

Brenda Turley

From: Brenda Turley
Sent: Friday, July 28, 2017 2:42 PM
To: 'Sandy K Nolan'
Subject: RE: Updated personal information

Dear Ms. Nolan,

The Board met on Friday, July 28, 2017 and reviewed your comments regarding the inclusion of language for implementing procedures for performing a criminal history records check as a prerequisite for licensure. As stated in your e-mail, you are in favor of adding this language, and the Board appreciates your support on this matter.

Thank you for your participation in the rulemaking process.

Brenda Turley
Executive Director
West Virginia Board of Accountancy
405 Capitol Street, Suite 908
Charleston, WV 25301-1744
(304) 558-3557
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From: Sandy K Nolan [<mailto:sknolan@valvoline.com>]
Sent: Friday, December 09, 2016 10:53 AM
To: Brenda Turley
Subject: Updated personal information

Hi,
Attached is the form with updated information. Thanks

Sandy K Nolan, CPA
Valvoline Credit Department
3499 Blazer Parkway, Lexington, KY 40509
Office: 304.562.7345 Fax: 859.357.4499
sknolan@ashland.com

PLEASE NOTE MY EMAIL ADDRESS HAS CHANGED TO : sknolan@valvoline.com



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Brenda Turley

From: Brenda Turley
Sent: Friday, July 28, 2017 2:43 PM
To: 'Brewer, Robert'
Subject: RE: Proposed Rule

Dear Mr. Brewer:

The Board met on Friday, July 28, 2017 and reviewed your comments regarding the inclusion of language for implementing procedures for performing a criminal history records check as a prerequisite for licensure. As stated in your e-mail, you are in favor of adding this language, and the Board appreciates your support on this matter.

Thank you for your participation in the rulemaking process.

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From: Brewer, Robert [<mailto:Robert.Brewer@sands.com>]
Sent: Friday, June 23, 2017 4:47 PM
To: Brenda Turley
Subject: Proposed Rule

I support requiring new applicants for certification to secure a criminal records check.

Robert H. Brewer
Senior Vice President, Chief Audit Executive

Las Vegas Sands Corp.
p: (702) 607 4373 | c: (702) 379 8298
robert.brewer@sands.com

3355 Las Vegas Blvd South
Las Vegas, NV 89109

The Venetian | The Palazzo | Sands Expo | Sands Bethlehem | Sands Macao | The Venetian Macao | Four Seasons Hotel Macao
The Plaza Macao | Sands Cotai Central | The Parisian Macao | Marina Bay Sands

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Brenda Turley

From: Brenda Turley
Sent: Friday, July 28, 2017 2:48 PM
To: 'Davis, Mavery L'
Subject: RE: Proposed rule regarding applicants for certification

Dear Mr. Davis,

The Board met on Friday, July 28, 2017 and considered your comments regarding the inclusion of language for implementing procedures to perform criminal history records check as a prerequisite for licensure.

Please know that Senate Bill 271 (codified at W.Va. Code §30-9-7), passed by the legislature on March 7, 2016, signed by Governor Tomblin on March 11, 2016, and effective June 6, 2016, requires an applicant for certification to submit to a state and national criminal history records check.

While, the Board appreciates your concerns regarding the additional expense, W. Va. Code §30-9-7(5)(F) mandates that the applicant is to pay the actual costs of the fingerprinting and criminal history records check.

Moreover, the Board was authorized by statute [W.Va. Code § 30-9-7(5)(G)] to propose rules to implement the criminal history records check provisions.

Thank you for your participation in the rulemaking process.

Brenda Turley
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From: Davis, Mavery L [<mailto:Mavery.L.Davis@wv.gov>]
Sent: Friday, June 23, 2017 4:36 PM
To: Brenda Turley
Subject: Proposed rule regarding applicants for certification

Greetings,

The proposed rule regarding new applicants for certification to secure a criminal records check may present additional undue hardships on many applicants. Qualified candidates must already pay registration fees, testing fees, and

purchase exam study materials. Adding this new hurdle may discourage reputable candidates from continuing through the process of becoming certified.

Regards,

Mavery L. Davis, CPA

Director of Finance

WV Department of Veterans Assistance

Office of the Cabinet Secretary

1514B Kanawha Blvd. East

Charleston, WV 25311

304-558-3661 (office)

681-319-5389 (cell)

304-558-3662 (fax)

Brenda Turley

From: Brenda Turley
Sent: Friday, July 28, 2017 2:52 PM
To: 'Fred Stiner [*]'
Subject: RE: Proposed Criminal History Records Check

Dear Mr. Stiner,

The Board met on Friday, July 28, 2017 and considered your comments regarding the inclusion of language for implementing procedures to perform criminal history records checks. However, this criminal history records check is not intended for Certified Public Accountant Examination candidates but for applicants for licensure. (See W. Va. Code 30-9-7).

Moreover, please know that questions regarding criminal convictions are already on the application itself. As such, the Board has dealt with these issues before, and reviews each case individually.

Thank you for your participation in the rulemaking process.

Brenda Turley
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From: Fred Stiner [*] [<mailto:stiner@verizon.net>]
Sent: Saturday, July 15, 2017 7:18 AM
To: Brenda Turley
Subject: Propooosed Criminal History Records Check

Gentlemen/Ladies:

I have read the proposed new rule 4.1.d. Criminal History Records Check.

I would like to understand the background for this proposal. Could you please tell me what prompted this proposed rule?

I am not able to locate at the website where the Board minutes are posted. Are there minutes of the Board available to the public, where this is discussed?

Thank you for this information.

Best regards,

Frederic M. Stiner, Jr. Ph.D., CPA

License #669

Frederic M. Stiner, Jr. Ph.D., CPA
109 Autumn Horseshoe
Newark DE 19702

telephone 302-738-9906

West Virginia Board of Accountancy
405 Capitol Street, Suite 908
Charleston, WV 25301-1744

By email

Gentlemen:

RE: Proposed new rule 4.1.d. Criminal History Records Check.

I have read the proposed new rule.

I oppose the proposed rule because it solves no known problem, adds to candidate costs and invades candidate privacy.

The Board has provided no justification for the rule. I have read the Minutes of the Board for January 19, 2017; July 21, 2016; and May 11, 2016. I am not able to locate any stated problem in the CPA examination or in practice that has occurred because there was no fingerprinting.

Requiring fingerprints adds to the cost of taking the CPA examination without any identified benefit.

The measure invades privacy of the candidate. A candidate should not have to disclose trivial misdemeanors that are unrelated to the practice of public accountancy. I believe that the government should not be collecting more information on citizens unless there is a clear public benefit. The Board already collects sufficient identifying information (name, birth date, educational transcripts and Social Security number) to conduct a criminal background check. The Accountancy Law and other criminal and civil laws already protect the public. If fingerprinting is required, then why not do a credit check and drivers' license check on all applicants as well?

If the Board believes that fingerprinting is necessary, exactly what findings of wrongdoing would prevent someone from being a candidate for the CPA examination? Would conviction of any felony be an impediment? Any misdemeanor? I believe, borrowing from the bar application, it should be for "fraud, deceit, misrepresentation, forgery, or malpractice."

I recommend that the Board not to enact this regulation. I recommend that advantages and disadvantages of the proposed rule be clearly stated.

Best regards,

Frederic M. Stiner, Jr., Ph.D., CPA

License #669

Brenda Turley

From: Brenda Turley
Sent: Friday, July 28, 2017 3:01 PM
To: Jean Harris (JeanPSU@hotmail.com)
Subject: RE: Jean Harris, WV CPA Comment Letter, 07-2017

Dear Dr. Harris,

The Board met on Friday, July 28, 2017 and considered your comments regarding the inclusion of language for implementing procedures to perform criminal history records check as a prerequisite for licensure. Please know that Senate Bill 271 (codified at W.Va. Code §30-9-7), passed by the legislature on March 7, 2016, signed by Governor Tomblin on March 11, 2016, and effective June 6, 2016, requires an applicant for certification to submit to a state and national criminal history records check.

While, the Board appreciates your concerns regarding the additional expense, W. Va. Code §30-9-7(5)(F) mandates that the applicant is to pay the actual costs of the fingerprinting and criminal history records check.

Further, any applicant denied a license is entitled to a hearing on the denial. Moreover, please know that questions regarding criminal convictions are already on the application itself. As such, the Board has dealt with these issues before, and reviews each case individually.

Please know that, the criminal history records check is conducted by the FBI per their protocols. Moreover, no electronic records will be maintained or stored on Board computers.

Thank you so much for your participation in the rulemaking process.

Brenda Turley
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From: Brenda Turley
Sent: Wednesday, July 12, 2017 6:04 PM
To: 'Jean Harris'
Subject: RE: Jean Harris, WV CPA Comment Letter, 07-2017

Ms. Harris,

FYI: The Board meeting is meeting on Friday, July 21, 2017. They will consider your comments at that time and I will send the Board's response sometime early the next week.

Brenda Turley
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From: Jean Harris [<mailto:JeanPSU@hotmail.com>]
Sent: Wednesday, July 05, 2017 5:27 PM
To: Brenda Turley
Subject: Jean Harris, WV CPA Comment Letter, 07-2017

Jeannie (Jean) E. Harris, Ph.D., CPA

2156 Lakeview Drive, Melbourne, FL 32935, HOME

P.O. Box 114, Cape Vincent, NY 13618, SUMMER

(717) 919-5417 cell, please no text; (321) 622-3641 home

JeanPSU@hotmail.com

July 6, 2017

West Virginia Board of Accountancy
405 Capitol Street, Suite 908
Charleston, WV 25301

email to: wvboa@mail.wvnet.edu

Dear Board Members and Staff Members,

Attached is my comment letter relative to proposed Rules of the West Virginia Board of Accountancy filed on June 23, 2017 to implement criminal history records check for every initial application for licensure. **Please confirm your receipt of this comment letter to me (Jean Harris) at JeanPSU@hotmail.com** . Also, by U.S. Mail, I am sending a hard copy of this same letter.

Yours truly,

Jean Harris

WV Certificate 001468

West Virginia
Board of Accountancy

JUL 10 2017

Received

Jeannie (Jean) E. Harris, Ph.D., CPA
2156 Lakeview Drive, Melbourne, FL 32935, HOME
P.O. Box 114, Cape Vincent, NY 13618, SUMMER
(717) 919-5417 cell, please no text; (321) 622-3641 home
JeanPSU@hotmail.com

July 6, 2017

West Virginia Board of Accountancy
405 Capitol Street, Suite 908
Charleston, WV 25301
email to: wvboa@mail.wvnet.edu

Dear Board Members and Staff Members,

Attached is my comment letter relative to proposed Rules of the West Virginia Board of Accountancy filed on June 23, 2017 to implement criminal history records check for every initial application for licensure.

Yours truly,



Jean Harris
WV Certificate 001468

COMMENT RE: The proposed Rules of the West Virginia Board of Accountancy filed on June 23, 2017 to implement criminal history records check for every initial application for licensure.

BY: Jean Harris, WV Certificate 001468

One concern is that much information relevant to composing a comment letter seems to be lacking. For example, no statement of justification for the proposed rules is included. Rather, the proposed rules are focused primarily on the requirements for finger printing and on the processing of finger prints. The primary purpose of fingerprinting, other operational matters, and issues of fairness are not addressed. Evidence of a link between fingerprinting and its stated purpose, fitness for licensure, is not presented. No data are provided with regard to the benefits found or the costs incurred by other states from implementing similar rules. And, no information is offered with regard to the prior experiences of this Board or of other state boards to support the proposed rules.

Considering matters of implementation, certain information would be useful, such as 1) the estimated number of applicants with criminal histories, 2) the estimated amount of time that may be required by the Board's members and staff to develop policies for the evaluation of criminal histories and then to deliberate over applicants' fitness, 3) whether or not criminal histories will be limited to convictions or will extend to arrests without convictions, and 4) how will the review process as instituted operate to achieve the primary purpose or strategic objective of review.

Important operational questions are not posed. What sort of policies will be developed by whom and under what due process procedures for the consistent, non-discriminatory and defensible evaluations of criminal histories? Some people are arrested without real justification, and many people who merit apprehension are not arrested. Most people who lie and falsify audit working papers may not have criminal histories. What specific crimes may be deemed relevant and irrelevant to an evaluation of fitness? Does evidence show that certain offenses associate with poor service or unethical behavior by professionals in general and/or auditors specifically? How will the issue of fairness be resolved in checking the criminal histories of applicants while ignoring the possible criminal histories of current license holders? Have or will members of the Board submit to background checks of their criminal histories? How much time will implementing the proposed rules take on the part of the Board's members and staff? To what extent might the individual members of the Board be held financially liable when a license is denied under the proposed rules? In adopting the proposed rules, these questions may be ignored, but they seem to merit thoughtful consideration in advance of adoption.

Some information is available. Approximately, 31% of the adult working population in the U.S. has criminal histories, meaning arrests and/or convictions [SOURCE: *Survey of State Criminal History Systems*, U.S. Department of Justice, 2012, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf> as discussed in an analysis, *Just Facts; As Many American Have Criminal Records as College Degrees*, by M. Friedman, Brennan Center for Justice, 2015, <https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-diplomas>]. Further, it is estimated that 8.6 % of the U.S. population has felony convictions [Source: *Growth in The US Ex-Felon and Ex-Prisoner Population, 1948 To 2010* by S. Shannon et al., 2010, <http://paa2011.princeton.edu/papers/111687>] . Incidentally, most felons in Florida and perhaps in other states too never serve a sentence. Rather, they plead guilty in a plea bargain arrangement to a felony to avoid serving a sentence.

Information regarding the experiences of other state boards can be secured. The State Board in Pennsylvania has a morals clause that requires applicants to self-disclose convictions. Evaluating this information now takes a significant amount of the time of Board members [SOURCE:<https://www.youtube.com/watch?v=1BeZNSTuhAQ>]. For any state board, time is a precious resource, a limited resource. The real cost of the proposed rules will be the amount of time required by the Board's members and staff to manage the application of the proposed rules. And, it is likely that the cost, in terms of time, will be significant. Thus, it is critical to ask, will the benefit justify the cost?

Beyond questions of costs and benefits, there will be questions of fairness to ponder. How will the many weaknesses in the criminal history system of West Virginia be addressed? Unless this system of record keeping has been improved significantly in the past five years, weaknesses persist that were documented in a U.S. Department of Justice report released in 2012. [SOURCE: *Survey of State Criminal History Systems*, U.S. Dept. of Justice, 2012, <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>]. How will the Board manage to free itself from the discriminatory operation of the criminal justice system with respect to the arrest, prosecution, and imprisonment of minority citizens? How will the Board justify its continuation by regulatory means of punishing citizens with a criminal history who may not have a conviction or who may have met all court-imposed sanctions including the completion of sentences and serving of probation? What rights, representation, and due process will the party who is being judged have? What data bases of information may become public via court order or by computer hacking? At a time when records are transmitted and stored electronically, the shredding of written documents (4.1.d.16) does not seem to be a serious protection of privacy. Most likely, many questions will arise and addressing them may take a considerable amount of time by the Board's members and staff.

It seems that the most fundamental question pertains to the primary purpose of reviews of criminal histories. At present, one clause in the proposed rules (4.1.d.2) addresses purpose, and it refers vaguely to "fitness for licensure." But, there seems to be a lack of clarity about the way to judge "fitness for licensure." One clause (4.1.d.10) states the criminal history must be "unremarkable." to qualify for certification and presumably for licensure, without attempting to define "unremarkable." But, the subsequent clause (4.1.d.11) seems to provide for a number of factors to be considered in determining if offenses merit the denial of a license whether the history is "unremarkable" or not. This last clause (4.1.d.11) is significant for two other reasons as well. It refers to the "reporting of criminal offenses," and offenses would seem to include arrests without convictions as well as arrests with convictions. And, it provides that evaluations will be on a case-by-case basis. Any case-by-case process begs for policies, procedures, and protocols to ensure consistent, non-discriminatory, and defensible evaluations.

From a general context, it may be useful to consider two fundamental questions, 1) what primary purpose should be achieved by a review of criminal histories and 2) is the Board the best means for achieving that purpose? In trying to answer these two questions, it is relevant to consider that the regulation of accounting and auditing is grounded in two distinct types of transactions -- a two-party transactions common to most services and a three-party transactions unique to external auditing.

With the exclusion of external auditing, CPAs provide services in two-party transactions. The parties are the CPA who provides the service and the client or employer who receives the service and who pays for it. The client or employer may or may not have the knowledge to judge the technical competence of the CPA. Thus, education, examination, and certification are aspects of the regulatory process. But, the client or employer, who interacts frequently with the CPA, may be in the best position to investigate, to observe, and to judge the character, the integrity, and the trustworthiness of the CPA. In a two-party transaction, if a client or employer judges the CPA to be deficient in any respect, he or she may terminate the CPA. Thus, with respect to two-party transactions, professional regulation provides some assurance of basic competency and given the economic power of the employer or client, the competitive markets operate as a powerful means to channel economic reward away from the unfit.

By design the market for external audits is grounded in a three-party transaction. The CPA auditor provides the service, the audit client pays the auditor, and the true recipients of the service, the users of audited financial statements receive the benefit of the service. In substance, published, audited financial statements are a public good, a good that all members of the public may access absent a fee for service. Hence, there is a strong public interest in regulating auditing, and this public interest is compounded by the nature of a three-party transaction.

In a three-party transaction, payment for the auditing service and use of the product, the audited financial statements, are separated in two distinct parties – the client and the user. Frequently, the user of audited financial statements has no personal interaction with the CPA auditor. The user's ability to judge the CPA auditor may be limited largely to the CPA's reputation. The users may not terminate the CPA auditor. Thus, in a three-party transaction, the economic power of the user is diminished and the economic power of the audit client is enhanced. And, seldom being the primary user of audited financial statements, the audit client may view the audit as a burden to be obtained cheaply. Thus, CPA auditors may operate under intense price pressure. And, the more competitive the market for audits, the greater the price pressure is likely to be.

With respect to financial statements, regulations apply both to the audit client, the owner of the financial statements, and to the external CPA auditor. In substance, CPA auditors function as privatized regulators to provide assurance to users that financial statements have been properly prepared. But, the three-party transaction operates to empower the client, a regulated party, because it is the client who is paying the auditor and it is the client who may terminate the auditor. Thus, the three-party transaction creates a special public interest in trying to ensure a high quality of external auditing. In addition, it may be argued that the erosion of past structural incentives for quality auditing has increased demand for the regulation of auditing. At one time, CPA auditors operated in partnerships with each partner liable for the work of all other partners, partners were well known to each other, liability for malpractice was extensive and significant, and most of an auditing firm's revenue derived from audit services. These powerful structural incentives, market incentives, are gone or weakened.

Because audited financial statements are in substance public goods grounded in a three-party transaction, the public interest in auditing is greater than for the purchase of services in a two-party transaction. The primary financial service that requires a CPA license is external auditing. Thus, in substance, the denial of a CPA license denies an individual the privilege to function as an external auditor and restricts the privilege of an auditing firm to employ that individual. In short, the supply of audit professionals is limited. Accordingly, there is a basis for boards of accountancy to direct special attention to external auditors of financial statements. Relative to the value of the proposed rules, one should ask, are there any known audit failures, audit flaws or financial frauds that may have been prevented from background checks of the criminal histories of applicants for licensure? With regard to CPAs or professionals in general, is there any evidence that applicants with a criminal history render worse service or behave in more unethical ways than the general population of CPAs or professionals? If history, evidence or experience shows the answers to these questions is yes, then checking criminal histories may be worth considering. If the enhancement of audit quality is not the primary purpose of the proposed rules, what is the primary purpose and how will progress toward that purpose be known and measured?

[Note: In the context of this letter, "audit failure" refers to the external auditor providing an opinion that is inappropriate. The audit failure may arise from the auditor's opinion indicating that the financial statements of a reporting entity merit greater reliance than the correct opinion would indicate. Also, the audit failure may arise from the auditor's opinion indicating that the financial statements merit less reliance than the correct opinion would indicate. Additionally, in the context of this letter, "audit flaws" refer to flaws in the process of conducting the audit, not to an inappropriate opinion.]

The proposed rules cast a wide net in proposing background checks of criminal histories for all applicants for licensure as a CPA. It may be possible to focus the time of the Board's members and staff in more effective and more efficient ways. From the perspective of protection of the public interest, the most risks would seem to associate with CPAs working as external auditors, and the maximum risks would seem to associate with experienced CPA auditors who have broad responsibility for the general conduct of an audit. Thus, the Board might direct its attention to existing auditors, both new and experienced auditors. Rather than denying a license to a new applicant, who may or may not engage in auditing, it may be more effective and more efficient to shift focus to the licensure of external auditors and to suspend or revoke the license of any external auditors who are judged unfit.

Already, the existing level of regulatory scrutiny applied to auditors of publicly-traded companies is extensive. Also, almost all external auditors of publicly-traded companies are large auditing firms that may institute their own background checks and employment policies. Thus, the sub-population of interest to the Board might be defined as external auditors who do not audit publicly-traded companies. Focusing on this sub-population would seem to offer several advantages. Without duplicating scrutiny, it directs attention to a sub-population that can influence audit quality, the strongest public interest. The Board has data about those CPAs that perform audits and for which auditing firms they work. And, auditing firms that audit publicly-traded companies are publicly known. As an alternative to its own background checking of criminal histories, the Board might require this sub-population of auditing firms to adopt and to submit for review policies that the firm has implemented to ensure that its auditors function in ethical ways to render an high quality of auditing.

If the Board proceeds with its own background checks, fewer resources in terms of the time of the Board's members and staff should be required to initiate and manage these background checks by focusing on a sub-population of auditors. Because the sub-population of interest would be restricted, background checks could be done on a rotating basis, every five years or so, limiting the number of background checks to be evaluated in any one year. The issue of treating new and experienced auditors in the same way would be eliminated. The Board's members and staff could move into the implementation and evaluation of background checks slowly. The sub-population of interest would in substance serve as a pilot program. Data could be collected and the experiences evaluated to assess if background checks should be continued as adopted, abandoned or expanded.

The proposed rules focus on fingerprinting, a rather small and easy-to-do operational aspect of a comprehensive program for reviewing criminal histories. But, the serious challenge is not collecting fingerprint data. The serious challenge is defining purpose, connecting operational means to specific purpose, defining policies and procedures, and applying them in a consistent and fair way. What is the primary purpose of background checks? How does the operational practice of fingerprinting connect to achieving an assumed purpose, fitness? What research, what evidence supports this connection? Auditing is about examining evidence to reach a conclusion, an opinion. How will the truly difficult aspects of evaluation be resolved with policies and procedures? How will a systematically fair process be created? What are the potential benefits and costs? And, which will most likely be the greater – benefits or costs? Before the proposed rules are adopted, many serious matters need to be thought through, costs and benefits analyzed, and if justifiable from facts and evidence, a reasonable and comprehensive plan put forth for achieving a well-defined purpose.