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WEST VIRGINIA LEGISLATURE  
*Legislative Rule-Making Review Committee*

2001 NOV 13 A 11:46  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

*Building 1, Room MB-49  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610  
(304) 347-4840  
(304) 347-4919 FAX*

*email: tanders@mail.wvnet.edu*

*Senator Mike Ross, Cochair  
Delegate Virginia Mahan, Cochair  
Debra A. Graham, Counsel*

November 13, 2001

*Joseph A. Altizer, Associate Counsel  
Connie A. Bowling, Associate Counsel  
Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Jo Ann Walker  
Accountancy, WV Board of  
122 Capitol St., Suite 100  
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Board Rules and Rules of Professional Conduct, 1CSRI**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Board of Accountancy

Subject: Board Rules and Rules of Professional Conduct, 1CSR1

PERTINENT DATES

Filed for public comment: June 26, 2001

Public comment period ended: July 26, 2001

Filed following public comment period: July 27, 2001

Filed LRMRC: July 27, 2001

Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section-by-section synopsis of the substantive amendments made by the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to Board organization and proceedings. It provides for the election of officers, meetings of the Board, employees and records of the Board. The provisions of this section are procedural in nature.

Section 4 relates to certification. It provides that the Board is to issue a certificate to an applicant who satisfies the requirements of this section. It sets forth education and experience requirements. It requires that foreign academic credentials be accompanied by a written evaluation from the Foreign

Academic Credential Service, Inc. regarding equivalency to the requirements of the proposed rule.

Section 5 relates to substantial equivalency certificate requirements. This section contains Code provisions and also provides that in determining whether out-of-state requirements for certification are substantially equivalent certifications to the Uniform Accountancy Act, the Board may use the National Qualification Appraisal Service.

Section 6 relates to not substantially equivalent certificate requirements. It contains education, experience, examination and continuing education requirements for applicants who do not qualify under Section 5 of the proposed rule.

Section 7 relates to foreign designation certificate requirements. It requires that the Board should issue a certificate to an applicant who holds a foreign designation in public accountancy, if the foreign authority makes similar provisions for this state's licensees and the certificate was issued upon the basis of education, examination and experience requirements established by the foreign authority or by law. It also contains requirements for the applicant regarding experience. The applicant must also have passed a uniform qualifying examination in national standards and an examination on the laws, rules and code of ethical conduct in effect in this state.

Section 8 relates to examination for certificate. It requires an applicant to file a complete application with the Board at least three months prior to the examination. It states that the Board may make use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service. It requires candidates to make a grade of at least 75% in each examination subject and provides for credit for passage of parts of the examination.

This section contains requirements regarding cheating and also authorizes the Board to develop a policy on computerized examinations.

Section 9 relates to certificate renewal; condition of renewal. This section requires holders of certificates to renew their certificates annually. It requires certificate holders

applying for renewal to have completed 120 hours of continuing education within the preceding 3 calendar years with at least 20 hours in each calendar year. It sets forth guidelines for continuing education programs. It requires all certificate holders to return an annual continuing education reporting form. It also sets forth persons who are exempt from the continuing education requirements.

This section provides for a phase-in of the continuing education requirements for any certified public accountant who was not subject to continuing professional education requirements as of July 1, 2001, because he or she had not performed or offered to perform professional services to the public and who elects to offer to perform professional services to the public during the phase-in period.

Section 10 relates to the duty to inform the Board of denials, suspensions, revocation and limitations. This section sets forth the Code provision that each licensee and substantial equivalency practitioner notify the Board within 30 days of any denial, suspension or revocation of or any limitation placed on a license or out-of-state certificate.

Section 11 relates to peer review of individuals. This section allows the Board to provide peer review of any certificate holder applying for certificate renewal or who the Board has reason to believe may be in violation of the rules of professional conduct.

Section 12 relates to a holder of out-of-state certificate establishing a principal place of business in state. It requires a holder of an out-of-state certificate who intends to establish his or her principle place of business in this state to first apply for the issuance of a certificate.

Section 13 relates to public accountants. It contains the Code provisions regarding public accountants who are registered under prior law on July 1, 2001.

Section 14 relates to substantial equivalency practice privileges. This section primarily contains the provisions of the Code. It also requires the Board to develop and maintain a list of those states whose certification requirements are substantially

equivalent to the certification requirements of the Uniform Accountancy Act and that extend similar privileges to holders of certificates in this state.

Section 15 relates to issuance and renewal of permits. This section contains the statutory provisions regarding the issuance and renewal of permits for firms. It sets forth certain events of which the firm is to notify the Board within 30 days of occurrence.

Section 16 relates to issuance and renewal of authorizations. It sets forth the information which an applicant for authorization to provide attest or compilation services must supply to the Board. The Board may issue an authorization to an individual practitioner or a firm. It requires both individual practitioners and firms to undergo a peer review program and sets forth the requirements for peer review. Authorizations are valid for one year.

Section 17 relates to the refusal to issue or renew; suspension, revocation of license and disciplinary action. This section basically sets forth provisions of the Code. It also contains requirements for reinstatement.

Section 18 relates to contingency fee contracts; commissions; and referral fees. It sets forth the factors which the Board will consider in determining the reasonableness of a contingency fee contract. It requires written disclosure of commissions and referral fees.

Section 19 relates to confidentiality of information. It prohibits the disclosure of 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, except with permission of the client.

Section 20 relates to accounting corporations and other forms of business. It allows one or more certified public accountants or public accountants to organize and become shareholders of an accounting corporation. It sets forth requirements for accounting corporations. The Board is required to issue a certificate of authorization to qualified corporations, and the corporation is required to file that authorization with and obtain a certificate of incorporation from the Secretary of State.

Section 21 relates to fees. It sets forth the fees currently charged by the Board and adds the following fees:

Initial and renewal of a firm permit . . . . .	\$65
Authorization to perform attest and compilation services . . . . .	\$65
Authorization to perform attest or compilation services . . . . .	\$50
Application for practice as a substantial equivalency practitioner . . . . .	\$10
Application for practice as a not substantial equivalency practitioner . . . . .	\$50

Section 22 relates to rules of professional conduct. It contains provisions regarding independence, integrity and objectivity, accounting principles and responsibilities to clients.

**AUTHORITY**

Statutory authority: W.Va. Code, §30-9-5, which provides, in part, as follows:

... (a) The board shall 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 and proper for implementing the provisions of this article...

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. In subsection 8.3, the Board gives itself authority to develop a written policy regarding computerized examinations. This written policy would be a legislative rule, which would need to go through the rule-making process.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

For the most part. Those sections of the rule which repeat the code should be deleted.

W.Va. Code §30-9-5 requires the Board to proposed rules containing certain specified provisions. This section requires the proposed rule to contain provisions regarding the conduct of investigations; identifying professional services required to be performed in accordance with the applicable statements on standards; and use of the titles certified public accountant, CPA, public accountant and PA. The proposed rule does not contain provisions regarding these subjects.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.



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