

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



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For Office  
Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas State Board of Public Accountancy

Department NA

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Statutory Authority for Promulgating Rules ACA 17-12-203(C)

Rule Title: Rule 21 "Prelicensure Criminal Background Petition"

Intended Effective Date  
(Check One)

Date

- |  |                                       |                |
|--|---------------------------------------|----------------|
| <input type="checkbox"/> Emergency (ACA 25-15-204)                                     | Legal Notice Published .....          | <u>2-2-20</u>  |
| <input checked="" type="checkbox"/> 10 Days After Filing (ACA 25-15-204)               | Final Date for Public Comment .....   | <u>3-6-20</u>  |
| <input type="checkbox"/> Other _____<br>(Must be more than 10 days after filing date.) | Reviewed by Legislative Council ..... | <u>5-15-20</u> |
|  | Adopted by State Agency .....         | <u>4-17-20</u> |

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)  
Jimmy Corley james.corley@arkansas.gov 5-18-20  
Contact Person E-mail Address Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

[Signature]  
Signature

\_\_\_\_\_  
Phone Number E-mail Address

Director  
Title

5-18-20  
Date

## **NEW RULE**

### **Rule 21      Prelicensure Criminal Background Petition**

#### **21.1      AUTHORITY**

- (a) Pursuant to Ark. Code Ann. § 17-3-103(a)(1), an individual with a criminal record may petition the Board at any time for a determination of whether the individual's criminal record will disqualify him or her from licensure and whether he or she could obtain a waiver under Ark. Code Ann. § 17-3-102(b).
- (b) Ark. Code Ann. § 17-3-104 requires the Board to adopt rules to implement this process.

#### **21.2      FORM AND CONTENTS OF PETITION**

- (a) An individual wishing to submit a prelicensure criminal background petition shall do so on a form provided by the Board.
- (b) The petitioner shall complete all portions of the petition form and shall provide the following information:
  - (1) Full name, mailing address, email address, and phone number;
  - (2) Identification of the court, case name, and case number in which the petitioner was found guilty or pleaded guilty or nolo contendere;
  - (3) Name of each crime and relevant statute under which petitioner was found guilty or pleaded guilty or non contendere;
  - (4) Date of the judgment or sentencing order; and
  - (5) A file-marked copy of the judgment or sentencing order.
- (c) If the petitioner wishes to do so, he or she may also submit a written position statement concerning the three issues the Board will address in its determination, which are set forth in Rule 21.3(f).

#### **21.3      CONSIDERATION OF PETITION**

- (a) A completed petition shall be submitted to the Board's executive director via certified mail, return receipt requested.
- (b) The executive director shall present any properly-completed petition to the Board's Compliance Committee at the next Compliance Committee meeting following receipt of the petition. However, if the executive director determines that the

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petition has not been properly completed, he or she shall return the petition to the petitioner at the address provided on the petition with instructions as to any additional information the petitioner needs to supply.

- (c) After considering the petition, the Compliance Committee shall make a recommendation to the Board regarding its determination on the petition.
- (d) The Board shall consider the petition and may accept, reject, or modify the Compliance Committee's recommendation.
- (e) For the purposes of considering a prelicensure criminal background petition, the Board shall accept as true the facts as stated in the petition.
- (f) In making its determination on a prelicensure criminal background petition, the Board shall address the following three issues:
  - (1) Whether the petitioner's criminal record, as set forth in the petition, will disqualify the petitioner from licensure under Ark. Code Ann. § 17-3-102;
  - (2) If the petitioner's criminal record will disqualify the petitioner from licensure, then whether the petitioner *could* obtain a waiver under Ark. Code Ann. § 17-3-102(b); and
  - (3) Whether the petitioner's criminal record could result in the denial of an application for licensure under Ark. Code Ann. § 17-12-601, regardless of whether the petitioner would be disqualified from licensure under Ark. Code Ann. § 17-3-102.
- (g) The Board's determination on a prelicensure criminal background petition shall be put in writing and served on the petitioner at the address provided in the petition via certified mail, return receipt requested.
- (h) The Board's determination is not subject to appeal.

### **21.4** APPLICABILITY OF DETERMINATION IN LICENSE APPLICATION PROCESS

- (a) A determination on a prelicensure criminal background petition that is unfavorable to the petitioner does not preclude the petitioner from later applying for licensure. However, the determination will be reviewed and taken into consideration by the Board in its decision on whether to grant an application for an individual CPA or PA license.
- (b) An applicant for an individual CPA or PA license must undergo the criminal background check required under Rule 10.2 regardless of whether that individual has completed the prelicensure criminal background petition process set out in this rule.

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- (c) If the results of the criminal background check required under Rule 10.2 match the facts concerning the applicant's criminal history that were provided in a precensure criminal background petition, and if the Board determined in response to the petition that either (1) the petitioner's criminal history either does not disqualify the individual from licensure, or (2) the petitioner could obtain a waiver under Ark. Code Ann. § 17-3-102(b), then the Board will be bound by its determination on the precensure criminal background petition.
- (d) If the Board discovers during the license application process that the facts of the applicant's criminal background are different from those set out in the precensure criminal background petition, the Board will not be bound by its determination on the petition.
- (e) A determination by the Board in response to a precensure criminal background petition that an individual with an otherwise disqualifying criminal history *could* obtain a waiver under Ark. Code Ann. § 17-3-102(b) does not mean that the individual *will* be granted such waiver. Whether to grant a waiver, when permissible, may only be decided through a hearing requested by:
  - (1) An affected applicant for a license; or
  - (2) An individual holding a license subject to revocation.