

**BEFORE THE ARKANSAS STATE BOARD OF PUBLIC ACCOUNTANCY**

**IN THE MATTER OF A  
PETITION FOR DECLARATORY ORDER  
BY DAVID CLEVELAND, CPA**

**DECLARATORY ORDER 17-1**

**DECLARATORY ORDER**

This matter came before the Arkansas State Board of Public Accountancy (the "Board") pursuant to Board Rule 18 "Declaratory Orders" at a duly-noticed public meeting held on August 18, 2017, at the Board's office, in response to a Petition for Declaratory Order received from a Board licensee, David Cleveland, CPA, on August 8, 2017. Having considered the Petition and materials presented, the Board makes the following Declaratory Order:

**BACKGROUND AND ASSUMED FACTS**

1. Petitioner David Cleveland, CPA ("Petitioner") sent a letter to the Board's Executive Director, dated August 8, 2017, asking as to whether "CPAs in Arkansas can perform accounting services for businesses and individuals in the medical marijuana industry without violating any board rules or ethical standards." Petitioner also stated that he "would like to know the Board's stance on this matter before agreeing to perform any services for clients in the medical marijuana industry."
2. While not specifically requested in the letter received from the Petitioner, based on prior communications with the Petitioner, the Board's Executive Director understands the letter to be intended as a petition for a declaratory order per Board Rule 18, and the Board accepts the letter as the Petition in this matter.

3. Per Board Rule 18, the Board makes no findings of fact when issuing a declaratory order. Rather, all facts set forth in the Petition are assumed to be true.

Facts set forth in this declaratory order are taken from the Petition.

4. Petitioner is a Certified Public Accountant licensed in Arkansas, license number 8515, and is the majority owner of the firm Goslee & Cleveland, PA, license number 870C.

5. On November 8, 2016, Arkansas voters approved Issue 6 – Medical Marijuana Amendment – which amended the Arkansas Constitution and legalized the use of marijuana by patients with specific “qualifying” medical conditions as certified by a physician, but did not legalize the recreational use of marijuana. The Arkansas Legislature passed several Acts during the 2017 legislative session to implement this change.

#### **Discussion and Analysis**

6. While the term “accounting services,” which was used in the Petition, is not defined in the Public Accountancy Act or the Board’s rules, the following similar terms are defined: “Practice of public accounting” is defined as “the performance of or an offer to perform attest services or the performance of or an offer to perform professional services for the general public.” Ark. Code Ann. § 17-12-103(a)(15).

“Professional services” is defined as “services arising out of or related to the specialized knowledge or skills performed by certified public accountants or public accountants.” Ark. Code Ann. § 17-12-103(a)(18).

7. The Board has identified the following statutes and Board rules as relevant to the question presented in the Petition:

a. Ark. Code Ann. § 17-12-501: “The Arkansas State Board of Public Accountancy shall renew licenses to persons who make application and demonstrate that their qualifications are in accordance with the provisions of this chapter.”

b. Ark. Code Ann. § 17-12-301(a): A certificate as a certified public accountant shall be granted by the Arkansas State Board of Public Accountancy to any person of good moral character.”

c. Ark. Code Ann. § 17-12-301(b)(1)(A): “Good moral character as used in this section means lack of history of: (i) dishonest or felonious acts; or (ii) Conduct involving fraud or moral turpitude.”

d. Ark. Code Ann. § 17-12-601(a)(1)(8) prohibits “conduct discreditable to the public accounting profession.”

e. Rule 401 of the Board’s Code of Professional Conduct: “A licensee shall not commit any act discreditable to the profession.”

f. Rule 412(a) of the Board’s Code of Professional Conduct: “A licensee who is convicted of or pleads guilty or nolo contendere to any crime other than a traffic violation, regardless of whether the adjudication of guilt or sentence is withheld, suspended or deferred in any court of this state, another state, or the federal government, shall make a written report thereof to the Board within thirty (30) days after the conviction or plea.”

8. While uncertainty exists about the level of enforcement of marijuana laws at the federal level, at this point in time marijuana use and/or possession is clearly illegal under federal law.

**CONCLUSIONS OF LAW**

9. 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.

10. 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.

11. 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.

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PAGE 5

IT IS SO ORDERED this 18<sup>th</sup> day of August 2017.

ARKANSAS STATE BOARD  
OF PUBLIC ACCOUNTANCY



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Robert Redfern, C.P.A.  
PRESIDENT