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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

Original: 2101

April 11, 2000

COMMITTEES

PROFESSIONAL LICENSURE.
MAJORITY CHAIRMAN
LIQUOR CONTROL
FIREFIGHTERS' CAUCUS.
COCHAIRMAN EMERITUS

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

RECEIVED
2000 APR 12 PM 2:40
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Chairman McGinley:

I am writing to inform you that the House Professional Licensure Committee held a meeting on April 11, 2000, and voted to approve Regulation 16A-469, Regulation 16A-672, Regulation 16A-693, Regulation 16A-578, and Regulation 16A-477.

In addition, the Committee voted to take no formal action on Regulation 16A-557 until final form regulations are promulgated. However, the Committee offers the following comments:

1. The Committee questions whether the Board has the authority to promulgate subparagraph (g), which would prohibit licensees from receiving commissions for recommending or referring a product or service to "an individual or entity that can exercise significant influence over the operating, financial or accounting policies of a client." Section 12(p)(1) of the CPA Law specifically relates to recommendations and referrals made to "clients" of licensees. There is no apparent statutory authority to expand the scope of this section to include parties other than clients, regardless of whether or not such parties are in a position to exercise significant influence over clients.
2. The Committee notes that the proposed regulations are intended to implement provisions relating to referrals and commissions, which became effective with the passage of Act 140 of 1996. The Committee requests an explanation as to why it took more than three years for proposed regulations on this subject to be published.

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
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Please feel free to contact my office if any questions should arise.

Sincerely,



Mario J. Civera, Chairman
House Professional Licensure Committee

MJC/sms

Enclosures

cc: Norbert O. Gannon, D.D.S., Chairman
State Board of Dentistry
Hanna Gruen, Chairperson
State Board of Occupational Therapy
Education and Licensure
Manuel J. Manolios, Chairman
State Board of Social Workers, Marriage and
Family Therapists and Professional Counselors
Brian V. Harpster, V.M.D., Chairman
State Board of Veterinary Medicine
Louis A. Guzzi, P.E., President
State Registration Board for Professional Engineers,
Land Surveyors and Geologists
Thomas J. Baumgartner, CPA, Chairman
State Board of Accountancy
Honorable Kim H. Pizzingrilli, Secretary of the Commonwealth
Department of State

Regulation 16A-557

State Board of Accountancy

PROPOSAL: Regulation 16A-557 amends 49 PA Code, Chapter 31, regulations of the State Board of Accountancy. The amendments would implement the provisions of Section 12(p) of the CPA Law, 63 P.S. Sec. 9.12(p), which was added by the Act of December 4, 1996, P.L. 851 (Act 140 of 1996), relating to commissions and referral fees.

The proposed Rulemaking was published in the Pennsylvania Bulletin on March 4, 2000. The Professional Licensure Committee has until April 24, 2000, to submit comments on the regulation.

ANALYSIS: Section 11.24 of the Board's regulations prohibits licensees from paying or obtaining commissions for referring the products or services of others to clients. This prohibition would be deleted and the regulation would be amended to delineate the circumstances under which commissions and referrals would be allowed, pursuant to the provisions of Sec. 12(p) of the CPA Law.

Licensees who receive or intend to receive commissions would be required to report that fact to the Board on the application for biennial renewal of licensure. Licensees who receive commissions and are subject to peer review pursuant to Sec. 8.9 of the CPA Law would be required to furnish peer reviewers with documentation to establish compliance with Sec. 12(p) of the Law. Prior to receiving commissions, licensees would be required to acquire and maintain any license or registration required by any governmental or regulatory agency for receiving commissions. Licensees who receive commissions of pay referral fees would be required to disclose this fact to clients through engagement or representation letters that are signed by the client. Licensee who receive commissions would be required to maintain workpapers which document discussions with clients relevant to investment needs, strategies and recommendations.

Pursuant to paragraph 11.24(g), licensees who perform an attest activity for a client would be prohibited from receiving a commission for referring a product or service to an individual or entity that could exercise significant influence over the operating, financial or accounting policies of the client. The Board states that this provision was inserted to address a situation which is not specifically addressed in Sec. 12(p)(1) of the CPA Law.

RECOMMENDATIONS: It is recommended that the Professional Licensure Committee take no formal action until final form regulations are promulgated. However, the Committee offers the following comment:

The Committee questions whether the Board has the authority to promulgate subparagraph (g), which would prohibit licensees from receiving commissions for recommending or referring a product or service to “an individual or entity that can exercise significant influence over the operating, financial or accounting policies of a client.” Section 12(p)(1) of the CPA Law specifically relates to recommendations and referrals made to “clients” of licensees. There is no apparent statutory authority to expand the scope of this section to include parties other than clients, regardless of whether or not such parties are in a position to exercise significant influence over clients.

House of Representatives
Professional Licensure Committee
April 6, 2000