

**OREGON BOARD OF ACCOUNTANCY
PHONE CONFERENCE
JUNE 6, 2005 MINUTES**

*The Board of Accountancy protects the public by regulating
the practice and performance of all services
provided by licensed accountants.*

Board Members Present

Stuart Morris, PA, *Chair*
T. Lynn Klimowicz, CPA *Vice-Chair*
Kent Bailey, CPA, *Treasurer*
James Gaffney, CPA
Ray Johnson, CPA
Anastasia Meisner, *Public Member*

Staff Members

Carol Rives, *Administrator*
Noela Kitterman, *Investigator*
Heather Shepherd, *Committee Coordinator*

Excused

Jens Andersen, CPA

Guest Attending

Christine Chute, Asst. Attorney General

1. CALL TO ORDER

The meeting was called to order at 3:05 p.m. This special meeting was called to review a complaint investigation that was on the May 23, 2005 Board agenda. The matter was carried forward to this meeting because a quorum was not present.

2. HB 2166A

The discussion of this item is cancelled. There is no legislative update.

3. May 23, 2005 Agenda item 11.D.1: Complaints Committee

Lance Brant, CPA 02-03-002

This item was first brought before the Board on October 25, 2004 and was referred back to the committee for further investigation. The following information will provide background of previous committee recommendations and Board discussions.

A. Board minutes, October 25, 2004:

Brant was CFO for Central Oregon Independent Health Services for approximately five (5) years. A disagreement occurred and Brant was terminated. After his termination, Brant allegedly threatened some of the employees and a police report was filed. The company discovered inaccuracies in recording stock options and the company notified Brant to repay the difference, which he did. Brant signed a confidential settlement agreement with the company. Brant filed a lawsuit against the company for violating the settlement agreement by filing a complaint with the Board.

INVESTIGATOR RECOMMENDATIONS:

ORS 673.170(4) Disciplinary actions, grounds

No violation

OAR 801-030-0020(1) Professional misconduct

Civil penalty for violation of professional misconduct \$5,000

Litigation Monitoring Agreement for continued litigation between Brant and COIHS.

COMMITTEE DISCUSSION: Brant was overpaid for stock options. The stock record book was not kept on the premises for awhile, but was brought on site during the past few

months. Brant claims that stock options were overpaid because the check was cut quickly. Brant should have known how many shares of stock he owned. The committee discussed the possibility that Brant was terminated because he was acting as a whistleblower; however, even if that were true, it would not excuse his conduct afterwards or his acceptance of overpayment for stock options. He may have thought that he had some claim against the company and could use the money as leverage. Nevertheless Brant returned the money upon demand.

Brant sent inappropriate and threatening e-mails to employees. In a post 9-11 world, threatening to blow up a building is serious. Brant's first attorney fired Brant because Brant would not follow attorney advice.

Brant says his reputation in Bend is tarnished, and that is where he grew up, however, he is now opening his own business in Bend.

If Brant took ownership of the financial statements, if he signed them, then he is responsible. If Brant did not sign, then that may be a way out for him. If PWC did the audit, their ledger would indicate how many shares were outstanding. If Brant was CFO, he cannot just say he relied on the audit.

COMMITTEE RECOMMENDATION: It was moved and carried to assess a \$5,000 civil penalty for misconduct and a \$5,000 civil penalty for competence and request investigator get additional information for the Board. Additional information to obtain before the Board meeting: a copy of handbook of stock transactions to determine if the CFO is responsible for signing off; PWC and/or company 2000 and 2001 representation letter for the audit; representation letters and financial statements for 2000 and 2001.

Board Discussion: *Andersen recused himself and left the room during the discussion. Andersen is mentioned in a second complaint, which staff has not yet reviewed. Brant sent the e-mail to all employees, which is in excess of 20 people. The investigator requested additional information from Central Oregon Independent Health Services, but they did not respond. Since the Committee requested additional information, the investigator should return the case to the committee for a recommendation. If the additional information is still unavailable, return the case to the Committee for their recommendation without the additional information. The Committee is directed also to consider Brant's dishonesty for sending the e-mails. Is it one violation for sending e-mails to 20 employees, or are there 20 different violations?*

BOARD ACTION: Klimowicz moved and it was carried to defer to the Complaints Committee for further consideration and recommendation.

Vote: 6 ayes, 1 abstention (Andersen)

B. Complaints Committee minutes, April 22, 2005:

In October 2004, the Committee requested the investigator obtain additional information to present to the Board, and recommended civil penalties against Lance Brant (Brant). The Board reviewed the case and referred it back to the Committee for further consideration and recommendation. In January 2005 Brant's attorney requested that the case be deferred until Brant could obtain "qualified" counsel. Brant decided to represent himself.

REVISED INVESTIGATOR RECOMMENDATION(S):

OAR 801-030-0010(1) Competency

Civil penalty for failure to withhold payroll taxes for 3 COIHS officers on ISO bonus transactions

1999 – 3 at \$1,000

2000 – 3 at \$5,000 each

| | |
|--|--------------|
| 2001 – 3 at \$5,000 each | \$33,000 |
| Civil penalty for overpayment of 8 (5/1 split) that were previously sold but not cancelled | 5,000 |
| OAR 801-030-0020(1) Professional misconduct. Civil penalty for violation of professional misconduct | 5,000 |
| OAR 801-030-0020(4) Public communications and advertising Civil penalty for violation of public communication and advertising | <u>5,000</u> |
| Total Civil Penalties | \$48,000 |

Lance Brant and spouse arrived in person at the Complaints Committee Meeting at 11:30 am on April 22, 2005. Brant provided the Committee with a written outline and response to the investigation summary (Attachment B). Brant presented history of the events leading up to the investigation. Brant spoke about the company's rapid growth rate, the company's need for a computer system conversion, claims that were paid late and claims that were paid in duplicate. Brant stated that the company's rapid growth rate exacerbated the declining infrastructure of the company. Brant stated that the CEO wanted to wait until stock options were approved by the board before discussing negative company financial results with the Company's Board. Brant was fired after he sent an agenda to the Finance Committee requesting a meeting to detail the financial issues. Brant used unauthorized email to advise peers of his situation. Brant and spouse left the meeting at 12:10 P.M.

Committee Discussion: Larry Brown recused himself from the discussion and from voting on the Lance Brant case.

The Committee reviewed the following allegations separately: Competency; Professional Misconduct and; Public Communications and Advertising.

The Committee concurred to consider the stock split issue and the payroll issue together under competency. Brant did not convey financial information in any formal manner to the Board of Directors, just to the Treasurer. The company had system conversion and claims problems. The Committee agreed that the company's growth rate could create difficulties for management.

The Committee determined the conversations regarding "blowing up the building" were uncorroborated hearsay and did not present sufficient evidence to support a violation under misconduct.

Brant sent an e-mail to company employees with the name of the Chief Executive Officer in the sender line to disguise that he was the actual sender and admitted that he did this so that the recipients would open the e-mail.

COMMITTEE RECOMMENDATION: Moved by Cruzan and carried to assess a civil penalty of \$28,000 (*\$18,000 to correct math calculation*) for failure to withhold payroll taxes for 3 COIHS officers on ISO bonus transactions and assess a \$5,000 civil penalty for overpayment of 40 shares, (8 shares subject to a 5/1 split that were previously sold but not cancelled) for a total civil penalty of \$33,000 (*\$23,000 see previous note*).

Vote: 4 ayes, 1 abstain (Larry Brown), 2 excused (Aldrich, Dorrell)

COMMITTEE RECOMMENDATION: Moved by Cruzan and carried to recommend no violation for Professional Misconduct.

Vote: 4 ayes, 1 abstain (Larry Brown), 2 excused (Aldrich, Dorrell)

COMMITTEE RECOMMENDATION: Moved by Cruzan and carried to accept investigator's recommendation of a \$5,000 civil penalty for violation of public communication and advertising.
Vote: 4 ayes, 1 abstain (Larry Brown), 2 excused (Aldrich, Dorrell)

Board Discussion, June 6, 2005: *Mr. Brant offered a consent order in the amount of \$5,500. Mr. Brant also submitted a copy of an insurance audit of COIHS performed by Department of Consumer and Business Services, Insurance Division with no direct findings in the payroll department, that he feels exonerates him from any violations. Mr. Brant claims that the CEO was forced to resign from COIHS. Ms. Kitterman asked the CEO about the resignation and learned that the CEO is now also the President of the company. The fact that COIHS was audited by the Insurance Division, does not exonerate Mr. Brant. The insurance audit does not address the company procedures that are at issue in the Board complaint; i.e. payroll records and shareholder records.*

Mr. Brant's explanation of his statement about "blowing up the building" is different than what he reported to the Bend police department when they took the initial complaint. Mr. Brant says the conversation was with a friend in a joking manner. The police report indicates Mr. Brant acknowledged he was upset at the time the comment was made.

Brant provided the Board with selected excerpts from depositions that he believes relate to this matter. The Board will not rely on excerpts from legal documents and requested legal counsel and Board investigator to obtain copies of the full depositions.

The Board also directed further investigation into the registration information on the Yahoo account that Mr. Brant used to send an e-mail to company employees with the name of the company CEO as the sender's line, instead of his own name. Brant admits that he did this so that recipients would open the message. Mr. Brant says that he identified himself in the first line of the e-mail as the sender; however the e-mail does not say "I, Lance Brant", rather it refers to Mr. Brant in third person.

BOARD ACTION: Defer for additional information. If the information is available before the August Board meeting, a phone conference may be scheduled.

4. CPA QUALIFICATIONS COMMITTEE

1. Potential Committee Member
 - a. Barbara L Santiago, Intel Corporation

Intel Corporation has an Experience Certification program with the Board of Accountancy and has recently had five successful candidates complete the program and become licensed CPAs in Oregon. The reports that Intel Corporation submitted were very thorough, the committee was very pleased. Ms. Santiago is a member of the Intel Supervisor Licensee Committee for the Certification program. Ms. Santiago was recommended by the Qualifications Committee Chair to serve on the Qualifications Committee and is willing to accept an appointment to this committee..

BOARD ACTION: Moved by Meisner and carried to appoint Ms. Santiago to the CPA Qualifications Committee.

BOARD VOTE: 6 ayes, 1 excused (Andersen)

5. Adjourn

The meeting adjourned at 3:45 p.m.