

STATEMENT OF POSITION

Advertising and Public Communications

(Issued November 2004, revised January 2007)

Objective. The purpose of this Statement of Position by the State Board of CPAs of Louisiana (Board) is twofold: First, to remind licensees that Board Rules on advertising and public communications apply to licensees' websites, e-mails and other electronic or internet marketing, as well as all other forms of advertising, marketing and public communications; and, secondly, to inform licensees of specific areas of the Board's Rules on advertising where the Board has noted recurring instances of noncompliance in all forms of advertisement, and to provide guidance as to whether certain statements in those areas are in compliance with the Board's Rules.

Summary. The Board's Rules of Professional Conduct relative to advertising and public communications (the "Rules") apply to all forms of marketing, advertising and public communication. LAC 46 XIX §§1707(F) and (G).

Explanation. In recent years licensees have increasingly used the internet and developed CPA Firm websites. Prior to the advent of the internet and universal access to marketing and advertising information, such information may have been in brochures or other printed material. Traditionally such material was disseminated only by hand or mail and was not as available for general reference or scrutiny.

Questions have arisen on how website material and information should be presented. The Board's staff has occasionally been asked to review a licensee's website and offer advice as to compliance with rules of conduct. On the other hand, some licensees or their marketers appear to design websites without realizing they should refer to the Board's Rules on advertising. The website presentation or representations may inadvertently conflict with advertising or other regulations. Other licensees exposed to such content may erroneously conclude that it is acceptable. They may then take a similar approach on their websites, and the lack of compliance becomes more pervasive.

The Board believes the proliferation of CPA Firm websites has evolved to the point where licensees should be advised and reminded in clear terms that a licensee's website and marketing communications transmitted through the internet are simply another form of advertising. Such content should be regarded the same as any other form of advertising material.

STATE BOARD OF CPAS OF LOUISIANA
Statement of Position—Advertising and Public Communications

Additionally, in recent years the Board has noted an increase of noncompliance with the Board's Rules on advertising and public communications in all venues. Generally, the Rules prohibit licensees from using or participating in any advertisement or public communication which contains false, fraudulent, misleading, deceptive or unfair statements or claims. The Rules also identify certain types of statements or claims that are considered to be false, fraudulent, misleading, deceptive or unfair. The Board has noted increased problems with compliance in some of those specific areas of the Rules on advertising.

Therefore, the Board sets forth this statement of position to provide guidance to CPAs and CPA Firms who have or plan to have websites or to disseminate communications and advertisements through the internet. This statement of position is intended to provide clarification and guidance to licensees in those areas where there have been problems with advertisements in all venues and forms of advertising and public communications.

The Statement of Position presented below provides more detailed guidance.

Statement of Position. The Louisiana Accountancy Act (LAA) provides authority to the Board to adopt Rules of Professional Conduct. La. Rev. Stat. §37:74(J). The Board's Rules of Professional Conduct relative to advertising and public communications apply to all forms of marketing, advertising and public communication. LAC 46 XIX §§1707(F) and (G). The LAA provides authority to the Board to consider action against an individual's CPA Certificate or a Firm's CPA Firm Permit for violation of the Board's Rules. La. Rev. Stat. §37:79.A(5).

Applicability of Board Advertising Rules on Websites, etc. The Board's Rules of Professional Conduct covering advertising and public communications are set forth in Board's Rules, LAC 46 XIX §§1707(F) and (G). Such Rules apply to all forms of advertising, marketing, and public communications, inclusive of the content on a licensee's website, or other marketing content, disseminated by or on behalf of a licensee, by e-mail or otherwise through the internet. The Rules apply to printed advertisements, verbal communications, letterhead stationery, business cards, telephone directory advertisements, brochures, letters, radio and television advertisements, websites, e-mails, other electronic or internet marketing or advertisement, and any other form of advertisement or public communications disseminated by or on behalf of a licensed CPA or CPA Firm.

Problem Areas Concerning Advertisements. Licensees are required to comply with all specific provisions of Board Rules on advertising and public communications. The Board has observed increased noncompliance in certain areas of the Rules. The illustrations provided below, while by no means all-inclusive, are intended to provide clarification and guidance to licensees.

Use of the Terms “Specialize”, “Expert”, and Related Terms

The Board's Rules prohibit a licensed CPA or CPA Firm from using statements or communications which state, imply or claim that the licensee has received formal recognition as a specialist or expert or has any specialized expertise in any aspect of the practice of public accountancy without stating from whom the recognition was received. [LAC 46 XIX §1707(F)(1)(f)]

STATE BOARD OF CPAS OF LOUISIANA
Statement of Position—Advertising and Public Communications

Accordingly, statements in any advertisement or public communication that include “I specialize in...” or “We specialize in ...”, or similar statements, are considered to be violations of §1707(F)(1)(f). The Board understands that licensees and firms may wish to use “specialize”, “expert” or “expertise” to indicate that the licensee or firm provides services in a specific area. However, these terms indicate more than just a specific area of practice, they imply recognition as a specialist or expert, and potentially lead the clients and general public to believe that the quality of the services being offered is exceptional, beyond those of other CPAs or CPA Firms, without informing the public as to the specific training or recognition of the licensee or firm in a given area of practice.

Any licensed CPA or CPA Firm that uses the above terms in any form of advertisement or public communication would be in violation of §1707(F)(1)(f). An exception is made for the term “expert witness” because of the conventional use of this terminology in the performance of litigation services and by the courts.

It would be acceptable to state that the licensee “limits practice to” or “concentrates in” certain service or areas of practice, or by using similar phrases.

Statements That Imply Guarantees

The Board’s Rules prohibit a licensed CPA or CPA Firm from using statements in advertisements which are intended or likely to create false or unjustified expectations of favorable results. [LAC 46 XIX §1707(F)(1)(d)]

Licensees should be cautious about using statements or words which tend to imply, state or predict a definite outcome if the public uses the CPA’s services, or any statement that in any way makes a guarantee as to the results of the services.

Statements such as “We will [can] minimize [your] taxes” or “We will [can] make [your] business more profitable” or similar statements are considered to be violations. On the other hand, if the statements were re-worded as “Our goal is to minimize [your] taxes” or “Our goal is to make your business more profitable”, these would be permissible.

In addition, the use of the word “solutions”*, or the phrase “tax and financial solutions” or “audit solutions” or similar phrases, implies a guarantee that the CPA will in fact provide a solution in each and every situation, for each and every client or potential client, and is therefore considered by the Board to be a violation of §1707(F)(1)(d).

* There is an exception allowed for the term “solutions” because of the conventional and pervasive use of this term in the Information Technology (IT) field. The term “solutions” is permissible if used in the context of the advertising of business lines, products, or services that are exclusively related to information technology (e.g., sales, consulting, and implementation services of software applications and computer-based information systems). Thus, it would be permissible to state that you offer “Information Technology Solutions” or “Information System Solutions” or “Computer Software Solutions”, etc., and to use the term “solutions” in describing and marketing IT products and IT services.

STATE BOARD OF CPAS OF LOUISIANA
Statement of Position—Advertising and Public Communications

Use of Laudatory Statements

Licenses may state general information in a dignified manner as to the types of services offered. However, the Board has noted a recurring problem with licenses using statements in advertisements that describe or refer to the quality of services offered or performed.

The Board's Rules prohibit a licensed CPA or CPA Firm from using statements in advertising or in public communications that indicate or imply that the licensee's professional services are of "exceptional quality", and from using other types of "laudatory" statements. These are prohibited regardless if the statements are made directly by the licensee or through use of a client's "testimonial" statements. In the context of this rule, "testimonial" or "laudatory" means a statement that indicates or implies that the licensee's professional services are of exceptional quality.

In similar manner, the Rules also prohibit the use of laudatory statements or claims which praise the quality of the services being performed, or which contain descriptive adjectives that in any manner identify the services as exceptional, commendable, or praiseworthy. [LAC 46 XIX §1707(F)(1)(c)]

If the client or third party gives their permission, statements made by clients or third parties may be used in advertising and public communications, provided that such communication would not otherwise constitute a violation if the communication were to be made directly by the licensee. That is, client or third party statements used in advertising must not be false, misleading, deceptive, laudatory, or refer to professional services of exceptional quality. They may not describe the services as commendable or praiseworthy, or make comparisons with other licenses, etc. But, objectively determinable claims or assertions by clients and others are permissible. For example, the number of years of client association, the types of services received, actual accomplishments of the licensee, the extent to which the client is satisfied or pleased with the licensee's services, or other verifiable facts could be included.

Other Rules On Advertising / Compliance

The above-cited Rules are areas where the Board has noted problems. Licenses should review all of the Rules of Professional Conduct concerning advertisements and public communications [LAC 46 XIX §§1707(F) and (G)] before making any statement or claim *other than a general description of services*.

CPAs should also be mindful that they are responsible for any statements or claims made by marketing personnel or public relations contractors on their behalf, and should review all advertisements for compliance with the Board's Rules. The Rules can be accessed on the Board's website www.cpaboard.state.la.us. The Rules on Advertising appear in this statement under the caption "Excerpted Citations."

Board staff are pleased to offer assistance to CPAs by reviewing proposed advertisements for any potential problems with Board Rules which appear below.

STATE BOARD OF CPAS OF LOUISIANA
Statement of Position—Advertising and Public Communications

Excerpted Citations.

Board Rule LAC 46 XIX §1707(F)

F. Advertising

1. Licensees shall have a right to advertise. However, a licensee shall not use or participate in the use of any public communication, written or verbal, having reference to professional services performed by the licensee, which contains a false, fraudulent, misleading, deceptive or unfair statement or claim, nor any form of communication having reference to the professional services of the licensee which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious, or harassing conduct. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to a statement or claim which:

- a. contains a misrepresentation of fact; or
- b. is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or
- c. contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of exceptional quality; or
- d. is intended or likely to create false or unjustified expectations of favorable results; or
- e. implies educational or professional attainments or licensing recognition not supported in fact; or
- f. states, implies, or claims that the licensee has received formal recognition as a specialist or expert or has any specialized expertise in any aspect of the practice of public accountancy without stating from whom the recognition has been received; or
- g. states or implies that the licensee's ingenuity and/or prior record are principal factors likely to determine the results of the services rather than the merit of the facts involved, or contains statistical data or information so as to reflect past performance or predict future success; or
- h. represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or
- i. contains other representations or implications beyond those set forth in §1707.F.2 that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived; or
- j. implies the ability to influence any court, tribunal, regulatory agency or similar body or any official thereof; or
- k. makes comparison with other CPAs;
- l. is undignified; or
- m. incorporates, refers to, or directly links to presentations which bring dishonor to the profession.

2. As an example, a licensee may use or participate in the use of a public communication which states in a dignified manner the following information about the licensee and any associated licensees:

STATE BOARD OF CPAS OF LOUISIANA
Statement of Position—Advertising and Public Communications

- a. name, firm name, address, telephone numbers, office hours, and telephone answering hours;
- b. biographical and educational background;
- c. professional memberships and attainments;
- d. description of services offered;
- e. the limitation of practice to certain areas of service;
- f. the opening or change in location of any office and changes in personnel;
- g. fees charged for the initial consultation, for specific services of average complexity, and hourly rates. Quoted fees must be adhered to for a reasonable period not less than thirty days after the publication.

Board Rule §1707(G)

G. Written Advertisements, Solicitations and Other Public Communications

1. A licensee shall have the right to mail or deliver advertisements, solicitations and other public communications, subject to the following provision:

a. a licensee shall not mail or deliver any advertisement, solicitation or other public communication if such advertisement, solicitation or other public communication would violate §1707.F.

2. For purposes of these rules, a *public communication* shall be deemed to include newsletters, brochures, magazines, books, announcements, notices, reports, notes, journals, letters, cards, inquiries, tapes, recordings, electronic communications, internet websites, and any other type of information or materials mailed, delivered or disseminated in any manner to one or more addresses who are not clients of the licensee at the time of such mailing, delivery, or dissemination. Materials disseminated only to clients of the licensee shall not be deemed to be a public communication.

3. Advertisements and public communications of any type may not contain any materials considered to be obscene, pornographic, or offensive.

4. All internet advertisements, websites or public communications which in any manner identifies the sponsor or participant as a CPA, certified public accountant, PA, public accountant, CPA firm, or professional accounting corporation is considered to be an advertisement or public communication by the CPA or CPA firm and must be in compliance with all rules adopted by the board and all provisions of the act.

Enforcement against holders of certificates and permits – La. Rev. Stat. §37:79(A)

After notice and a hearing as provided for in R.S. 37:81, the board may revoke any certificate or permit, or suspend for a period of not more than five years, or refuse to issue or renew any certificate or permit, reprimand, censure, or limit the scope of practice of any licensee, impose an administrative fine not to exceed one thousand dollars per violation, or place any licensee on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons ... (5) ... violation of professional standards or rules of professional conduct adopted by the board.