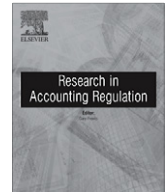




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# Research in Accounting Regulation

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## Research Report

# Should the forensic accounting profession be regulated? ☆

Wm. Dennis Huber

Capella University, School of Business and Technology, 225 South 6th Street, 9th Floor, Minneapolis, MN 55402, USA

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### ABSTRACT

Adopting Huber's (2012) argument that forensic accounting has become a profession, this paper examines whether the forensic accounting profession and the forensic accounting certification industry should be regulated. Several recent studies have uncovered significant problems within the forensic accounting profession and the forensic accounting certification industry. The failure of forensic accounting corporations to disclose either their legal status or the qualifications of their officers and directors, their failure to publish financial statements, and their failure to adopt or enforce a Code of Ethics or Standards of Practice, were among the most significant problems uncovered. The failures of the corporations were exacerbated by forensic accountants' failure to investigate diligently the corporations that issued their certifications prior to obtaining their certifications. This resulted in a significant number of forensic accountants holding certifications from corporations that were inconsistent with their beliefs that a forensic accounting corporation should be not-for-profit, and their officers and directors should be qualified.

Those studies suggested three alternatives for addressing the problems: voluntary action by the corporations, establishing an independent agency for accrediting the corporations and certifications, and regulatory intervention. However, the feasibility of the recommended alternatives was not sufficiently evaluated to be able to arrive at a conclusion for recommending which alternative should be implemented.

This paper evaluates the feasibility of alternative solutions. It concludes that the most realistic alternative is for government regulation of forensic accounting in the form of legislation at the state level.

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## Introduction

Several recent studies have uncovered significant problems within the forensic accounting profession and the forensic accounting certification industry that adversely affect the credibility of the profession and the industry. The failure of forensic accounting corporations to disclose either their legal status or the qualifications of their officers and directors, their failure to publish financial statements, and their failure to adopt or enforce a Code of Ethics or Standards of Practice, were among the most significant problems uncovered. The failures of the forensic

accounting corporations were exacerbated by the failure of forensic accountants to investigate diligently the corporations that issued their certifications prior to obtaining their certifications.

Those studies suggested three alternatives for addressing the problems: voluntary action by the corporations, establishing an independent agency for accrediting the corporations and certifications, and regulatory intervention. However, the feasibility of the alternatives was not sufficiently evaluated to be able to arrive at a conclusion for recommending which alternative should be implemented.

The purpose of this paper is to evaluate the feasibility of alternative solutions for addressing these problems. After evaluating the alternatives, the paper concludes that the most realistic alternative is for government regulation in the form of legislation at the state level. The less intrusive

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E-mail address: [Dennis.Huber@Capella.edu](mailto:Dennis.Huber@Capella.edu)

approach is for states to adopt legislation to limit the use of titles that include any combination of the words “certified/chartered,” “financial/forensic/fraud,” and “accountant/auditor/examiner,” to those who obtain their certifications from corporations that meet minimum standards set by the state regarding disclosure of their legal status and the qualifications of corporate board of directors and officers, publishing their financial statements, and adoption and enforcement of a Code of Ethics and Standards of Practice.

The remainder of the paper first discusses the problems associated with the absence of standards governing the forensic accounting certification industry that affect the credibility of the forensic accounting profession and the industry, and the need to find solutions before the problems reach a stage which could result in more drastic and more intrusive actions being taken by the state than limiting the use of titles. It then considers the historical development of public accounting as a recognized and regulated profession in the United States, and the current status of the both the forensic accounting profession and the forensic accounting certification industry.

Finally, it presents arguments why, as a matter of public policy, regulation is the only feasible alternative to address the problems. It argues that licensing is the more intrusive, less effective, and less desirable intervention, and suggests that the less intrusive and more effective form of regulation is to limit the use of the title “forensic accountant” in its various forms.

## Problems

There are several reasons why forensic accounting can be considered important enough to the subject of state regulation. The first reason is the nature and function of forensic accounting and its role in the judicial process. Apart from expert witness considerations, discussed below, the role and importance of forensic accountants in the judicial process cannot be overstated. Federal Appeals Court Judge Harry T. Edwards considers, “Forensic science [to be] the handmaid of the justice system” (Edwards, 2012). While not a forensic science, forensic accounting plays an equally important role in the justice system. Forensic accounting has a broad social, legal, cultural, organizational and economic impact in the socio-legal environment in support of specific legal claims (Williams, 2002).

A second reason stems from the nature of the forensic accounting certification industry.<sup>1</sup> Williams (2002) refers to the “forensic accounting and investigation industry” as a sphere of professional practice that spans the boundaries of law, accounting, business, and the economy. Here, the forensic accounting industry is more narrowly construed. It refers simply to the supply side of forensic accounting related certifications and the corporations that issue them. Williams explains that the proliferation of unfamiliar specialty forensic accounting certifications is the result of the

<sup>1</sup> It should be noted here that although public accounting is deemed to be a profession in state statutes and regulations, and the public generally considers public accounting to be a profession, public accounting is increasingly being referred to as an industry rather than a profession (Previts, 2003; Zeff, 2003).

extent to which the development of the forensic accounting industry is motivated by narrow organizational interests and objectives related to competition and profitability.

As discussed in greater detail below, the forensic accounting certification industry is characterized not just by strong, competitive forces but also by outright legal conflict between the corporations that issue forensic accounting certifications. The competition can easily be seen in the various self-promotional materials. The conflict, if not outright animosity, is manifested in the legal actions taken by one corporation against another which, while claiming it is to protect the corporation, does little to advance the forensic accounting profession. The disparity in the legal statuses of the corporations; the qualifications of their Directors and Officers; the educational, experience, and examination requirements; and the (non)existence and (non)enforceability of Codes of Ethics and Standards of Practice, combine to cause confusion among not just forensic accountants (Huber, 2011, in press-a,b,c), but also the users of forensic accounting services (Braun, Mauldin, & Fischer, 2001).

Lawyers are the biggest users of fraud auditing and forensic accounting services (Davis, Farrell, & Ogilby, 2010; NACVA, 2010; Williams, 2002). Attorneys who seek the services of a forensic accountant for litigation support often begin by looking at their certifications (Fielstein & Lemanski, 2009). However, when hired by attorneys forensic accountants are not hired to provide a benefit to the attorneys who hire them, but to the clients of the attorneys, normally in an adversarial proceeding.

There is at this time nothing that prohibits anyone from forming a corporation and issuing forensic accounting related certifications to anyone willing and able to pay. The only limitation is the creative ability of the organizers with what to call a certification, and the trademarks already owned by other corporations.<sup>2</sup> With the growth in demand for fraud auditors and forensic accountants expected to continue (McMullen & Sanchez, 2010; Seda & Peterson Kramer, 2008), and no barriers to entry, there is no limit, at least in theory, to the number of forensic accounting corporations that can enter the market with a corresponding potentially limitless demand for forensic accounting certifications.

Third, there are *Daubert* considerations. Beginning with *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (509 U.S. 579, 1993) and the cases that followed,<sup>3</sup> Federal District Courts have been charged with the responsibility of exercising “gatekeeping” functions over the admission of expert testimony under Federal Rules of Evidence Rule 702. The District Courts’ gatekeeping function is made more difficult by the absence of uniform, or even generally accepted, ethics, standards, or credibility of forensic accounting certifications.

<sup>2</sup> A new for-profit corporation, the *Association of Certified Financial Crime Specialists* (ACFCS), was incorporated in Florida in December 2011 which will offer the “Certified Financial Crime Specialist” (CFCS) certification as early as 2013. See <http://www.acfcs.org/>. The founder of the ACFCS, Charles Intriago, also founded the for-profit *Association of Certified Anti-Money Laundering Specialists* (ACAMS) which issues the Certified Anti-Money Laundering Specialist (CAMS). Mr. Intriago and the Officers of the ACFCS are qualified.

<sup>3</sup> See, e.g., *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

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