

OREGON BOARD OF ACCOUNTANCY
BOARD MINUTES
Public Session
May 21, 2012

Eugene Hilton & Conference Center

Vistas II

Eugene OR

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

BOARD MEMBERS:

Roberta Newhouse, CPA, *Chair*
Jessie Bridgham, CPA, *Vice Chair*
Ann Ferguson, CPA, *Treasurer*
Dr. Roger Graham, *Public Member (8:26 a.m.)*
Al Crackenberg, PA
Scott Wright, CPA
Larry Brown, CPA

BOARD STAFF:

Pat Hearn, Executive Director
Kimberly Sisk, Exec. Assistant
Noela Kitterman, Investigator
Susan Bischoff, AAG (*left at 1:00 p.m.*)

GUESTS:

Sherri McPherson, OSCP Representative
Jason Orme, CPA, OSCP Representative
Kevin Pryse, CPA, 8:15
Gary Mercer/Mark Hause, 11:10 a.m.
Frank Lagesen, Attorney for Christopher Acarregui – Noon by telephone

Items appear in the order of occurrence.

1. CALL TO ORDER

Chair Roberta Newhouse called the meeting to order at 8:02 a.m., welcomed guests and announced that the meeting was being recorded.

2. APPROVAL OF MINUTES

A. The minutes from the Public Session of February 6, 2012 Board Meeting were reviewed.

BOARD ACTION: Moved by Mr. Wright and carried to accept the minutes for the February 6, 2012 Board meeting as submitted.

VOTE: 6 ayes, 1 absent (Graham)

3. COMPLAINTS COMMITTEE

A. April 27, 2012 Complaints Committee Meeting minutes were available as information only for reference and discussion purposes.

B. Investigations for Discussion

2. Kevin Pryse

11-022CNK

Mr. Pryse was the tax accountant and shareholder for a business enterprise and also the accountant for the married clients who were majority shareholders of the business. In 2010, the company was sold and Mr. Pryse advised the wife that she had been repaid twice for a loan she had made to the business.

The couple later became legally separated and had agreed to spousal and child support payments. When Mr. Pryse prepared the 2009 tax returns, he did not report spousal support on either return. Mr. Pryse proposed that his client, who was the obligee of the spousal and child support, give him 10% of the loan repayment as his portion of the proceeds from the sale of the business instead of amending her tax return.

In 2010 the clients hired another CPA to prepare the business taxes for the 2010 return. Mr. Pryse did not provide the new CPA with any records until it was requested from an attorney, nor did he provide the depreciation schedules.

BOARD ACTION: Moved by Ms. Bridgham and carried to find sufficient evidence for the Board to make a preliminary finding of a violation of OAR 801-030-0005(2), Integrity and objectivity.

VOTE: 6 ayes, 1 absent (Graham)

BOARD ACTION: Moved by Ms. Bridgham and carried to find sufficient evidence for the Board to make a preliminary finding of a violation of OAR 801-030-0010(1)(b), Due professional care.

VOTE: 6 ayes, 1 absent (Graham)

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is insufficient evidence for the Board to make a preliminary finding of a violation of OAR 801-030-0015(2)(b), Requested records. Mr. Pryse eventually sent the records to the subsequent CPA.

VOTE: 6 ayes, 1 absent (Graham)

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to find a violation of OAR 801-030-0020(1), Professional misconduct.

VOTE: 6 ayes, 1 absent (Graham)

Mr. Pryse was present at the meeting to answer any questions from the Board.

3. Gary Mercer

11-014CNK

Mr. Mercer provided tax services for two clients and their company for 25 years. Without notification to his clients or obtaining written consent, Mr. Mercer sold his practice, including the client records, to Loren Harwood CPA. Mr. Mercer's clients were not contacted, in writing, prior to the sale and were not given an opportunity to approve the transfer of their records.

Mr. Mercer claimed that he used the services of a broker for the sale of his business and that he informed his client in a phone conversation.

Ms. Ferguson asked if the committee discussed an integrity issue. The committee did not since the sale was through a 3rd party and Mr. Mercer was quite ill at the time.

Discussion: The Board asked the current status of Mr. Mercer's license, and was informed that he is retired and no longer practicing. Although the Complaints Committee only recommended one violation of OAR 801-030-0015(2)(d)(A), Custody and disposition of working papers, after more discussion, the Board determined additional violations related to integrity and objectivity as well as confidential client information. It was discussed that this can be a common problem for sole practitioners and the Board may want to consider making information available to licensees to aid them in the sale of their practice.

BOARD ACTION: Moved by Ms. Ferguson and carried to find that there is sufficient evidence to make a preliminary finding of violation for OAR 801-030-0015 (2)(d)(A), Custody and disposition of working papers.

VOTE: 7 ayes

BOARD ACTION: Moved by Ms. Ferguson and carried to find that there is sufficient evidence to make a preliminary finding of violation for OAR 801-030-0015(1), Confidential client information.

VOTE: 4 ayes, Ferguson, Brown, Newhouse and Wright, 3 nays, Graham, Crackenberg and Bridgham.

BOARD ACTION: BOARD ACTION: Moved by Ms. Ferguson and carried to find that there is sufficient evidence to make a preliminary finding of violation for OAR 801-030-0005(2)(a), Integrity and objectivity.

VOTE: 2 ayes, Ferguson and Wright, 5 nays, Brown, Graham, Crackenberg, Newhouse and Bridgham.

Mr. Mercer and Mr. Mark Hause, CPA arrived at the meeting at 11:10 a.m. Ms. Newhouse explained the action that had already been taken by the Board on Mr. Mercer's case.

Mr. Hause stated that, although he has heard the recommendations of the Board action and that the Board finds that Mr. Mercer is in violation of Board rules, the information was the opinion of the investigator and that the successor in interest has not given all the facts. Ms. Bischoff stated that the Board had made their decision on the matter and will be moving forward. Mr. Hause stated that Mr. Mercer does not understand the process and this was not serving any justice in the matter. Mr. Hause requested a meeting with Mr. Hearn to discuss an agreed upon disposition.

1. Loren Harwood

11-015CNK

Mr. Gary Mercer provided tax services for two of his clients, and their business for 25 years. In January 2011, without previous notification or written consent, Mr. Mercer sold his practice, including client tax records to Loren Harwood CPA. His clients were not contacted before the sale and were not given the opportunity to approve the transfer of records.

After meeting with Mr. Harwood, the two clients decided that they did not want to use him as their CPA and asked that he return all of their files and working papers. Mr. Harwood refused, indicating they were his property and he believed that he would be in violation of Board rules regarding record retention. He has since engaged an attorney to write an agreement to provide the former clients with their records.

Ms. Bridgham stated a possible conflict of interest as she previously worked in the same geographical area (Coos Bay and North Bend) as Mr. Mercer and Mr. Harwood.

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is insufficient evidence to make a preliminary violation of OAR 801-030-0015(2)(b), Requested records.

VOTE: 7 ayes.

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0020(1), Professional misconduct.

VOTE: 1 ayes, Bridgham, 6 opposed (Wright, Newhouse, Brown, Crackenberg, Graham, Ferguson).
Motion failed.

C. MOVE TO EXECUTIVE SESSION– Consent Agenda

**A. Alison Hill Tax
Kay Anthony, CPA**

Case #11-036NK

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is insufficient information to make a preliminary finding of violation of OAR 801-030-0020(6)(a), False and misleading firm names.

Vote: 7 ayes.

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is insufficient information to make a preliminary finding of violation of OAR 801-030-0020(6)(e), Failure to notify the Board within 30 days of a change of ownership.

Vote: 7 ayes.

B. Investigations for Discussion

1. Wayne Slovick

Case #11-065NK

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0005(2)(a), Integrity and objectivity.

VOTE: 5 ayes, 2 opposed (Graham and Crackenberg)

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020, Professional misconduct.

VOTE: 7 ayes.

2. Keith Wilhelm

Case #12-009NK

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of violation of ORS 673.320(a), Use of CPA designation.

VOTE: 7 ayes.

3. Keith Wilhelm

Case #12-002NK

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of violation of ORS 673.320(3), assumed or used the title or designation “Certified Public Accountant” or abbreviation of PCA without holding a valid, active Oregon license.

Vote: 7 ayes.

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence for the Board to make a preliminary finding of violation of ORS 673.320(5) and (6), Use of the title or designation Public Accountant.

Vote: 7 ayes.

5. David Sheets

Case #12-031NK

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of violation of ORS 673.320(3), Use of the title or designation certified public accountant or the abbreviation of CPA without holding a valid license.

Vote: 7 ayes

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional misconduct, by showing disregard for Oregon state law through his repeatedly allowing his license to lapse or by renewing late.

Vote: 7 ayes.

7. PROPOSED CASE SETTLEMENTS

A. J. Michael Garcher

Mr. Garcher prepared tax returns for his clients, an unmarried couple with two children, and prior to 1993. In 1993, the couple entered into a Stipulated Judgment of Dissolution of Domestic Partnership and Paternity and agreed to monthly child support and monthly support to one of the partners.

Mr. Garcher continued to provide tax services to both parties after their dissolution of partnership and claimed that he was unaware of the stipulated judgment. The client paying support listed the amount paid as spousal support with his itemized deductions. Mr. Garcher understood, from Internal Revenue Code Section 71, that the deduction was not allowed

because they were never legally married. He also believed that the payments were not spousal support, but rather child support and reimbursement of medical costs.

A proposed Stipulation and Order was prepared that required Mr. Garcher to pay a \$500 civil penalty for violation of OAR 801-0030-0010(1), Due professional care, which Mr. Garcher signed on March 19, 2012.

BOARD ACTION: Moved by Dr. Graham and carried to accept the Proposed Stipulation and Order prepared for Mr. Garcher.

***Discussion:** The Board minutes from February show that the Board made two findings of violation, why is the Board now only addressing one violation in the Stipulation and Order? Mr. Hearn noted that in a stipulation and order, the parties are agreeing on a settlement, not necessarily to a specific charge or violation.*

VOTE: 7 ayes.

B. Brian Bishop

Mr. Bishop was an independent contractor and provided services, as the Business Manager of counseling and consulting business, owned by the complainant, for eight years. The complainant believed that the information in the company's financial records indicated that Mr. Bishop failed to exercise due professional care in providing professional services or that he may have engaged in professional misconduct. The issues presented in the complaint involved management of company finances, including submission of invoices for his services at increasing hourly rates, without prior authorization, and signing company checks payable to himself.

The Complaints Committee and Board found that Mr. Bishop was in violation of OAR 801-030-0010(1)(b), Due professional care and OAR 801-030-0020, Professional misconduct.

The Proposed Stipulation and Order assesses a \$1000 civil penalty. Ms. Ferguson noted that there was a violation that was found by the Board which is not included in the order. Mr. Hearn explained that this part of settlement strategy. The Board noted that, in the future, it would prefer that the orders show each violation found by the Board and simply negotiate the terms surrounding those violations.

BOARD ACTION: Moved by Mr. Wright and carried to accept the proposed Stipulation and Order as presented.

VOTE: 5 ayes, 2 opposed (Ferguson, Bridgham)

C. Christopher Acarregui

Mr. Frank Lagesen, attorney for Mr. Acarregui, joined the meeting by phone at noon. Mr. Hearn gave the history of this case. The Board found Mr. Acarregui in violation of over 40 violations of the Oregon Administrative Rules and Statutes. Mr. Lagesen and Mr. Hearn drafted a proposed Stipulation and Order for the Board's consideration.

The proposed Stipulation and Order includes a suspension of Mr. Acarregui's license for two years effective September 1, 2012, \$10,000 civil penalty, and the sale of at least 51% of his accounting practice.

BOARD ACTION: Moved by Mr. Wright and carried to accept the proposed Stipulation and Order.

Discussion: The Board and the Complaints Committee felt that the actions of Mr. Acarregui warranted revocation of his license. The question was asked if a suspension of his license is adequate sanction given the circumstances. Mr. Hearn indicated that since, Mr. Acarregui did not financially benefit from the relevant transactions, it may not warrant revocation. The suspension for two years is significant and that the Board would have to approve any reinstatement application submitted after the suspension period is served. Mr. Lagesen noted that the proposal was a difficult solution for Mr. Acarregui to agree to.

Ms. Ferguson stated she found it difficult to come down to suspension and \$10,000, due to the 40 violations, which is equivalent to maximum penalties of \$200,000, and revocation as recommended by the Board. Ms. Bischoff indicated that it would cost much more than \$10,000 to litigate.

The Board also discussed the possibility that Mr. Acarregui could still own 49% of his firm, Acarregui PC. The OAR clearly states that a licensee who is under suspension cannot practice in a firm nor own a firm.

The Board requested information related to the terms of the sale of the CPA practice.

VOTE: 7 opposed.

Mr. Hearn and Mr. Lagesen will attempt to negotiate a revised settlement proposal.

8. Old Business *(in order of occurrence)*

A. Ron Bales *(Mr. Bales is listed on both Executive and Public Agendas)*

Mr. Bales submitted a letter requesting the Board consider reinstating his license to practice. Mr. Bales had previously been sent a Cease and Desist Order for potentially practicing without

a valid license. Ms. Bischoff recommended that the Board withdraw the Cease and Desist Order.

BOARD ACTION: Moved by Mr. Wright and carried to withdraw the Cease and Desist Order and respond to Mr. Bales' request for reinstatement.

VOTE: 6 ayes, 1 absent (Ferguson out of room)

5. PUBLIC COMMENTS

None

6. OAIA Report

None

7. OSCP Report

Mr. Jason Orme is the new Board liaison for the OSCP. He appreciates the hospitality shown to him during this meeting and looks forward to working with the Board. He mentioned that their office had received numerous calls regarding the board requirement to include a copy of the CPE proof of completion certificates with renewal forms.

9. CONTINUING PROFESSIONAL EDUCATION

A. Meeting minutes of May 1, 2012 – Information Only

B. Municipal Auditor Applications

1. Approved Applications:
 - a. Hans Karl Graichen – Approve
 - b. Brenda Bartlett – Approve
 - c. Ryan Pasquarella – Approve
 - d. Jessica Ann Knowles – Approve
 - e. Hani N. Morcos - Approve

BOARD ACTION: Moved by Mr. Crackenberg and carried to approve the applicants listed above for a Municipal Auditor license.

VOTE: 7 ayes

C. Items for Discussion

1. Municipal Roster Courses - It seems that there is some controversy on what is and what is not acceptable for meeting the municipal auditor application requirements. The Board requires courses to be certain levels, such as "Level 1" or "Level 2", and there are instances where the level is not easily shown. Some courses can be split to meet more than one category, which is also not easily understandable on the proof of completion.

Mr. Burns compiled a checklist for the CPE Committee coordinator to use as a reference tool when reviewing applications for the municipal roster. This checklist will be reviewed by the CPE Committee and the Board prior to implementation.

10. PEER REVIEW OVERSIGHT COMMITTEE

A. No minutes provided

The Board staff will draft a contract with the Oregon Society of CPAs for committee review at their meeting on July 19. The contract will outline the roles and responsibilities and expectations of each party as it relates to the Peer Review Program.

The PROC committee would like to have a least one member at each RAB (Review Acceptance Body) meeting. Ms. Barker has indicated that she will periodically send the Board a list of those who are no longer enrolled in the program.

11. QUALIFICATIONS COMMITTEE

A. Minutes of April 25, 2012 - Information Only

The Qualifications Committee coordinator has been out on medical leave and unable to prepare the cases for review. Once she returns, the Board will hold a special meeting to approve the applicants for licensure.

13. NEW BUSINESS

A. Secretary of State Cases – Permission to close

Mr. Hearn reminded the Board that they decided that they previously decided cases would no longer be opened simply upon receipt of a letter from the Secretary of State's office.

There are 4 such cases pending, which were previously opened. Mr. Hearn requests that the Board close those cases without further review.

BOARD ACTION: Moved by Mr. Wright and carried to close the following cases:

11-046NK Bailey & Co
11-047NK Steven Tuchsherer
11-048NK Jeffrey Cooley
11-049NK Patrick Carney

VOTE: 6 ayes, 1 opposed (Bridgham)

15. REPORT OF CHAIR

Ms. Newhouse reported that she and Ms. Sisk attended the OSCP Circle of Excellence Banquet.

16. REPORT OF VICE CHAIR

A. Items from Work Session

Ms. Bridgham commented that the review of the OAR's is slow and difficult. It is suggested that the Board go through the entire set of rules soon or assign a task force to do so. The rules need to be reviewed for technical flaws and revised if necessary.

Ms. Bridgham also thanked Dr. Graham for his comments during the work session regarding the decision to move forward with semi-independent status, licensees applying for licenses with no known nexus to Oregon, 150-hour education rule and the interaction between the Board and respondents in a complaint case.

17. REPORT OF TREASURER

A. Cash Flow Handout

Ms. Ferguson referenced the cash flow document included in the agenda packet. The revenue from renewals is not reflected on this chart due to the timing. Mr. Wright asked the reason for a drop in IT costs and Mr. Hearn advised that number would be going up soon due to the professional services contract for the online licensing project.

18. EXECUTIVE DIRECTOR REPORT

A. Online licensing project update

Mr. Hearn reported that the online license project is not on target to be operational for the 2012 renewal cycle. The vendor is being very cooperative and working diligently on the project. The current plan is to mail the paper renewals on May 21, and “go-live” on May 23. Licensees should be able to access the system the week of May 28.

The transition of the system is going to be difficult for both staff and licensees who have been comfortable doing it the same way for many years.

Ms. Sisk reported that the system still has many “priority 1” defects which prohibit the system from “going live”. The focus of the project has been on renewals; however, all back office systems must be functioning in order for staff to “switch-over”. Most of the other functions, such as licensing, examination, firm licensing and enforcement have not had adequate testing nor have the “front-end or web-facing” pages been built.

B. Documents Signed under Delegated Authority

Mr. Hearn reported that he signed one Cease and Desist Order; two Withdraw Notices, five Notices of Proposed Discipline, one Default Order and one Stipulation and Order since the last Board meeting in February 2012.

C. Approval of Travel to NASBA Regional Meeting in June 2012

The Executive Director would like Board approval to attend the NASBA Regional Meeting in Anchorage, Alaska, June 27-29, 2012. Ms. Newhouse, Ms. Bridgham, Mr. Brown and Mr. Wright will also be attending the regional meeting. Mr. Brown and Mr. Wright are traveling on a NASBA scholarship, available for new Board Members.

BOARD ACTION: Moved by Ferguson and carried to approve the travel for Pat Hearn, Executive Director to attend NASBA Western Regional meeting.

VOTE: 7 ayes.

E. Uncollectible Debt Write-offs

The Board was presented with a listing of the current uncollectible debts that should be “written-off”. The Board uses the Department of Revenue to collect debt owed to the Board. A collection agency can also be used, although the Board has not done so in the past. Ms. Bridgham suggested that Board staff try to collect by all available means, and then write-off all debts which appear to be uncollectible. The Board concurred.

F. Richard Donaca #10-09CNK

Mr. Donaca submitted a letter to the Board requesting an extension of the due date in order to obtain additional CPE as required by his Stipulation and Order #10-091CNK. He indicated that there the next available Planning and Risk Assessment course is not offered before the June 30, 2012 deadline.

After review of the letter and general discussion of this request the Board agreed to grant a 30-day extension, in order to allow Mr. Donaca to complete the CPE requirements outlined in the Stipulation and Order #10-09CNK. The new due date shall now be noted as July 31, 2012.

VOTE: 7 ayes.

G. Elaine Fankhauser (added to agenda)

Ms. Fankhauser submitted a request to the Board to waive the CPE requirement for her to renew her Inactive CPA license. Ms. Fankhauser explains that she is unemployed by choice as she raises her family. The requirement to obtain the CPE is a financial hardship.

BOARD ACTION: Moved by to deny the request for a waiver.

VOTE: 7 ayes.

ANNOUNCEMENT - FERGUSON

Ann Ferguson announced to the Board that she has resigned from Deloitte and Touche effective June 2, 2012. Since her seat on the Board is required to be held by a licensee in public practice, she will most likely be unable to continue serving as a Board member in her current seat.

NEXT MEETING

Date: August 6, 2012
Location: Board Office Salem
Time: 8:30 a.m.