



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Board of Accountancy

- Permanent Rule
- Emergency Rule
- Expedited Adoption
- Expedited Repeal

(1) Date of adoption: January 3, 2001

(2) Purpose:

To allow CPAs to receive compensation in the form of commissions, referral fees, and contingent fees from nonattest clients provided specific disclosure requirements are met.

(3) Citation of existing rules affected by this order:

Repealed:

Amended: WAC 4-25-626 What restrictions govern commissions, referral, and contingent fees?

Suspended:

(4) Statutory authority for adoption: RCW 18.04.055(2)

Other authority:

PERMANENT RULE ONLY (including EXPEDITED ADOPTION):

Adopted under notice filed as WSR 00-23-090 on 11/20/00 (date).

Describe any changes other than editing from proposed to adopted version: None

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

EXPEDITED REPEAL ONLY

Under Preproposal Statement of Inquiry filed as WSR _____ on _____ (date).

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

(6) Effective date of rule:

Permanent Rules

or Expedited Rule Making

- 31 days after filing
- Other (specify) 2/5/01*

*(If less than 31 days after filing specific finding in 5.3 under RCW 34-05.380(3) is required)

Emergency Rules

- Immediately
- Later (specify) _____

NAME (TYPE OR PRINT)

Dana M. McInturff, CPA

SIGNATURE

TITLE

Executive Director

DATE

01/03/01

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

JAN 5 2001

1200

WSR 01-03-012

TIME: _____ PM

Note: If any category is left blank, it will be calculated as zero.

No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note.

A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New _____	Amended _____	Repealed _____
Federal rules or standards:	New _____	Amended _____	Repealed _____
Recently enacted state statutes:	New _____	Amended _____	Repealed _____

The number of sections adopted at the request of a nongovernmental entity:

New _____ Amended _____ Repealed _____

The number of sections adopted on the agency's own initiative:

New _____ Amended 1 Repealed _____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____ Amended _____ Repealed _____

The number of sections adopted using:

Negotiated rule making:	New _____	Amended _____	Repealed _____
Pilot rule making:	New _____	Amended _____	Repealed _____
Other alternative rule making:	New _____	Amended <u>1</u>	Repealed _____

AMENDATORY SECTION (Amending WSR 98-12-055, filed 5/29/98, effective 6/29/98)

~~WAC 4-25-626 ((Can I accept)) What restrictions govern commissions, referral, ((or)) and contingent fees? (1) ((Commissions and referral fees are compensation arrangements where:~~

~~(a) The primary contractual relationship for the product or service is not between the client and CPA,~~

~~(b) The CPA is not primarily responsible to the client for the performance or reliability of the product or service,~~

~~(c) The CPA adds no significant value to the product or service, or~~

~~(d) A third party instead of the client pays the CPA for the products or services.~~

~~(2) A CPA who is not in public practice but using the title CPA may accept commission, referral, and contingent fees. However, the CPA must disclose in writing to the client the nature, source and amount of the commission, referral or contingent fee.~~

~~(3) The following parameters define the limited circumstances in which a licensee in public practice may be compensated on a commission or referral fee basis. This rule does not apply to compensation set by courts, judicial proceedings, public authorities or governmental agencies.~~

~~(a) A licensee in public practice may not enter into compensation arrangements for attest services that in any way tend to bias or give the appearance of tending to bias the results of attest services or the licensee's report.~~

~~(b) A licensee in public practice may not accept a commission or referral fee, as defined in subsection (1) of this section, for the sale or referral to a client of products or services of others.~~

~~(c) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment in advance to the client.~~

~~(4) A licensee in public practice may not accept a contingent fee for:~~

~~(a) Attest services,~~

~~(b) Other services, except for tax services which will receive substantive consideration by tax authorities, provided to a client during that client's attest engagement or during the period covered by the respective attest report,~~

~~(c) An arrangement meeting any of the definitions of commissions and referral fees in subsection (1) of this section,~~

~~(d) An arrangement that violates federal laws or the laws or regulations of Washington state or its municipalities, or~~

~~(e) Preparation of original or amended tax returns (a licensee~~

~~may accept a contingent fee in situations where the licensee reasonably expects the finding or results, on which the contingent fee is based, will receive substantive consideration by tax authorities);~~

~~(f) For services other than those in (a) through (e) of this subsection, a licensee in public practice may perform professional services for a fee which is contingent on the findings or results of the professional services with the following restrictions:~~

~~(i) If the situation involves adverse party(ies) and the licensee expects the findings or results will receive substantive consideration by the adverse party(ies) or their agent(s), the licensee must:~~

~~(A) Obtain a written agreement from the client stating the client will provide to the licensee the name(s) and address(es) of the adverse party(ies) or the primary agent(s) of the adverse party(ies), and~~

~~(B) Provide prompt written notification to the adverse party(ies) or their agent(s) of the licensee's role as the client's advisor and recommend the adverse party(ies) or their agent(s) seek their own advisor.~~

~~(ii) All contingent fee arrangements must:~~

~~(A) Be disclosed in advance of client acceptance;~~

~~(B) Be in writing;~~

~~(C) Include the method of calculating the fee;~~

~~(D) Specify the licensee's role as the client's advisor, and~~

~~(E) Be available to the board or other regulatory agencies upon request.)) A CPA 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 CPA also performs attest services for that client.~~

This prohibition applies during the period in which the CPA is engaged to perform the attest services and the period covered by any historical financial statements involved in the attest services.

(2) A CPA who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose, consistent with the requirements set forth in subsection (7) of this section, that fact to any person or entity to whom the CPA recommends or refers a product or service to which the commission relates.

(3) Any CPA who accepts a referral fee for recommending or referring any service of a CPA to any person or entity or who pays a referral fee to obtain a client shall disclose, consistent with the requirements set forth in subsection (7) of this section, such acceptance or payment to the client.

(4) A CPA shall not:

(a) Perform for a contingent fee any professional services for, or receive such a fee from a client for whom the CPA or the CPA's firm performs attest services; or

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

(5) The prohibition in subsection (4) (a) of this section applies during the period in which the CPA is engaged to perform the attest services and the period covered by any historical financial statements involved in the attest services.

(6) Except as stated in the next sentence, 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. Solely for purposes of this section, 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 CPA's fees may vary depending, for example, on the complexity of services rendered.

(7) All CPAs who accept commission, referral and contingent fee arrangements must:

(a) Disclose the arrangement in writing and in advance of client acceptance;

(b) Disclose the method of calculating the fee or amount of fee; and

(c) Specify the CPA's role as the client's advisor.