1105.7800 CODE OF PROFESSIONAL CONDUCT.

A. The AICPA Code of Professional Conduct is incorporated by reference.

B. Failure to report continuing professional education or falsely reporting continuing professional education required by parts 1105.3000 and 1105.7000 is an act discreditable to the profession and is basis for disciplinary action under Minnesota Statutes, section 326A.08.

C. Failure to report peer reviews required by parts 1105.4000 and 1105.7100 or seeking an exemption when one is not warranted, is an act discreditable to the profession and is a basis for disciplinary action under Minnesota Statutes, section 326A.08.

D. Failure to file an application, registration, renewal, or other document or form required to be filed with the board pursuant to this chapter, the act, or any other statutes or rule is an act discreditable to the profession and is basis for disciplinary action under Minnesota Statutes, section 326A.08.

E. Persons and firms subject to the Sarbanes-Oxley Act of 2002, Public Law 107-204, shall comply with that act and related published rules. Failure to do so is an act discreditable to the profession and is basis for disciplinary action under Minnesota Statutes, section 326A.08.

F. Persons and firms performing audit or attest services according to government auditing standards issued by the Comptroller General of the United States or auditing or related professional practice standards issued by the Public Company Accounting Oversight Board, which documents are incorporated by reference, shall comply with those standards. Failure to do so is an act discreditable to the profession and is basis for disciplinary action under Minnesota Statutes, section 326A.08.

G. A firm granted a permit under Minnesota Statutes, section 326A.05, is not considered independent with respect to an audit of financial statements for a client if any person specified in part 1105.4000, items D and E, within one year preceding the commencement of audit procedures, participated in any capacity in the current or prior audit and subsequently became the chief executive officer, controller, chief financial officer, chief accounting officer, or any person servicing an equivalent position for the client.

H. (1) A licensee, registrant, certificate holder, or applicant may not directly or indirectly take any action to fraudulently influence, coerce, manipulate, or mislead any certified public accounting firm, the state auditor, or the legislative auditor engaged in the performance of an audit of financial statements if that person knew or was unreasonable in not knowing that the action could, if successful, result in rendering the financial statements materially misleading. Engaging in these acts is an act discreditable to the profession and is a basis for disciplinary action under Minnesota Statutes, section 326A.08.

(2) For purposes of this item, actions that "could, if successful, result in rendering the financial statements materially misleading" include, but are not limited to, the following actions taken at any time to fraudulently influence, coerce, manipulate, or mislead an auditor:

(a) to issue a report on a client's financial statements that is not warranted in the circumstances, due to material violations of generally accepted accounting principles, generally accepted auditing standards, or other standards;

(b) not to perform an audit, review, or other procedures required by generally accepted auditing standards or other professional standards; or

(c) not to withdraw an issued report.

I. A licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, shall not render services that do not follow the standards, as applicable under the circumstances and at the time the services are provided, specified in the documents in part 1105.0250. In addition to these applicable standards, and to the extent other provisions of this chapter and Minnesota Statutes do not modify or conflict with them, a licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, shall follow standards issued by other professional or governmental bodies including international standards setting bodies with which a licensee is required by law, regulation, or the terms of engagement to comply.

J. (1) A licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, also performs for that client:

(a) an audit or review of a financial statement;

(b) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(c) an examination of prospective financial information.

This prohibition applies during the period in which the licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, is engaged to perform any of the services listed under this item and the period covered by any historical financial statements involved in these services.

(2) A licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, who is not prohibited by this item from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, recommends or refers a product or service to which the commission relates.

(3) Any licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, who accepts a referral fee for recommending or referring any service of a licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, to any person or entity or who pays a referral fee to obtain a client shall disclose any acceptance or payment to the client.

K. (1) A licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, shall not:

(a) perform for a contingent fee any professional services for, or receive any fee from a client for whom the licensee, the licensee's firm, or an individual with practice privileges under Minnesota Statutes, section 326A.14, performs:

i. an audit or review of a financial statement;

ii. a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

iii. an examination of prospective financial information; or

(b) prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(2) The prohibition in subitem (1) applies during the period in which the licensee or individual with practice privileges under Minnesota Statutes, section 326A.14, is engaged to perform any of the services listed in this item and the period covered by any historical financial statements involved in any listed services.

(3) A contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. For purposes of this item, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending, for example, on the complexity of services rendered.

Statutory Authority: *MS s 197.4552; 326.18; 326A.02*

History: *27 SR 1425; 28 SR 1636; 30 SR 422; 33 SR 476; 40 SR 953; 42 SR 736*
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