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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

CHAIRMAN
PROFESSIONAL LICENSURE COMMITTEE

Original: 2464
April 20, 2005

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

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INDEPENDENT REGULATORY REVIEW COMMISSION

Dear Chairman McGinley:

The House Professional Licensure Committee held a meeting on April 12, 2005, to consider the following:

Regulation 16A-528 - Final rulemaking of the State Board of Optometry relating to general revisions. The committee voted to approve the regulation.

Regulation 16A-6818 - Proposed rulemaking of the State Board of Psychology relating to biennial renewal fee increase. The committee voted to take no formal action until final regulations are promulgated. The committee submits the following comments:

1. The committee notes that the Preamble to the regulation indicates that the board's biennial increase in expenses occurred primarily in the area of hearing examiner and legal office costs. The committee is requesting additional information as to this area, e.g., what types of cases are referred to the hearing examiners, how many hearing examiners the board uses, and the number of hours expended through the use of hearing examiners.
2. Similarly, the committee seeks a more detailed breakdown of the board's legal expenditures, i.e., the number of hours attributed to legal activities and the range of those activities. Additionally, the committee requests a listing of other board expenditures and projected expenditures, including the administrative fees which are to go to the Department of State.
3. The committee also notes that the board imposed more disciplinary sanctions in 2003 versus 2002, in numerical terms 32 versus 17 sanctions. The committee seeks a breakdown of these sanctions with respect to the category of offenses and, if possible, identification by the board of any trends in the increase of sanctions and open cases.

Regulation 16A-559 - Proposed rulemaking of the State Board of Accountancy relating to general revisions. The committee voted to take no formal action until final regulations are promulgated. The committee submits the following comments:

1. The committee notes that the board delivered this proposed regulation, which is designed to implement Act 140 of 1996, on March 15, 2005. The committee notes the

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board intends to deliver other proposed regulations implementing Act 140 of 1996 in the future. The committee seeks information from the board regarding the anticipated dates of delivery with respect to these regulations.

2. The committee notes that licensees, attorneys representing licensees in disciplinary and other matters, consumers of accounting services, and others will read and seek to understand the regulations promulgated by the board. The committee notes the board's view that regulations should not repeat provisions of the enabling act and that definitions should be deleted as superfluous if contained in the statute. The committee agrees in part and disagrees in part. The committee recommends that the board address the issues raised by the committee which relate to removal of statutory provisions, whether those provisions are substantive or are definitions.
3. With respect to Section 11.1 Definitions, the committee recommends the board maintain definitions which define terms of art that are used in the regulation. Hence, the committee recommends the board retain the definition of "Board." In addition, the committee recommends that certain definitions be maintained and updated to conform to Act 140 of 1996. This is true whether the board wants to repeat the definition found in the statute verbatim or cite to the statute itself. For example, "attest function" should be changed to "attest activity" but changed to conform to the statutory definition, "firm" should be maintained but changed to conform to the statutory definition, and "licensee" should be maintained but changed to conform to the statutory definition. Further, the term "practice of public accounting" should be changed to "public accounting," and include the definition found in the statute.

In addition, because it is a term of art, the committee recommends the board include a definition of "qualified association," and use that term where appropriate in the regulation. An example where "qualified association" should be used is Section 11.5(a). Further, in order to provide guidance to licensees, attorneys representing licensees, and the public, the committee recommends the board retain the definition "inactive status" and add language referring to inactive status in Section 11.9(2), which speaks to the "inactive license roll."

The committee also asks the board to move the definition of "contingent fee" from Section 11.25 to Section 11.1. The committee asks the board to do this for the reason cited in the committee's second comment, as well as to save the board a step if it writes other provisions relating to contingent fees.

Finally, the committee asks the board to add a definition of Public Company Accounting Oversight Board. Further, the committee asks the board to review the entirety of Regulation 16A-559 to determine whether certain provisions need to be changed in order to meet the requirements of the Public Company Accounting Oversight Board.

4. The committee recommends that, for the reason cited in the committee's second comment, the language of Section 11.3 be maintained.

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5. With respect to Section 11.5 Temporary Practice Permit, the committee notes that the term "qualified association" should be substituted for "association" in subsection (a). Further, the committee notes that the board, by deleting the phrase "or jurisdiction" in Section 11.5(a)(1) and (2), could arguably prevent those accountants licensed in the District of Columbia from applying for a temporary permit in Pennsylvania. If that is the board's intention, the committee seeks an explanation. If that is not the board's intention, the committee recommends that the phrase "or jurisdiction" be maintained or that the board include a reference to the District of Columbia.

Further, with respect to Section 11.5(a)(3), the committee seeks an explanation from the board regarding the difference between the existing regulatory language and the proposed regulatory language. Specifically, the committee asks the board to explain the legal significance of the term "personally" in the phrase, "Does not personally maintain an office in the Commonwealth."

Finally, with respect to Section 11.5, the committee recommends that for the reason cited in the committee's second comment, the board retain the legal concepts embodied in subsections (c) and (d). The committee asks the board to re-write these subsections as necessary to conform to the 1996 amendments to the statute.

6. The committee recommends that, for the reasons cited in the committee's second comment, the language of Section 11.7 Use of the Designation "Public Accountant" and the Abbreviation "PA" be retained and, if needed, updated to conform to Act 140 of 1996.
7. The committee recommends that, for the reason cited in the committee's second comment, the language of Section 11.8 Use of the Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Public Accounting be retained and, if needed, updated to conform to Act 140 of 1996.
8. With respect to Section 11.9 Use of Professional Title Solely as Mark of Achievement by Individual Without Current License, the committee asks the board to provide a citation to the statutory provision which authorizes the board to write such a provision. Further, the committee asks whether the language of Section 11.9 conflicts with Section 12 of the CPA Law and, consequently, asks the board to again review the statutory provision regarding unlawful acts and the provisions of Section 11.9. The committee is concerned that using CPA solely as a mark of achievement will mislead the public with respect to whether the individual may practice public accounting.

Further, the committee seeks clarification from the board regarding whether an individual who may use CPA solely as a mark of achievement must complete the continuing education requirement of obtaining 80 hours every two years.

If, after its review, the board believes there is no conflict, then the committee asks the board to retain paragraphs (4) and (5). The committee also recommends the word "if" be substituted for the word "when" in subparagraph (i), (ii), and (iii) of paragraph (5), as

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the word "if" is appropriate when speaking to a condition. The committee asks the board to retain the language of subsections (b) and (c) and to update them, if necessary, to conform to Act 140 of 1996.

Finally, the committee asks the board to consider whether, on business cards and stationary, the board should require the individual to disclose that he is not licensed.

9. With respect to Section 11.21 Independence, the committee recommends that the provision be re-written so that the term "attest activity" is used. Further, the committee recommends deleting the parentheses, as well as the words "for example." Instead, the committee recommends re-writing the provision so that it states, "...a recognized public or private standard-setting body, including AICPA, the Securities and Exchange Commission, the General Accounting Office, and the Department of Labor." In addition, the committee recommends that the Public Company Accounting Oversight Board (PCAOB) be added to the list of standard-setting bodies.
10. With respect to Section 11.25 Contingent Fees, the committee notes that the board derived the provision from AICPA's professional standards. The committee notes that AICPA's interpretation of its rule has been criticized by PCABO and asks the board to review the proposed rulemaking of PCABO to determine if the board should change this language.

Similarly, the committee questions whether there is a conflict between the language of Section 11.25(c), the board's proposed language dealing with contingent fees, and the remainder of Section 11.25. Additionally, the committee questions whether the board's proposed subsection (c) conflicts with Section 3(a)(11) of the CPA Law, which requires the board to write regulations to maintain "a high standard of integrity, objectivity and dignity..." Finally, the committee recommends that if there is a regulatory or statutory conflict, or if there is no authority to write subsection (c), the language of subsection (c) be deleted.

11. With respect to Section 11.27 Auditing Standards and Other Technical Standards, the committee asks the board to include a reference to PCABO where appropriate.
12. For the reason cited in the committee's second comment, the committee recommends that the board retain the language of Section 11.30 Confidentiality.
13. With respect to Section 11.31 Records, the committee recommends the term "former client" be included after the term "client" where the term "client" appears the second time.
14. For the reason cited in the committee's second comment, the committee asks the board to retain the legal concepts embodied in Section 11.35, but to update the language so that it conforms with Act 140 of 1996.

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15. With respect to Section 11.55, the committee recommends the board include a provision which embodies the following legal concepts: (1) individuals sitting for the examination for the first time after January 1, 2000, must complete the experience requirement within one hundred twenty months of application for certification; and (2) individuals who took the examination prior to 2000 need not complete the experience requirement within any particular period of time.

The committee notes that this section states the hours must be acquired "over at least a 24-month period" and "over at least a 12-month period." The committee seeks clarification from the board regarding to what these time periods refer. The committee also seeks clarification from the board that this language does not conflict with Section 4.1 of the CPA Law.

The committee is concerned that prospective licensees will not be aware of the time limitation contained in the statute with respect to those sitting for the examination for the first time after January 1, 2000. Further, the committee notes that the phrases "over at least a 24-month period" and "over at least a 12-month period" are confusing and may lead some applicants to believe they must obtain more than one or two years of experience.

Additionally, the committee notes that the board will no longer recognize training sessions in an attest function. The committee recognizes the board has the discretion to change this standard. However, the committee is concerned that such a change will impact those already seeking to fulfill the experience requirement. Consequently, the committee recommends that the board set a date in the future when this type of training will no longer be acceptable to the board. The committee also asks the board to provide adequate notice to applicants that, as of a certain date, such training sessions will no longer be counted.

Further, with respect to subsection (d)(4) of this section, the committee recommends deleting the parentheses and the words "for example." Paragraph (4) should be re-written with the word "including" and a list of the types of activities which are not acceptable.

16. With respect to Section 11.56, the committee recommends the board retain the language which states that a supervisor is responsible for the accuracy of the statement submitted to the board. The committee also recommends including language in subsection (c) which states that knowingly submitting false or inaccurate information or willfully refusing to submit a verified statement will subject the supervisor to disciplinary action.
17. With respect to Section 11.73, the committee recommends the board retain the legal concept embodied in this section. The committee recommends that this section state, "The provisions of this chapter may not be construed in a manner which would be in violation of or inconsistent with the provisions of the act."

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18. With respect to Section 11.36 Business Name, the committee recommends that subsection (b) be deleted and that a CPA be required to disclose, when speaking with clients or potential clients, that fact that he is a solo practitioner.

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

Sincerely,

A handwritten signature in cursive script that reads "Thomas P. Gannon".

Thomas P. Gannon
Chairman
House Professional Licensure Committee

cc: The Honorable Pedro A Cortes, Secretary of the Commonwealth
Department of State
The Honorable Kenneth A. Rapp, Deputy Secretary
Regulatory Programs, Department of State
The Honorable Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
The Honorable Peter V. Marks, Sr., Deputy Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Ruth Dunnewold, Senior Deputy Chief Counsel
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Cynthia K. Montgomery, Regulatory Counsel
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Steven J. Reto, O.D., Chairman
PA State Board of Optometry
Alex M. Siegel, J.D., Ph.D., Chairperson
State Board of Psychology
Francis J. Lison, CPA, Chairman
State Board of Accountancy