

Russell Cromey, 2276 Cowern Place, St. Paul, MN 55109.....\$100.00.

Stephen Flesche, 435 East University Avenue, St. Paul, MN 55101.....\$600.00.

Alvin Hillstrom, 3511 Freeman Road, Cloquet, MN 55720.....\$300.00.

Justin Korwin, 1705 Pine Street, Hastings, MN 55033.....\$100.00.

Frank Marshall, 102 East Central Entrance, Duluth, MN 55811.....\$300.00.

Mary Mclean, 1700 Fremont Avenue, St. Paul, MN 55106.....\$210.00.

John Melina, 341 Elm Avenue, Waverly, MN 55390.....\$600.00.

Timothy Nelson, 1147 6th Avenue, Windom, MN 56101.....\$600.00.

Carl Palmquist, 6215 5th Avenue South, Richfield, MN 55423.....\$600.00.

Roy Peterson, 4183 C.J. Circle Southeast, Prior Lake, MN 55372.....\$165.00.

Joseph Reynolds, 1243 East County Road C, Maplewood, MN 55109.....\$100.00.

Ralph Rotzien, P.O. Box 50374, Minneapolis, MN 55405.....\$600.00.

Douglas Rumpel, 1956 Feronia Avenue, #303, St. Paul, MN 55104.....\$255.00.

John Stelling, P.O. Box 1243, Burnsville, MN 55337.....\$100.00.

Richard Stephenson, 2112 West 6th Street, Duluth, MN 55806.....\$600.00.

Douglas Swanberg, 1106 Avenue F, #20, Cloquet, MN 55720.....\$600.00.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 1:58 p.m.

#### CHAPTER 542—S.F.No. 2746

*An act relating to occupations and professions; board of accountancy; establishing procedures for the board to carry out disciplinary proceedings; providing penalties; amending Minnesota Statutes 1990, section 326.211, subdivision 9; proposing coding for new law in Minnesota Statutes, chapter 326; repealing Minnesota Statutes 1990, sections 326.23; and 326.231.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. Minnesota Statutes 1990, section 326.211, subdivision 9, is amended to read:

Subd. 9. (a) No person shall assume or use the title or designation "certified public accountant" or "licensed public accountant" in conjunction with names indicating or implying that there is a partnership, or corporation, if there is no bona fide partnership or corporation licensed under section 326.20.

(b) No person shall assume or use the title or designation "certified public accountant" or "licensed public accountant" in conjunction with the designation "and Company," or "and Co.," "and Associates," or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation with more than one shareholder licensed under section 326.20.

(c) A sole proprietor ~~or~~, partnership, or corporation lawfully using the title or designation in conjunction with the names or designation on July 1, ~~1980~~ 1992, may continue to do so if otherwise in compliance with the provisions of sections 326.165 to ~~326.23~~ 326.229.

## Sec. 2. [326.228] COMPLAINT COMMITTEE.

The board shall establish a complaint committee to investigate, mediate, or initiate administrative or legal proceedings on behalf of the board with respect to complaints filed with or information received by the board alleging or indicating violations of sections 326.165 to 326.229. The complaint committee shall consist of three members of the board, one of whom shall be a certified public accountant, and one of whom shall be a licensed public accountant. When the licensed public accountants lose their representation on the board pursuant to section 326.17, the complaint committee shall consist of three members of the board, two of whom shall be certified public accountants.

## Sec. 3. [326.229] ISSUANCE, DENIAL, REVOCATION, AND SUSPENSION OF LICENSES; DISCIPLINE.

Subdivision 1. GENERALLY. (a) If the board, or the complaint committee if authorized by the board, has a reasonable basis to believe that a person has engaged in or is about to engage in a violation of a statute, rule, or order that the board has issued or is empowered to enforce, the board, or the complaint committee if authorized by the board, may proceed as described in subdivision 2 or 3.

(b) Except as otherwise described in this section, all hearings shall be conducted in accordance with chapter 14.

Subd. 2. LEGAL ACTION. (a) When necessary to prevent an imminent violation of a statute, rule, or order that the board has issued or is empowered to enforce, the board, or the complaint committee if authorized by the board, may bring an action in the name of the state in the district court in Ramsey county, when necessary to prevent imminent harm to the public, or in any county in

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which jurisdiction is proper to enjoin the act or practice and to enforce compliance with the statute, rule, or order. Upon a showing that a person has engaged in or is about to engage in an act or practice constituting a violation of a statute, rule, or order that the board has issued or is empowered to enforce, a permanent or temporary injunction, restraining order, or other appropriate relief shall be granted.

(b) For purposes of injunctive relief under this subdivision, irreparable harm exists when the board shows that a person has engaged in or is about to engage in an act or practice constituting a violation of a statute, rule, or order that the board has issued or is empowered to enforce.

(c) Injunctive relief granted under paragraph (a) does not relieve an enjoined person from criminal prosecution by a competent authority or from action by the board pursuant to subdivisions 3, 4, 5, and 6 with respect to the person's license, certificate, or application for examination, license, or renewal.

**Subd. 3. CEASE AND DESIST ORDERS.** (a) The board, or the complaint committee if authorized by the board, may issue and have served upon an unlicensed person or an unlicensed certificate holder an order requiring the unlicensed person or unlicensed certificate holder to cease and desist from the act or practice constituting a violation of the statute, rule, or order. The order shall be calculated to give reasonable notice of the rights of the unlicensed person or unlicensed certificate holder to request a hearing and shall state the reasons for the entry of the order. No such order shall be issued until an investigation of the facts has been conducted pursuant to section 214.10.

(b) Service of the order is effective when the order is served on the unlicensed person, unlicensed certificate holder, or counsel of record personally or by certified mail to the most recent address provided to the board for the unlicensed person, unlicensed certificate holder, or counsel of record.

(c) Unless otherwise agreed by the board, or the complaint committee if authorized by the board, and the person requesting the hearing, the hearing shall be held no later than 30 days after the request for the hearing is received by the board.

(d) The administrative law judge shall issue a report within 30 days of the close of the contested case hearing record, notwithstanding Minnesota Rules, part 1400.8100, subpart 3. Within 30 days after receiving the report and any exceptions to it, the board shall issue a further order vacating, modifying, or making permanent the cease and desist orders as the facts require.

(e) If no hearing is requested within 30 days of service of the order, the order becomes final and remains in effect until it is modified or vacated by the board.

(f) If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person is in default and the proceeding may be determined against that person upon consideration of the cease and desist order, the allegations of which may be considered to be true.

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Subd. 4. **ACTIONS AGAINST APPLICANTS, LICENSEES, OR CERTIFICATE HOLDERS.** (a) The board may, by order, deny, refuse to renew, suspend for not more than five years, temporarily suspend, or revoke the application, certificate, or license of a person; censure or reprimand that person; refuse to permit a person to sit for examination, or refuse to release the person's examination grades if the board finds that the order is in the public interest and that, based on a preponderance of the evidence presented, the applicant, licensee, or certificate holder:

(1) has violated a statute, rule, or order that the board has issued or is empowered to enforce;

(2) has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether or not the conduct or acts relate to the practice of public accounting, providing that the fraudulent, deceptive, or dishonest conduct or acts reflect adversely on the person's ability or fitness to engage in the practice of public accounting;

(3) has engaged in conduct or acts that are negligent or otherwise in violation of the standards established by Minnesota Rules, parts 1100.4700 and 1100.4800, where the conduct or acts relate to the practice of public accounting;

(4) has been convicted of or has pled guilty or nolo contendere to a felony or crime, an element of which is dishonesty or fraud, or has been shown to have engaged in acts or practices tending to show that the applicant, licensee, or certificate holder is incompetent or has engaged in conduct reflecting adversely on the person's ability or fitness to engage in the practice of public accounting;

(5) employed fraud or deception in obtaining a certificate, license, renewal, or reinstatement or in passing all or a portion of the examination;

(6) has had the person's public accounting license, certificate, right to examine, or other similar authority revoked, suspended, canceled, limited, or not renewed for cause in any state, commonwealth, or territory of the United States, in the District of Columbia, or in any foreign country;

(7) has had the person's right to practice before any federal, state, or other government agency revoked, suspended, canceled, limited, or not renewed;

(8) failed to meet any requirement for the issuance or renewal of the person's license or certificate; or

(9) with respect to temporary suspension orders, has committed an act, engaged in conduct, or committed practices that may result or may have resulted, in the opinion of the board or the complaint committee if authorized by the board, in an immediate threat to the public.

(b) In lieu of or in addition to any remedy provided in paragraph (a), the board may require, as a condition of continued licensure, possession of certificate, termination of suspension, reinstatement of license or certificate, examination, or release of examination grades, that the person:

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(1) submit to a quality review of the person's ability, skills, or quality of work, conducted in such fashion and by such persons, entity, or entities as the board may require; and

(2) complete to the satisfaction of the board such continuing professional education courses as the board may specify.

(c) Service of the order is effective if the order is served on the applicant, licensee, certificate holder, or counsel of record personally or by certified mail to the most recent address provided to the board for the licensee, certificate holder, applicant, person or counsel of record. The order shall state the reasons for the entry of the order.

(d) All hearings required by this subdivision shall be conducted in accordance with chapter 14 except with respect to temporary suspension orders, as provided for in subdivision 5, paragraph (e).

**Subd. 5. PROCEDURE FOR TEMPORARY SUSPENSION OF LICENSE OR CERTIFICATE.** (a) When the board, or the complaint committee if authorized by the board, issues a temporary suspension order, the suspension is in effect upon service of a written order on the licensee, certificate holder, or counsel of record, specifying the statute, rule, or order violated. The order remains in effect until the board issues a final order in the matter after a hearing or upon agreement between the board and the licensee or certificate holder.

(b) The order may prohibit the licensee from engaging in the practice of public accounting in whole or in part, as the facts may require, and may condition the end of such suspension on compliance with a statute, rule, or order that the board has issued or is empowered to enforce.

(c) The order shall set forth the rights to hearing contained in this subdivision and shall state the reasons for the entry of the order.

(d) Within ten days after service of the order, the licensee or certificate holder may request a hearing in writing. The board shall hold a hearing before its own members within five working days of receipt of a request for hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the temporary suspension. This hearing is not subject to chapter 14. Evidence presented by the board or the licensee or certificate holder shall be in affidavit form only. The licensee, certificate holder, or counsel of record may appear for oral argument.

(e) Within five working days after the hearing, the board shall issue its order and, if the suspension is continued, schedule a contested case hearing within 30 days after issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record, notwithstanding the provisions of Minnesota Rules, part 1400.8100, subpart 3. The board shall issue a final order within 30 days after receipt of that report.

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Subd. 6. VIOLATION; PENALTIES; COSTS OF PROCEEDING. (a) The board may impose a civil penalty not to exceed \$2,000 per violation upon a person who violates an order that the board has issued or is empowered to enforce.

(b) The board may, in addition, impose a fee to reimburse the board for all or part of the cost of the proceedings resulting in disciplinary action authorized by this section, the imposition of civil penalties, or the issuance of a cease and desist order. The fee may be imposed when the board shows that the position of the person who violates a statute, rule, or order that the board has issued or is empowered to enforce is not substantially justified, unless special circumstances make an award unjust, notwithstanding the provisions of Minnesota Rules, part 1400.8401. The costs include, but are not limited to, the amount paid by the board for services from the office of administrative hearings, attorney fees, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and expense incurred by board members and staff.

(c) All hearings required by this subdivision shall be conducted in accordance with chapter 14.

Subd. 7. REINSTATEMENT. The board may reinstate a suspended, revoked, or surrendered certificate or license upon petition of the former or suspended certificate holder or licensee. The board may, in its sole discretion, require that the former certificate holder or licensee submit to the board evidence of having obtained up to 120 hours of continuing professional education credits that would have been required had the former certificate holder held a certificate or the former licensee been licensed continuously. The board may, in its sole discretion, place any other conditions upon reinstatement of a suspended, revoked, or surrendered certificate or license that it finds appropriate and necessary to ensure that the purposes of sections 326.165 to 326.229 are met. No suspended certificate or license shall be reinstated until the former certificate holder or licensee has completed one-half of the suspension.

#### Sec. 4. INSTRUCTION TO REVISOR.

The revisor shall change the section references from "326.23" to "326.229" in the following sections of Minnesota Statutes: 3.972, 319A.02, 326.17, 326.18, 326.20, 326.211, 326.212, 326.22, 326.224, 326.225, and 326.53; and from "326.231" to "326.229" in Minnesota Statutes, section 326.20. The revisor shall make similar citation changes in Minnesota Rules.

#### Sec. 5. REPEALER.

Minnesota Statutes 1990, sections 326.23 and 326.231, are repealed.

Presented to the governor April 17, 1992

Signed by the governor April 27, 1992, 1:59 p.m.

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