



NASBA

Providing services to businesses in the marijuana industry

A sample of current board positions

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Alaska

Pending changes to the federal marijuana enforcement policies, it is the position of the Alaska Board of Public Accountancy (Board) that offering to perform or performing professional services for clients in the marijuana industry who are in compliance with Alaska's marijuana law, AS 17.38.010 – 17.38.900, and regulations adopted thereunder is not specifically prohibited by the Accountancy Act codified in Section 8 Chapter 4 of the Alaska Statutes, or Title 12 Chapter 4 of the Alaska Administrative Code. The Board has determined that, in the absence of a court or agency determination that a state marijuana law has been violated, Alaska licensees and licensed entities that elect to provide services to the marijuana industry consistent with the law in any state in which the licensee practices, will not face action by the Board for violation of the Alaska Accountancy Act or regulations governing the profession, based solely on the fact that the licensee or licensed entity is providing such services. The phrase "an act discreditable" is defined in 12 AAC 04.530(1) and does not include providing services to the marijuana industry. "Good moral character" is defined at 12 AAC 04.990(12) and does not preclude providing services to the marijuana industry. The Board may pursue disciplinary action against (or deny a license to) one who violates another state's law by providing services to a marijuana vendor or manufacturer where that industry is illegal.

Licensees who choose to provide professional services to the marijuana industry will be held to the professional standards, laws and rules applicable to all other services provided by the licensee. The decision to provide professional services to the marijuana industry is a business decision for individual licensees and registered firms. The Board cautions that those licensees or firms that choose to provide services of any kind to this industry should diligently address the potential risks and uncertainties involved, including but not limited to the continued uncertainty surrounding enforcement of applicable federal drug laws and related provisions of the Internal Revenue Code.

From: Alaska Board of Public Accountancy's Position Statement Regarding Licensees and Licensed Entities Providing Services to the Marijuana Industry



Arizona

"... the Arizona Board of Accountancy has concluded that merely accepting an engagement to provide accounting services to a medical marijuana dispensary does not, on its face, constitute an act discreditable to the profession and it will not pursue independent disciplinary action against an Arizona CPA registrant based solely on such acceptance. The Arizona Board of Accountancy recommends that Arizona registrants considering providing services to the medical marijuana industry read the materials referenced herein,* professional standards applicable to the professional services to be provided and guidance state and federal regulatory bodies offer, including, but not limited to, the Internal Revenue Service, the U.S. Department of Justice and the U.S. Securities Exchange Commission and any other authoritative materials available that frame the issues contemplated herein."

- *1. An Issue Brief on State Marijuana Laws and the CPA Profession, issued May 16, 2013, and last updated Jan. 5, 2015, which the American Institute of CPAs and the Colorado and Washington State Societies of Certified Public Accountants issued;
2. An Issue Brief on State Marijuana Laws and the CPA Profession, issued July 24, 2015, and last updated Jan. 8, 2016, which the American Institute of CPAs and the Colorado and Washington State Societies of Certified Public Accountants issued;
3. FIN-2014-G001 Guidance issued Feb. 14, 2014, by Department of the Treasury Financial Crimes Enforcement Network entitled, BSA Expectations Regarding Marijuana-Related Businesses;
4. State Bar of Arizona Ethics Opinions 11-01: Scope of Representation, February 2011 regarding legal ethics of a lawyer counselling or assisting a client;
5. Business Appraisal Within the Cannabis Industry: The ultimate appraisal challenge issued by Ronald L. Seigneur of Seigneur Gustafson LLP, copyright 2015;
6. Obstacles to Legalizing Marijuana: Resolving the Federal-State Conflict Authored by Wei-Chih Chiang and produced in the Checkpoint subscription service in May 2015;
7. AICPA: Talking to State Boards About Marijuana Policies: Key Policy Suggestions for State CPA Societies; and
8. AICPA: Providing Services to Businesses in the Marijuana Industry: A Sample of Current Board Positions.

From: White paper prepared by the Arizona Board of Accountancy – Provision of professional services to medical marijuana dispensaries by Arizona CPAs



Arkansas

“Upon consideration of the provisions of the Public Accountancy Act and the Board Rules specifically identified in paragraph 7 above, the Board concludes that, in and of itself, the provision of professional services, as defined in ACA 17-12-103(a)(18), within states where the possession and distribution of medical marijuana has been legalized, and the client has been duly licensed or is in the process of licensure application does not constitute a lack of good moral character as defined in Ark. Code Ann. § 17-12-301(b)(1)(A), nor would the provision of such services be considered an act discreditable to the profession under Ark. Code Ann § 17-12-601(a)(1)(8) or Rule 401 of the Board’s Code of Professional Conduct.

“The Board cautions that because certain activities surrounding the possession, growth, sale, and distribution of marijuana are illegal under federal law, this Declaratory Order is limited to opining whether a licensee’s provision of ‘professional services’ would constitute a violation of the statutes and rules under the Board’s jurisdiction. The Board further reminds its licensees that in the event of a criminal conviction or plea covered by Rule 412 of the Board’s Code of Professional Conduct, a licensee is required to make a report to the Board in accordance with that Conduct Rule. Nothing in this Declaratory Order negates the possibility that disciplinary action may be taken by the Board should a licensee be convicted of a state or federal crime, even if such conviction relates to the licensee’s provision of services to clients in the medical marijuana industry.

“Finally, the Board cautions that, pursuant to Board Rule 8, any and all ‘professional services’ provided must meet the professional standards applicable to the engagement, as identified by Board Rule 8.”

From: Arkansas State Board of Public Accountancy’s Declaratory Order 17-1



Colorado

“It is the Board’s position that offering to perform or performing professional services for clients in the marijuana industry who are in compliance with Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code is not in itself specifically prohibited by the Accountancy Act codified in Section 2 of Title 12 of the Colorado Revised Statutes or the State Board of Accountancy Rules.

“Certificate holders who choose to provide professional services to the marijuana industry will be held to the professional standards, laws, and rules applicable to all certificate holders for services provided.

“The Board’s Position Statement should not be construed: (a) as an endorsement for certificate holders to provide professional services to the marijuana industry; (b) as a statement about the feasibility of meeting applicable professional standards in providing services to the marijuana industry; or (c) as a statement about marijuana enforcement in any other jurisdiction or by any other local, state, or federal authority.”

From: Colorado Board of Accountancy’s Position Statement Regarding Certified Public Accountant Certificate Holder’s Providing Services to the Marijuana Industry



Connecticut

"It is exclusively the jurisdiction of state and federal courts to determine if and when drug laws are violated; in the absence of such a determination by the courts, the Connecticut Board of Accountancy will not pursue independent disciplinary action against Connecticut CPAs or CPA firms who are operating within the bounds of state law.

"CPAs must be aware that recreational marijuana remains an illegal substance in all but four states, and it is highly recommended that any Connecticut based CPAs or CPA firms seeking to provide services to recreational marijuana vendors or producers outside of Connecticut consult with independent legal counsel about potential legal issues that may arise as a result of providing services to recreational marijuana vendors and producers. Since recreational marijuana is currently illegal within Connecticut, it remains the prerogative of Connecticut law enforcement to take legal action against Connecticut based CPAs or CPA firms providing services to recreational marijuana vendors outside of Connecticut.

"Marijuana regulation is a rapidly changing area of the law and it is a CPA's responsibility to verify that their respective state laws currently allow the sale of medical or recreational marijuana. Furthermore, CPAs and CPA firms must be aware that federal enforcement policy is subject to change with a new presidential administration."

From: Position Statement of the Connecticut State Board of Accountancy on Recent Developments Regarding State Marijuana Laws



Florida

"... the provision of public accounting services, as defined in Section 473.302(8), FS, to marijuana-related businesses in states where marijuana-related businesses have been legalized, in the absence of a criminal conviction of the certified public accountant for the provision of those services, in and of itself does not constitute a lack of good moral character."

From: Florida Board of Accountancy response to Petition for Declaratory Statement by Howard, Howard and Hodges, Certified Public Accountancy and Consultants



Iowa

"It is exclusively the jurisdiction of state and federal courts to determine if and when drug laws are violated and, in the absence of such a determination by the courts, the Board will not attempt to interpret local, state, or federal marijuana laws, assess compliance with the same, or speculate on local, state, or federal drug enforcement policies. Unless and until a particular establishment is found to be in violation of applicable law by a court of competent jurisdiction, it is the Board's position that offering to provide or providing professional services to retail marijuana businesses legally operating in another state does not, on its face, constitute an act discreditable to the profession, constitute a lack of good moral character, or otherwise violate the statutes and/or rules the Board administers. See Iowa Code § 542; Iowa Admin. Code ch. 193A. Thus, the Board will not generally pursue disciplinary action against licensees who offer to provide or provide professional services to such businesses.

"Notwithstanding the foregoing, the Board's position does not negate the possibility that disciplinary action may be taken should a licensee continue to provide services to a business that is found to be operating in violation of applicable laws, rules, or regulations, or should the licensee be found guilty of a criminal act related to the provisioning of such services or otherwise. See Iowa Admin. Code r. 193A—14.3(11) (authorizing Board to initiate disciplinary action against a licensee "[c]onvict[ed] in this state or any other jurisdiction, of any felony, or of any crime described in Iowa Code section 542.5(2)"). The board will treat any successful prosecution related to state or federal marijuana laws just as it would the prosecution of any other criminal act."

From: Iowa Accountancy Examining Board response to an informal inquiry into the Board's position regarding the ethics of an Iowa CPA or CPA Firm providing professional services to a retail marijuana business legally operating in the State of Nevada.



Maryland

"Upon advice of counsel, in light of the current state of Maryland and Federal law, the Board will take no regulatory action against a CPA or firm solely on the basis that the CPA or firm provides services to a business involved in the sale or distribution of marijuana, provided that the business is operating legally under applicable state law."

From: Upon inquiry



Massachusetts

“The decision to provide professional services to the marijuana industry is a business decision for individual licensees and registered firms. The Board cautions that those licensees or firms that choose to provide services of any kind to this industry should diligently address the potential risks and uncertainties involved, including but not limited to the continued uncertainty surrounding enforcement of applicable federal drug laws and related provisions of the Internal Revenue Code.

“After careful consideration, the Board has determined that Massachusetts licensees and firms that elect to provide services to the marijuana industry legalized in any state in which the licensee practices will not face action by the Board based solely on the fact that the licensee or firm is providing such services. However, licensees are reminded that the federal government views such activity as a federal criminal offense. The Board’s position does not negate the possibility that disciplinary action may be taken by the Board should a licensee be found guilty of a federal criminal act.

“All licensees should be reminded that any and all professional services provided are subject to the same professional standards, laws and rules applicable to all other professional services provided by the licensee or firm.

“The Board of Public Accountancy unanimously approved this statement on January 19, 2017.”

From: Massachusetts Board of Public Accountancy’s Position Statement on Legal Marijuana



Michigan

“The decision to provide professional services to the medical marijuana industry is a personal business decision for individual licensees and licensed firms. The Department and Board caution that those individual licensees or licensed firms that choose to provide services of any kind to persons or entities engaged in the medical marijuana industry should diligently consider the inherent risks and uncertainties involved, including, but not limited to, the political uncertainty of federal enforcement of the Controlled Substances Act and provisions of the U.S. Internal Revenue Code.

“Federal law notwithstanding, it is the Department and Board’s position that a licensee offering to perform professional services for clients engaged in the medical marijuana industry who are otherwise in compliance with Michigan’s Medical Marijuana Act, Medical Marijuana Facilities Licensing Act, and associated administrative rules, or any other state where medical marijuana is legalized, is not in itself specifically prohibited by the provisions of Michigan’s Occupational Code (Act 299 of 1980, Article 7). Therefore, a licensee will not face any action by the Department or the Board based solely on the fact that the individual licensee or licensed firm provides professional services to a client engaged in the medical marijuana industry. Licensees that choose to provide professional services to the medical marijuana industry will be held to the professional standards, laws, and rules applicable to all licensees for the services provided by them.”

From: Michigan State Board of Accountancy Guidance for Licensees Providing Services to the Medical Marijuana Industry



New Mexico

“At its meeting on February 7, 2012, the New Mexico Public Accountancy Board discussed at length the issues that have been raised by certified public accountants (CPAs) and by your office regarding the Department of Health’s requirement that every medical cannabis producer in New Mexico undergo an audit by a CPA. Specifically, the Board considered your request that it issue a letter stating whether CPAs in New Mexico are or are not permitted to perform audits of these entities.

“The Board reviewed information from the United States Department of Justice and the New Mexico Attorney General’s Office regarding criminal implications, and it heard the concern of the New Mexico Society of CPAs and the American Institute of CPAs that an audit opinion might not even be possible in the case of a medical cannabis producer. Based on the information and the concerns that were raised, the Board determined that this is a legal issue that is beyond its scope. Accordingly, it has declined to issue a letter permitting CPAs in New Mexico to conduct audits of medical cannabis producers, as it has no authority to do so. An individual licensee who is considering conducting such an audit should seek independent legal advice and might discuss his or her concerns with the United States Department of Justice and the Drug Enforcement Administration.”

From: Letter from the New Mexico Public Accountancy Board to the New Mexico Department of Health, re: Public Accountancy Board Ruling Regarding Audits of Medical Cannabis Producers; dated February 23, 2012



Nevada

“The decision to provide professional services to the marijuana industry is a business decision for individual licensees and registered firms. The Board cautions that those licensees or firms that choose to provide services of any kind to this industry should diligently address the potential risks and uncertainties involved, including but not limited to the continued uncertainty surrounding enforcement of applicable federal drug laws and related provisions of the Internal Revenue Code.

“After careful consideration, the Board has determined that Nevada licensees and firms that elect to provide services to the marijuana industry legalized in any state in which the licensee practices will not face action by the Board based solely on the fact that the licensee or firm is providing such services. However, licensees are reminded that the federal government views such activity as a federal criminal offense. The Board’s position does not negate the possibility that disciplinary action may be taken by the Board should a licensee be found guilty of a federal criminal act.

“All licensees should be reminded that any and all professional services provided are subject to the same professional standards, laws and rules applicable to all other professional services provided by the licensee or firm.”

From: Nevada State Board of Accountancy Guidance for Licensees Providing Services to the Marijuana Industry



Oregon

“The decision to provide professional services to the marijuana industry is a business decision for individual licensees and registered firms. The Board cautions that those licensees or firms that choose to provide services of any kind to this industry should diligently address the potential risks and uncertainties involved, including but not limited to the continued uncertainty surrounding enforcement of applicable federal drug laws and related provisions of the Internal Revenue Code.

“After careful consideration, the Board has determined that Oregon licensees and firms that elect to provide services to the marijuana industry legalized in any state in which the licensee practices, will not face action by the Board for violation of the State of Oregon Board of Accountancy’s Code of Professional Conduct, based solely on the fact that the licensee or firm is providing such services. However, all licensees should be reminded that any and all services provided are subject to the same professional standards, laws and rules applicable to all other services provided by the licensee.”

From: Guidance for Licensees Providing Services to the Marijuana Industry



Washington

On March 15, 2018, Gov. Inslee signed Engrossed Substitute Senate Bill 5928, which related to making financial services available to marijuana producers, processors, retailers, qualifying patients, health care professionals and designated providers as authorized under chapters 69.50 and 69.51A RCW; and adding a new section to chapter 9.01 RCW.

Sections (3) of this bill reads as follows:

A Certified Public Accountant or certified public accounting firm, which practices public accounting as defined in RCW 18.04.025, does not commit a crime solely for providing professional accounting services as specified in RCW 18.04.025 for a marijuana producer, marijuana processor, or marijuana retailer authorized under chapter 69.50 RCW.

Given the passage of this bill, the Board reiterates its policy that it will not initiate disciplinary action against CPAs that are compliant with our state’s self-imposed regulatory framework and remain free of other financially related violations of federal or state law.

That being said, the Board cannot provide an assessment of the spectrum of risks that CPAs potentially face if they choose to engage with clients who are involved in the cannabis industry. Licensees are advised to seek their own legal counsel.

From: Position Statement of the Executive Director of the Washington State Board of Accountancy

For more information on providing services to businesses in the marijuana industry and state board guidance for licensees, visit aicpa.org/marijuana.



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