

MARIO J. CIVERA, JR., MEMBER
HOUSE POST OFFICE BOX 202020
MAIN CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA 17120-2020

232 LONG LANE
UPPER DARBY, PENNSYLVANIA 19082



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

PROFESSIONAL LICENSURE.
MAJORITY CHAIRMAN
LIQUOR CONTROL
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COCHAIRMAN EMERITUS

Original: 2101

November 13, 2000

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

Dear Chairman McGinley:

I am writing to inform you that the House Professional Licensure Committee held a meeting on November 13, 2000, and voted to approve Regulations 16A-422, 16A-555, 16A-557, 16A-623, and 16A-655.

The Committee also voted to take no formal action on Regulation 16A-7011 until final form regulations are promulgated. However, the Committee questions the use of the terms "application by examination" and "application by reciprocity." Since there is another examination fee listed, it gives the impression that there are two different examination fees. The Committee suggests that "licensure application fee" and "licensure by reciprocity" would be more appropriate terms.

Please feel free to contact my office if any questions should arise.

Sincerely,

A handwritten signature in black ink that reads "Mario J. Civera".

Mario J. Civera, Chairman
House Professional Licensure Committee

MJC/sms
Enclosures

cc: David J. King, Chairman
State Board of Certified Real Estate Appraisers
Richard Sciorillo, Chairman
State Board of Barber Examiners
Thomas J. Baumgartner, CPA, Chairman
State Board of Accountancy
Robert H. Morrow, Chairman
State Board of Examiners of Nursing Home Administrators
James J. Irrgang, Chairman
State Board of Physical Therapy
Honorable Kim H. Pizzingrilli, Secretary of the Commonwealth
Department of State

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INDEPENDENT REGULATORY REVIEW COMMISSION

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.

Regulation 16A-557 is Final Rulemaking which was delivered to the Professional Licensure Committee on October 30, 2000. The Professional Licensure Committee has until November 19, 2000 to approve or disapprove 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. Licensees who receive commissions would be required to maintain workpapers which document discussions with clients relevant to investment needs, strategies and recommendations.

The proposed regulations originally included paragraph 11.24(g), which provided that 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 stated that this provision was inserted to address a situation which is not specifically addressed in Sec. 12(p)(1) of the CPA Law. The Committee questioned whether the Board had the authority to promulgate subparagraph (g), in that 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. In deference to the Committee’s concern, the Board has deleted subparagraph (g) from the final form regulation, and has stated its intention to seek implementation of this provision through legislation.

RECOMMENDATIONS: It is recommended that the Professional Licensure Committee approve the regulation.

House of Representatives
Professional Licensure Committee
November 1, 2000