in this subsection.

16.3. A business entity applying for authorization under this section shall provide the following information in its application:

16.3.1. The names of all partners, officers, shareholders, members or managers of the firm whose principal place of business is in this state and each individual's certification number;

16.3.2. The location of each office of the firm within the state and the name of the certified public accountant or public accountant in charge of each office;

16.3.3. Any issuance, denial, revocation, suspension, probation, or censure of a permit issued by this or another state board;

16.3.4. Verification that any certified public accountant or public accountant who signs or authorizes someone to sign a report on financial statements on behalf of the permit holder meets the competency requirements set forth in the professional standards for those services set forth in Section 22 of this Rule.

16.3.5. Verification that the attest and compilation services by the permit holder are verified by a certified public accountant or a public accountant; and

16.3.6. Verification that the permit holder is undergoing a peer review program that conforms with subsection 16.2.5.

16.3.7. The board shall issue an authorization to a permit holder providing the information required in this subsection.

16.4. A firm may simultaneously apply for the issuance or renewal of a permit and the issuance or renewal of an authorization by demonstrating that the firm meets the requirements of Section 15 of this Rule and Section 16 of this Rule.

16.5. The board shall renew an authorization for a period of one year beginning on the first day of July of each year after initial issuance in accordance with the requirements for initial issuance under this Section.

~~§1-1-13. Discipline and Enforcement. §1-1-17. Refusal to Issue or Renew; Suspension; Revocation of License; Disciplinary Action~~

~~13 17.1. Censure, reprimand, revocation and suspension of certificates, registrations, and licenses. -- After notice and hearing, as provided in W. Va. Code §30-1-1, et. seq., the Board may censure or reprimand a certificant or registrant, revoke or suspend any certificate or registration, and may refuse to issue, or refuse to renew, any license, for any one or a combination of the following causes: Authority and grounds for refusal to issue or renew a license or to suspend, revoke and/or fine a licensee. -- The board may refuse to issue, refuse to renew, suspend, revoke or limit any license or practice privilege of any licensee, substantial equivalency practitioner~~

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or firm and may take disciplinary action against a licensee or substantial equivalency practitioner practicing in this state who, after hearing held pursuant to W. Va. Code § 30-1-1, et seq., has been adjudged by the board as unqualified because of any of the following reasons:

(a) Fraud or deceit in obtaining or maintaining a license or substantial equivalency practice privilege;

(b) Cancellation, revocation, suspension or refusal to renew an out-of-state certificate, an out-of-state permit or substantial equivalency practice privilege for disciplinary reasons in any other state for any cause other than failure to pay an annual fee for the renewal of an out-of-state certificate or out-of-state permit in the other state;

(c) Failure by any licensee to maintain compliance with requirement for issuance or renewal of a license or to timely notify the board as required under W. Va. Code § 30-9-18;

(d) Revocation or suspension of the right of the licensee or substantial equivalency practitioner to practice before any state or federal agency;

(e) Dishonesty, fraud, professional negligence in the performance of services as a licensee or substantial equivalency practitioner or in the filing or failure to file the licensee's or substantial equivalency practitioner's own income tax returns, or a willful departure from accepted standards of professional conduct applicable to licensee's and substantial equivalency practitioners;

(f) Violation of any provision of this article, any lawful order of this board, or any rule, including the violation of any professional standard or rule of professional conduct;

(g) Conviction of a felony or any crime an element of which is dishonesty or fraud under the laws of the United States or this state, or conviction of any similar crime under the laws of any other state if the underlying act or omission involved would have constituted a crime under the laws of this state;

(h) Performance of any fraudulent act by any licensee or substantial equivalency practitioner;

(i) Any conduct reflecting adversely upon the licensee's or substantial equivalency practitioner's fitness to perform professional services;

(j) Making any false or misleading statement or verification in support of an application for a license filed by another person or firm; or

(k) Engaging in the unlawful practice of law as defined by the West Virginia supreme court of appeals.

17.2. If the board renders a decision to deny issuance or renewal of a license, suspending or revoking of a license, or the board takes disciplinary action, the board shall determine whether the licensee, substantial equivalency practitioner or firm holds an out-of-state certificate or permit, and, if so, the board shall notify the board of accountancy of the state of issuance of its decision.

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17.2.1. The board will affect notification of the decision 30 days from the time the decision becomes final including the final determination of any appeals that may be made.

17.2.1. Upon expiration of this time period, the board shall provide a certified copy of its decision and any decision of a circuit court or the West Virginia Supreme Court of Appeals issued in the matter.

17.3. When the board has suspended, revoked or refused to renew a license or has revoked the practice privileges of a substantial equivalency practitioner, the licensee, firm, or substantial equivalency practitioner against whom the action has been taken, shall be afforded an opportunity to demonstrate the qualifications to resume practice.

17.3.1. A request for reinstatement shall be made in writing and directed to the board. It shall state with specificity the reason(s) that the party believes that he or she is qualified to resume practice. The party requesting reinstatement may also request to address the board at a future board meeting. The board may also request such a meeting and may require any additional information that it deems necessary to issue a decision.

17.3.2. Upon a determination with regard to the request for reinstatement, the board shall notify the requesting party of its decision in writing.

17.3.3. The provisions of this subsection are separate and distinct from the contested case hearing procedure provided for in Title 1, Series 2, Contested Case Hearing Procedure for the West Virginia Board of

Accountancy. A request for reinstatement shall not meet the petition requirements set forth in that rule.

~~(a) Fraud or deceit in obtaining a certificate, registration, or license;~~

~~(b) Dishonesty, fraud, or gross negligence in the practice of public accounting;~~

~~(c) Violation of this Rule;~~

~~(d) Conviction of any felony, or any crime an element of which is deceit or fraud, under the laws of any state or of the United States;~~

~~(e) Cancellation, revocation, suspension, or refusal to renew authority to practice public accountancy by any other state, for any cause other than failure to pay an annual license fee in the other state;~~

~~(f) Habitual drunkenness, addiction to the use of habit-forming drugs, mental incompetence, or gross immorality, and~~

~~(g) Unlawful practice of law as defined by the West Virginia Supreme Court of Appeals and/or statutory law of this State.~~

~~13.2. Injunction against unlawful acts. Any person may bring to the attention of the board suspected violations of section 6 of the Act. At its discretion, and following whatever investigation it considers appropriate, the board may apply to any court of competent jurisdiction for an order enjoining the violations as provided in section 8 of the Act.~~

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~~§1-1-18.~~ Contingency Fee Contracts; Commissions; Referral Fees.

~~11-6.~~ 18.1. All contingency fee contracts shall be in writing and signed by both the accountant and the clients.

~~11-7.~~ 18.2. Before entering into a contingency fee contract, the accountant shall disclose, to the prospective client, in writing; the percentage to be retained by the accountant in the event a favorable result is attained.

~~11-8.~~ 18.3. In determining the reasonableness of a contingency fee contract, the Board shall consider the following factors:

18.3.1. The time and labor expended in attaining the result;

18.3.2. The difficulty of the work performed;

18.3.3. The level of skill required to perform the work;

18.3.4. Whether acceptance of this client's work precluded the licensee from accepting work from other clients;

18.3.5. The standard contingency fee charged in the area;

18.3.6. Time limitations imposed by the work or the client;

18.3.7. The amount involved and the results obtained;

18.3.8. The experience, reputation and ability of the licensee; and

18.3.9. The nature and length of the relationship with the client;

~~11-9.~~ 18.4 A licensee shall not charge or accept a contingency fee for:

18.4.1 preparing an original or amended tax return or claim for a tax refund;

18.4.2 serving as an expert witness;

18.4.3 performing an audit or review of a financial statement;

18.4.4 performing a compilation of a financial statement when the licensee expects, or reasonably might expect that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

18.4.5 performing an examination of prospective financial information,

18.4.6 The prohibition in this subsection applies during the period in which the licensee or the licensee's firm is engaged to perform any of the services listed in this subsection and the period covered by any historical statements involved in the services.

~~11-10.~~ 18.5. A licensee may utilize a contingency fee contract when representing a client before a taxing authority. Provided: that nothing in this rule shall be construed either to limit or expand the scope of professional services practice of public accountancy. This rule shall not be construed to promote the unauthorized practice of law.

~~11-11.~~ 18.6. Prohibited Commissions. A licensee in public practice shall not

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recommend or refer to a client any product or service for a commission or recommend or refer to a client any product or service to be supplied by a client for a commission or receive a commission, when the licensee or the licensee's firm also performs the following services for that client:

18.6.1. an audit or review of a financial statement;

18.6.2. a compilation of a financial statement when the licensee expects; or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

18.6.3. an examination of prospective financial information;

~~11-12-~~ 18.7. The prohibition in this subsection applies during the period in which the licensee is engaged to perform any of the services listed in this subsection and the period covered by any historical financial statements involved in the listed services.

~~11-13-~~ 18.8. Disclosure of Permitted Commission. A licensee in public practice who is not prohibited by this rule from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact in writing to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

~~11-14-~~ 18.9. Referral Fees. Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to

obtain a client shall disclose the acceptance or payment to the client in writing.

### §1-1-19. Confidentiality of information

19.1. Except by permission of the client for whom a licensee performs services or the heirs, successors, or personal representatives of such a client, a licensee shall not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee. Such information shall be deemed confidential. *Provided*, That this section shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings under this article, in ethical investigations conducted by private professional organizations, in the course of peer reviews, to other persons on a need-to-know basis when such persons are active in the firm and performing services for such client, or to persons in the firm who need the information for the sole purpose of assuring quality control within the firm.

### §1-1-20. Accounting Corporations and Other Forms of Business.

~~10~~ 20.1. One or more licensees may organize and become shareholders of an accounting corporation subject to the requirements of this section.

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10 20.2. No accounting corporation shall exist or transact business as an accounting corporation without the prior authorization of the board. Applicants for authorization shall complete an application form, furnish all other documents and information requested by the board, and pay the fee set forth in section 12 of this Rule.

10 20.3. The board shall not authorize the organization of an accounting corporation unless, in addition to the other requirements set forth in this Rule, the applicants comply with the following requirements:

(a) The sole purpose and business of the corporation shall be to furnish to the public, services not inconsistent with the Act or this Rule: Provided, That the corporation may invest its funds in a manner not incompatible with the practice of public accounting;

(b) The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation shall be an individual licensed under W. Va. Code §30-9-1 et. seq.

(c) At least one shareholder of the corporation is certified or registered in this state;

(d) The accounting corporation is domiciled in this State.

(e) Sixty (60) % of the ownership of any accounting corporation is by individuals licensed under W. Va. Code §30-9-1 et. seq.

(f) The remaining percentage of ownership may be held by non-licensee owners who are active participants in the accounting corporation.

(i) Non-licensee owners are considered active participants in the accounting corporation if they are employed by the accounting corporation for at least 20 hours per week and are otherwise legally authorized to provide compatible professional services.

(ii) Non-licensee owners shall possess no direct control or have personal supervision of the practice or personnel who act in behalf of the corporation in giving of assurance in a report or otherwise.

(g) Each resident manager in charge of an office of the corporation in this State and each shareholder or director personally engaged within this State in the practice of public accounting shall be certified or registered in this State;

(h) When not inconsistent with this section, the organization and procedures of accounting corporations shall conform to the requirements of W. Va. Code §31-1-1, et. seq.

10 20.4. When the Board determines that an accounting corporation meets the requirements of this rule and W. Va. Code §30-9-11, the Board shall notify the Secretary of State that a Certification of Authorization has been issued to the person or persons making application for the accounting corporation.

10 20.5. Upon receipt of the certificate of authorization required by subsection 10.2 of

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this Rule, an accounting corporation shall promptly cause to be filed in the office of the Secretary of State a certified copy of the certificate of authorization. No accounting corporation shall transact business until it has received (i) a certificate of incorporation from the Secretary of State and (ii) filed a certified copy of the certificate of incorporation with the Board.

~~10 20.6.~~ The Secretary of State, upon receipt of a certificate of authorization shall attach the Certificate of Authorization to the corporation s application and, upon compliance with the applicable provisions of chapter thirty of the West Virginia Code, the Secretary of State may issue to the incorporators a certificate of incorporation for the accounting corporation. Once the accounting corporation receives the certificate of incorporation from the Secretary of State s Office it may begin engaging in the practice of public accounting through persons duly licensed under W. Va. Code §30-9-i et. seq.

~~10 20.7.~~ The person or persons making application for the accounting corporation shall send a copy of the Certification of Authorization to the Secretary of State s office.

~~10.8.~~ ~~One or more licensees may be members of an accounting firm that is organized as a limited liability company or registered limited liability partnership solely to render accounting services under the laws of West Virginia, including but not limited to, the Uniform Liability Act, W. Va. Code §31B-1-101 et. seq., and the Uniform Partnership Act, W. Va. Code §41B-1-1 et. seq., and may practice as a limited liability organization, provided that they are otherwise licensed to~~

~~practice public accountancy in West Virginia and the accounting firm is registered pursuant to rules promulgated by the Board.~~

~~10 21.9.~~ ~~Nothing in this rule or the laws under which a licensee or accounting firm is organized shall relieve a licensee from personal liability for the acts, errors and omissions of the licensee arising out of the performance of public accountancy.~~

~~10 21.10.~~ ~~Licensees may operate under other forms of business organizations, including but not limited to partnerships, professional limited liability companies and limited liabilities companies authorized by West Virginia law provided, however, the Board shall not authorize the organization unless, in addition to the other requirements set forth in this Rule, the applicants comply with the following requirements:~~

~~(a) The sole purpose and business of the organization is to furnish to the public, services not inconsistent with the Act or this Rule. Provided, That the organization may invest its funds in a manner not incompatible with the practice of public accounting;~~

~~(b) The shareholder or member of the organization having authority over the practice of public accounting by the organization is an individual licensed under W. Va. Code §30-9-1 et. seq. in good standing;~~

~~(c) At least one member or shareholder of the organization is certified or registered in this state;~~

~~(d) The organization is domiciled in this State.~~

~~(c) Sixty (60) % of the ownership of the organization is by an individual licensed under W.Va. Code §30-9-1 et.seq. in good standing and shall be principally employed by the organization or actively engaged in its business.~~

~~(f) The remaining percentage of ownership may be held by non-licensee owners who are active participants in the organization.~~

~~(i) Non-licensee owners are considered active participants in the organization if they are employed by the organization for at least 20 hours per week and are otherwise legally authorized to provide compatible professional services.~~

~~(ii) Non-licensee owners shall possess no direct control or have personal supervision of the practice or personnel who act in behalf of the organization in giving assurance in a report or otherwise.~~

~~(g) Each resident manager in charge of an office of the organization in this State and each shareholder or director personally engaged within this State in the practice of public accounting shall be certified or registered in this State;~~

~~(h) When not inconsistent with this section, the organization and procedures of any business organization shall conform to the requirements of W. Va. Code authorizing the formation of that business organization.~~

~~10-21-11. No professional limited liability company shall exist or transact business without the prior authorization of the Board. Applicants for authorization shall complete an~~

~~application form, furnish all other documents and information requested by the Board, and pay the fee set forth in section 12 of this Rule.~~

~~10-21-12. Upon receipt of the authorization required by subsection 10-11 of this Rule, a professional limited liability company shall promptly cause to be filed in the office of the Secretary of State a certified copy of the authorization. No professional limited liability company shall transact business until it has received (i) a certificate of Organization from the Secretary of State and (ii) filed a certified copy of the certificate with the Board.~~

~~10-21-13. A professional limited company may render public accounting services only through members, employees and agents who are licensees within this State. The term "employee" or "agent," as used in this subsection, does not include secretaries, clerks, typists or other individuals who are not usually and ordinarily considered by custom and practice to be rendering public accounting services.~~

~~10-21-14. This section does not modify the law as it relates to the relationship between a person furnishing accounting services and his or her client, nor does it modify the law as it relates to the liability arising out of such a professional service relationship. Except for permitting a professional limited liability company, this section is not intended to modify any legal requirement or court rule relating to ethical standards of conduct required of persons providing accounting services.~~

~~10-21-15. The name of a professional limited liability company shall contain the last name or names of one or more of its~~

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~~shareholders or include the name or names of former members or of persons who were associated with a predecessor partnership or other organization. The name shall also contain the words "professional limited liability company," or the abbreviation "P.L.L.C." The use of the word "company" or any other words or abbreviations in the name of a professional limited liability corporation, organized under this section 10 of this Rule which indicate that the organization is a corporation, other than the words "professional limited liability company" or the abbreviation "P.L.L.C.," is specifically prohibited.~~

§1-1-~~42~~ 21. Fees.

~~42~~ 21.1. The board shall charge the following fees:

(a) An examination application fee of one hundred seventy dollars (\$170.00), provided, however, that the board may increase this fee to administer the examination by computer as provided in section 8 of this Rule;

(b) A re-examination fee of forty dollars (\$40.00) per part of the examination retaken, provided, however, that the board may increase this fee to administer the examination by computer as provided in section 8 of this Rule;

(c) A transfer of credit and examination application for as follows:

(i) A transfer of credit application fee of one hundred fifty-five dollars (\$155.00);

(ii) An examination fee of one hundred seventy dollars (\$170.00);

(iii) A minimum transfer fee of one or more parts of the examination of seventy-five dollars (\$75.00);

(iv) A minimum transfer fee of three parts of the examination of one hundred fifteen dollars (\$115.00); and

(v) A minimum transfer fee of four parts of one hundred fifty-five dollars (\$155.00);

(d) A fee for authorization to release information form of thirty dollars (\$30.00);

(e) A certificate fee of thirty dollars (\$30.00);

(f) A C.P.A. license renewal fee, a P.A. license renewal fee, a non-resident C.P.A. license application fee, a non-resident C.P.A. license renewal fee of sixty-five dollars (\$65.00);

~~g. A P.A. license renewal fee of sixty-five dollars (\$65.00);~~

~~h. A non-resident C.P.A. license application fee of sixty-five dollars (\$65.00);~~

~~i. A non-resident C.P.A. license renewal fee of sixty-five dollars (\$65.00);~~

(g) An accounting corporation, limited liability company or limited liability partnership application for registration fee of fifty-five dollars (\$55.00);

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(h)~~k~~ An accounting corporation, limited liability company or limited liability partnership registration renewal fee of fifty-five dollars (\$55.00);

(i)~~t~~ An active certificate holder registration fee of thirty dollars (\$30.00);

(j)~~m~~ An active certificate holder registration renewal fee of fifty dollars (\$50.00);

(k)~~r~~ All renewals postmarked after the annual renewal deadline date of June 30, are subject to an additional late filing fee of fifty dollars (\$50.00);

(l)~~e~~ A fee for a copy of the directory of all licensees of one hundred ten dollars (\$110.00);

(m)~~p~~ A fee for a copy of the list of all scheduled examination candidates of not more than one hundred ten dollars (\$110.00);

(n)~~q~~ A late fee for filing of continuing professional education reports, if they are filed after January 31, of one hundred ten dollars (\$110.00);

(o)~~r~~ A fee for a request for an extension of time to file a continuing professional education report postmarked prior to January 31, of fifty-five dollars (\$55.00);

(p)~~s~~ A fee for a request for an extension of time to file a continuing professional education report postmarked subsequent to January 31, of one hundred ten dollars (\$110.00);

(q)~~t~~ A fee for request for extension of time to file continuing professional education report postmarked after June 30, of fifty-five dollars (\$55.00) per month;

(r)~~u~~ A fee for reinstatement of a license application of sixty-five dollars (\$65.00); and

(s) A fee for initial and renewal licensure of a firm permit of sixty-five dollars (\$65.00);

(t) A fee for authorization to perform attest and compilation services of sixty-five dollars (\$65.00);

(u) A fee for authorization to perform attest or compilation services of fifty dollars (\$50.00);

(v) A fee of ten dollars (\$10.00) for an applicant who wishes to practice in this state pursuant to Section 14 of this Rule and whose out-of-state requirements or individual qualifications are found to be substantially equivalent by NQAS;

(w) A fee of fifty dollars (\$50.00) an applicant whose out-of-state requirements or individual qualifications are not found to be substantially equivalent by the NQAS, but are required to be verified independently by the board;

†2 21.2. All fees are nonrefundable and shall not be prorated. The Board may, in its discretion, return all or part of a fee accompanying a filing which the Board declines to process and returns it to the applicant.

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### §1-1-~~22~~ 22. Rules of Professional Conduct.

#### ~~22.1~~ 22.1. Independence, Integrity, and Objectivity.

(a) A licensee shall be independent in the performance of professional services.

(b) In the performance of any professional service, a licensee shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

#### ~~22.2~~ 22.2. General Standards; Accounting Principles.

(a) A licensee shall:

(1) Undertake only those professional services that the licensee or his or her firm can reasonably expect to be completed with professional competence;

(2) Exercise due professional care in the performance of professional services;

(3) Adequately plan and supervise the performance of professional services; and

(4) Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(b) A licensee who performs auditing, review, compilation, management advisory, tax, or other professional services

shall comply with the recognized professional standards applicable to the services.

(1) Recognized professional standards include, but are not limited to: Statements on Standards for Management Advisory Services, Statements on Standards for Tax Services, Statements on Standards for Accounting and Review Services, and Statements on Responsibilities in Personal Financial Planning Practice, and Statements on Standards for Attestation Engagements issued by the AICPA, as well as SAS, SSARS, and SSAE

(c) A licensee shall not (1) express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principals or (2) state that he or she is not aware of any material modifications that should be made to the statements or data in order for them to be in conformity with generally accepted accounting principles, if the statements or data contain any departure from any accounting principle promulgated by bodies designated to establish the principles that has material effect on the statements or data taken as a whole. If, however, the statements or data contain such a departure and the licensee can demonstrate that due to unusual circumstances the financial statements or data would otherwise have been misleading, the licensee can comply with the rule by describing the departure, its approximate effects with the principle would result in a misleading statement.

#### ~~22.3~~ 22.3. Responsibilities to Clients.

(a) A licensee shall not disclose any confidential client information without the

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specific consent of the client. This rule shall not be construed (i) to relieve a licensee of his or her professional obligations under subdivisions 11.2 (b) and (c) of this Rule, (ii) to affect in any way the obligation to comply with a validly issued and enforceable subpoena or summons, (iii) to prohibit review of a licensee's professional practice under subsection 7.5 of these Rules, or (iv) to preclude a licensee from initiating a complaint with or responding to any inquiry made by a recognized investigative or disciplinary body. Members of a recognized investigative or disciplinary body and professional practice reviewers shall not use to their own advantage or disclose any licensee's confidential client information that comes to their attention in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with a recognized investigative or disciplinary body or affect, in any way, compliance with a validly issued and enforceable subpoena or summons.

### †† 22.4. Responsibilities to Colleagues [RESERVED]

### †† 22.5. Other Responsibilities and Practices.

(a) A licensee shall not commit an act discreditable to the public accounting profession.

(b) A licensee shall not seek to obtain clients by advertising or other forms of solicitation that are false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited.

(c) A licensee may practice public accounting only in the form of a proprietorship, a partnership, or a professional corporation whose characteristics conform to this Rule. A licensee shall not practice public accounting under a firm name that is misleading. Names of one or more past partners or shareholders may be included in the firm name of a successor partnership or corporation. Also, a partner or shareholder surviving the death or withdrawal of all other partners or shareholders may continue to practice under a name which includes the name of past partners or shareholders for up to two years after becoming a sole practitioner. ~~A firm may not designate itself as a member of a professional organization unless all of its partners or shareholders are members of the organization.~~