



OREGON BOARD OF ACCOUNTANCY
COMPLAINTS COMMITTEE
PUBLIC SESSION MINUTES
June 5, 2015

3218 Pringle Rd SE #110
Salem, OR 97302

1st Floor Conference Room

503-378-4181

Committee Members Present

Josh Dunlap, CPA
Kent Bailey, CPA
Bill Holmes, CPA
Joe Sullivan, CPA
Haley Lyons, CPA
Nancy Young, CPA
Chris Walter, CPA
Jessie Bridgham, CPA

Staff

Martin Pittioni, Executive Director
Noela Kitterman, CPA, Investigator
Theresa Gahagan, CPA, CFE, Investigator
Bethany Reeves, Compliance Specialist

Board Counsel

Susan Bischoff, AAG

Board Liaison

John Lauseng, CPA

Guests Present for All or Part of Public Session

Justin Richardson
Julie Bardacke Haddon
Rosemarie Sibley Howell

1. Call to Order

Chair Dunlap called the public session to order at 8:41 a.m. and announced that the meeting was being recorded.

2. Review and Approval of Agenda

Mr. Pittioni requested and the Chair agreed to postpone Agenda Item 5.B – Report of the Actions Taken at the May 18 and 19, 2015 Board Meeting, until after the cases had been considered.

3. Approval of Minutes

A. BOACC Public Session Minutes, April 24, 2015

Discussion: Jessie Bridgham announced she would abstain from voting because she was not present at the April 24, 2015 BOACC meeting. Chris Walter also abstained for the same reason.

Committee Action: Moved by Mr. Walter and carried to accept the April 24, 2015 public session minutes.

Vote: 6 ayes – unanimous, 0 – nays, 2 – abstain (Bridgham and Walter)

4. Old Business – GovSpace Update and Implementation

Ms. Reeves provided an update for the group on the GovSpace electronic collaboration tool. Five BOACC members indicated they had successfully downloaded meeting materials from GovSpace. Ms. Reeves noted that all of the meeting materials were available as a single download for this meeting, and asked if the BOACC members preferred this format, if they would prefer each case to be loaded

individually. Ms. Bridgham replied that she preferred a single download; however, Mr. Bailey, Ms. Young, and Ms. Lyons indicated they would prefer that cases be uploaded one by one as they are finished, followed immediately by an email notifying each member that another case is available for review. This would allow the members of the BOACC to review the finished cases as soon as possible. Ms. Reeves said this could be done going forward.

5.A New Business - Updates on Compliance Resourcing

Mr. Pittioni provided an update of where the key bills for the Board in the 2015 legislative session stand and how they will impact compliance operations. The fee bill (SB 581) and the budget bill (SB 5501) are both waiting for the Governor's signature, and provide for secure, permanent authority for two investigators going forward, removing the temporary status of the second investigator position. The substantive statutory reform bill (SB 272) includes a provision to better protect the public by granting the Board the authority to issue emergency suspensions to licensees.

Mr. Pittioni explained that a Cease and Desist Order can currently be issued by the Board, but it does not take effect for 30 days, and if a Respondent were to request a contested case hearing, it could take another 12 months for the Cease and Desist to take effect. In contrast, the Emergency Suspension provision that will take effect on January 1, 2016 would immediately suspend the Respondent's license, and of course be subject to the special provisions in the Administrative Procedures Act for state agencies that have this authority. Both actions can only be implemented by vote of the Board. Ms. Bischoff added that the Emergency Suspension would go into effect before the Respondent would have the contested case hearing, and the suspension would remain in effect pending the outcome of the hearing, and the case would enter an expedited hearing process at the Office of Administrative Hearings. The Emergency Suspension will offer greater protection to the public because currently a license can only be suspended before a hearing if the Respondent agrees to have it suspended.

In regards to staffing the compliance team, Investigator Kitterman is retiring on June 30, 2015. However, the Board is extremely fortunate that she has agreed to return on a part-time basis for one more year starting on July 1, 2015. Ms. Kitterman is capable of the finest work, and the Board is extremely lucky to be able to have her services for another year. There is also an ongoing recruitment for a full-time investigator position. The deadline for applications has passed. There are no applicants with CPA credentials in the applicant pool, but interviews will be held on June 11, 2015. The applicants' backgrounds in accounting and tax have been qualified through the DAS process.

At the Board level there are discussions of how increase the efficiency by changing the investigative process. The goal is to calibrate the process so that more time and resources are used on allegations with more threat for the public, and less resources are used on allegations with low risk to the public. One possibility is hiring a non-CPA investigator, since we now have one CPA credentialed investigator, who could work in tandem with the CPA investigator as necessary. Mr. Pittioni invited any suggestions on increasing efficiency.

6. Convene Executive Session/Public Session Reconvened

At 8:56 am, executive session was convened pursuant to ORS 192.660(2)(f), for the purpose of examining exempt public records. After the executive session concluded, public session was reconvened at 3:00 pm.

5.B New Business – Report on Actions taken at the May 18 and 19, 2015 Board Meeting

Mr. Lauseng reported that the Board agreed with most of the Complaints Committee recommendations from April 24, 2015. He noted the cases where the Board had a split vote or voted differently than the BOACC recommendations. The differences were:

- Case #14-052 – Darren Michael Hall – The Board agreed with the BOACC recommendations, and in addition, made a preliminary finding of violation related to Board Communication, for telling Board staff and the BOACC that he had not received the final document from the investigation conducted by the Maine Board of Accountancy, because staff at the Maine BOA provided the Board with a copy of the Certified Mail Receipt for the Final Order, signed by Mr. Hall.
- In the cases related William Holdner and Jane Baum, the Board did not make a preliminary finding of violation related to the Respondents failure to resign as trustees. The motion failed 3 to 4. With regard to the firm name, the Board did not find a make a preliminary finding of violation because there is a provision that specifically allows the firm name to include the name of a retired partner.
- Mr. Pittioni added that in relation to firm names, it was clear that the Board itself had difficulty with the language in our rules and struggled with applying the various provisions related to firm names. Pittioni said that was a clear signal that the rules needed to be clarified, and so the Laws and Rules Committee is going to consider this issue and possible revisions.

7. Committee Recommendations

A. Case #13-032

1. **Committee Action:** Moved by Ms. Young and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1) - Professional misconduct [2013 Edition].

Discussion: There was consensus that the statutorily required nexus between the conduct at issue and the practice of public accountancy was lacking.

Vote: 8 ayes – unanimous,

B. Case #13-049

1. **Committee Action:** Moved by Ms. Young and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b) - Due Professional Care [2013 Edition], for numerous errors on a tax return and for not requesting the client to provide the Respondent with a copy of the letter from the IRS, after the Respondent learned that the IRS had sent a letter to the client.

Discussion: None

Vote: 8 ayes – unanimous

2. Moved by Ms. Young and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(a) – Professional Competence [2013 Edition], for employing a tax strategy to zero out corporate income by increasing rent expenses above that which represented economic reality.

Discussion: Ms. Bischoff asked Ms. Young if she combined the motion of Professional Competency with the separate allegation related to OAR 801-030-0010(4) – Tax Standards [2013 Edition], and Ms. Young confirmed that yes she had.

Vote: 8 ayes – unanimous

Discussion of the Egregiousness of the Violation(s): Ms. Young recommended the Board consider requiring the Respondent to put a quality assurance process in place and take between 20 and 40 additional CPE on complex tax matters. Ms. Bridgham recommended the Board

require the Respondent to work with a mentor who could help the Respondent become the person in the local community who provides outstanding service.

C. Case #13-004

1. **Committee Action:** Moved by Ms. Young and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b) - Due Professional Care [2012 Edition], with regard to moving expense deductions on a 2010 tax return; and OAR 801-030-0020(1) – Professional Misconduct [2012 Edition], for not responding or not responding timely to telephone calls and emails from the client.

Discussion: None

Vote: 8 ayes – unanimous

D. Case #14-063

Committee Action: None.

Discussion: The BOACC deferred the case so that additional information could be obtained, and requested Board staff to amend the case to add an additional party to the case.

E. Case #14-039

1. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0015(2) - Client records and working papers.

Discussion: None

Vote: 8 ayes – unanimous

In Case #14-039, the BOACC considered the following list of actions:

- A. Respondent accepted responsibility to prepare but failed to prepare and file Client A's federal personal income tax returns for years 2003, 2004, 2005, 2006, 2007, 2008, 2011, 2012 and 2013 (9 instances)
- B. Respondent accepted responsibility to prepare and file, but failed to prepare and file Client A's Oregon personal income tax returns for years 2002; 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2013 (12 instances)
- C. Respondent accepted responsibility to prepare and file, but failed to prepare and file, Trust A and Trust B tax returns for years 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012 and 2013 (12 federal and 12 state tax returns for a total of 24 for each trust - 48 instances)
- D. Respondent failed to withdraw from the engagements detailed in items a. through c. above when he could not timely complete the work
- E. Respondent had Client A sign her 2002 Form 1040 tax return on November 16, 2007, before it was completed by Respondent on December 12, 2007
- F. Respondent failed to properly account for and report income related to the purchase of a Mercedes Roadster from Client B

G. Respondent accepted advances from clients while insolvent

H. Respondent prepared and signed, but failed to file amended tax returns for the years 2000 and 2001.

Based upon the record established to date, and information provided by the Respondent at the meeting, the BOACC developed consensus that there was not sufficient evidence to recommend the Board find a violation with respect to the Respondent's conduct relating to the transactions with Client B with respect to use/purchase of the Mercedes roadster, and the acceptance of client advances while insolvent. This consensus was indicated by excluding those points of conduct (items F and G on the list) in the motions to recommended sufficient evidence to find multiple OAR violations.

The BOACC passed motions with respect to recommending findings of sufficient evidence of violations of Board laws and rules, as follows:

- 2. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(2) - Integrity and Objectivity, based upon all or part of the conduct identified above, excepting items F and G. (multiple instances)
Discussion: None
Vote: 8 ayes – unanimous
- 3. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1) - Professional Misconduct, based upon all or part of the conduct identified above, excepting items F and G. (multiple instances)
Discussion: None
Vote: 8 ayes – unanimous
- 4. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b) - Due Professional Care, based upon all or part of the conduct identified above, excepting items F and G. (multiple instances)
Discussion: None
Vote: 8 ayes – unanimous
- 5. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(8) – Business Transactions with Clients, (2008 through 2012 Editions) based upon all or part of the conduct identified below, excepting item C. (multiple instances)

 - a. Borrowing money from Lambert Neighbour (1 instance)
 - b. Borrowing money from Alan Wilkinson (4 instances)
 - c. Borrowing money from Mark Gregory and lending money to Mark Gregory (multiple instances)

Discussion: None
Vote: 8 ayes – unanimous

9. Announcements and Adjournment

Chair Dunlap announced the next meeting on July 17, 2015 and adjourned the meeting at 3:35 pm.