



OREGON BOARD OF ACCOUNTANCY
COMPLAINTS COMMITTEE
PUBLIC SESSION MINUTES
November 7, 2014

3218 Pringle Rd SE #110
Salem, OR 97302

1st Floor Conference Room

503-378-4181

Committee Members Present

Josh Dunlap, CPA (Acting Chair)
Kent Bailey, CPA
Bill Holmes, CPA (8:12 am – 5:25 pm)
Joe Sullivan, CPA (by phone from 4:30 – 5:25 pm)
Haley Lyons, CPA (by phone from 4:30 – 5:25 pm)
Rob Nicklos, CPA (8:00 am – 2:17pm, by phone from 1:07 – 2:17 pm)

Excused Absences

Chris Walter, CPA
Fred Peterson, CPA

Guests Present for All or Part of Public Session

Jeff Edison
Lynn Edison
Dayna Underhill
Rodney Manser
Marilyn McFarlane

Staff

Martin Pittioni, Executive Director
Noela Kitterman, CPA, Investigator
Theresa Gahagan, CPA, CFE, Investigator
Bethany Reeves, Comp. Spec. (8:00 – 4:00 pm)

Board Liaison

Larry Brown, CPA (by phone from 4:17 – 5:20 pm)

Board Counsel

Susan Bischoff, AAG

1. Call to Order Time - 8:06 am

Mr. Dunlap announced the recording and called the 1st portion of the public session to order at 8:06 a.m.

2. Review and Approval of Agenda Time - 8:06 am

No changes were made to the agenda.

3. Approval of Minutes Time – 8:07 am

A. BOACC Public Session Minutes, September 26, 2014

Ms. Bischoff noted that at the October 20, 2014 Board Meeting, the Board directed staff to refer to each case in the public minutes by case number only, unless that Board were to make a preliminary determination of violations in that case. Mr. Pittioni added that although there would still be public documents which could be requested by any person through a public records request, this would reduce the number of times a Respondent's name was published in connection with a case in which the Board had made a determination of insufficient evidence for finding a violation.

Committee Action: Moved by Mr. Bailey and carried to accept the minutes as written.

Vote: 5 ayes – unanimous, 0 – nays, 1 absence (Holmes)

4. Review of Board Actions from October 19 and 20, 2014

Time – 8:10 am

Mr. Brown reported that the Board substantially agreed with all Complaints Committee recommendations:

The BOACC had recommended INSUFFICIENT evidence in cases #12-052 and #13-020, and the Board concurred.

In case #13-021, the BOACC recommended INSUFFICIENT evidence, but discussed whether Board staff should do further investigation. The Investigator obtained a deposition given by the respondent, and both the investigator and Mr. Brown reviewed the deposition. The deposition showed that another officer at the bank hid information and faced criminal charges. With the receipt of this information, the Board agreed that there should be no further investigation, and voted that there was INSUFFICIENT evidence.

In the Grove Muller Swank case #09-072CNK, the BOACC recommended SUFFICIENT evidence for six violations. Additional information was provided to the Board on two of the allegations, so the Board made four preliminary findings of violation. The sanction is being negotiated, and the Board is seeking post-issuance reviews of some of the audit engagements completed after the firm's most recent peer review and a civil penalty.

Mr. Pittioni added that the Board finalized several settlements at that meeting, as well, including:

- 1.) Case #10-130CNK – Christopher Acarregui. This case was very expensive for the Board, but provided a solid public-protection outcome of revocation with no backroom practice, and Mr. Acarregui and his wife must divest themselves of ownership in the firm Bend Accounting. The settlement also provides for \$60,000 in civil penalties, plus suspended civil penalties and suspended costs of almost \$290,000, all of which become payable if Mr. Acarregui violates the Order.
- 2.) Case #13-012 – Howard Goodman, the Respondent from the Coast, a former actively licensed CPA who continued to provide services while not on active status, while focusing primarily on work as a construction contractor.
- 3.) Case #11-050NK – Allen Adams, Jr. One of the issues in this case was that Mr. Adams did not make disclosures to investors of a jury conviction of fraud in a civil case, settled for a six month suspension. He is in significant financial straits, so most of the civil penalty is stayed and he is on a payment plan.
- 4.) Case #13-011 – David Raskin. He settled for a small civil penalty related to his actions in handling client files from another family member CPA who had been incarcerated for a period of time.
- 5.) Case #12-043NK – Gary Schutz. This Respondent had a telephone conversation with a representative from the Oregon Department of Revenue (DOR) without disclosing his identity to a DOR representative, misleading the DOR agent to believe he was the taxpayer. Mr. Schutz did not obtain a power of attorney from the taxpayer to represent the taxpayer before the DOR. Mr. Schutz submitted a letter to the Board acknowledging that his actions were inappropriate and agreed that he would not to do it again. The Board settled with him for lower level civil penalty than the BOACC had recommended.

Mr. Brown added that the Board voted to close two cases without investigating. One was related to a person who no longer holds a license with the Board, and in the other case, the Respondent died.

5. Old Business – Meeting Schedule Follow-up Time – 8:27 am

Mr. Pittioni discussed the 2015 BOACC meeting schedule.

1. The BOACC meeting scheduled for June 5, 2015 was moved to May 29, 2015. Bill Holmes noted a possible conflict with the May date.
2. The October 2, 2015 meeting was moved earlier to September 25, 2014. No conflicts with that date were noted.
3. A phone meeting was scheduled for January 6, 2015 from 8:30 – 10:00 am. It is prior to the in-person BOACC meeting scheduled for January 16, 2015, so matters which may be better addressed in person than by telephone, may be considered on January 16, 2015. BOACC member feedback was that Mondays are generally not good for meetings, and mornings are preferred over afternoons for phone meetings.

6. Convene Executive Session #1 Time - 8:35 am

Public session adjourned at 8:35 am, and executive session was convened pursuant to ORS 192.660(2)(f). At 1:07 pm, Mr. Nicklos ceased participating in the meeting in person and began participating in the meeting by phone. Public session was called to order again at 1:54 pm.

7. Committee Recommendations #1 Time - 1:54 pm

Bill Holmes disclosed a possible conflict of interest related to cases #14-044, #14-045, #14-046, and #14-051. He recused himself from the discussion and vote on this case and excused himself during the duration of discussion for these cases.

A. Case #14-044

Committee Action: Moved by Mr. Bailey and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct (1 instance).
VOTE: 4 ayes, 1 nay (Lyons), 1 recused (Holmes)

Committee Action: Moved by Mr. Bailey and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0005(1), Independence (1 instance).
VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Bailey 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 (1 instance).
VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Bailey and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-050-0020 (4) Peer Review Participation (1 instance).

Comments: Mr. Bailey noted that the firm did participate in peer review.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

The BOACC took no action on three other allegations related to aiding and abetting.

Discussion: The BOACC noted that they did not recommend the failure to enroll in peer review as a violation because they did not view the Rules as specific enough to direct specific engagements that

must be included in the peer review pool. Mr. Bailey added that any Board sanction be focused more on education, and civil penalties, if any, should be low. He also noted that information had been presented in connection with this case that indicated a widespread lack of understanding among CPAs about the requirements of BETC letters for the Department of Energy, so the Board could consider conducting educational outreach on this issue.

B. Cases #14-045 & #14-046

Committee Action: Moved by Mr. Bailey and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct, for advising against filing for bankruptcy.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Bailey and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct, for advising Mr. Olsen it would be financially beneficial to rapidly sell the property.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Dunlap and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(9), Business Transactions with Clients, for the land the Respondent purchased from a client, and for contracting with the client to perform road and site work at the Respondent's home.

Comments: Mr. Brown noted that he will recommend the Board not make a decision until the Board has obtained information about the source of the funds the Respondent used to purchase the land from the client at issue. This information has been requested from the Respondent by the Board, but the information has not been provided because of an ongoing lawsuit.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Bailey and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(2), Integrity and Objectivity (conflict of interest), when Respondent entered into a contract to purchase land from a client at the same time Respondent was advising the same client regarding reducing his debt.

Comments: The BOACC noted that if additional evidence relating to this allegation is obtained, the Board may not wish to follow this recommendation.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Bailey and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct, for intimidating the client's daughter with respect to the related civil law matter

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

C. Case #14-051

Committee Action: Moved by Mr. Sullivan and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct, for misleading the Board.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Sullivan and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct, for intimidating the client's daughter with respect to the related civil law matter.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Sullivan and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(9), Business Transactions with Clients, for the land purchase.

Comments: Mr. Bailey noted that if additional evidence relating to this allegation is obtained, the Board may not wish to follow this recommendation. Mr. Nicklos agreed.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

Committee Action: Moved by Mr. Sullivan and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0005(2), Integrity and Objectivity (conflict of interest), when Respondent entered into a contract to purchase land from the client at the same time Respondent was advising the client regarding his debt.

Comments: Mr. Dunlap noted that this allegation seems linked to the allegation related to Business Transactions with Clients, and as noted previously, if the Board obtained additional information related to that allegation, they may wish to consider that information in connection with this allegation. Ms. Bischoff commented that she would recommend that the Board defer any action related to the land purchase transactions until after the lawsuit is resolved.

VOTE: 5 ayes, 0 nays, 1 recused (Holmes)

D. Case #13-001

The BOACC members suggested making some motions on the related case #13-001, since the BOACC had not voted on all potential violations at the BOACC meeting on May 9, 2014, and the Board is delaying consideration of that matter until all the related cases were considered by BOACC and moved to the Board. However, Ms. Bischoff recommended they not do so, since the Respondent in that case had not been notified that the BOACC may take action on that case during this meeting. However, Board Liaison Mr. Brown said he felt he had a comfortable sense of a BOACC position on the remaining allegations in connection with case #13-001 so he could talk with the Board.

The Respondents in the above cases and Ms. Underhill left the meeting at 4:35 pm.

8. Convene Executive Session #2 Time - 2:22 pm

Public session adjourned at 2:17 pm, and executive session was convened again at 2:22 pm pursuant to ORS 192.660(2)(f). Mr. Brown ceased attending the meeting in person at 4:05 pm and began attending the meeting by phone at 4:17 pm. Public session was called to order again at 4:31 pm.

9. Committee Recommendations #2 Time - 4:31 pm

A. Case #14-037

Committee Action: Moved by Mr. Bailey and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of ORS 673.160, Requirement to Register a Firm.

VOTE: 5 ayes, 0 nays, 1 excused absence (Nicklos)

Committee Action: Moved by Mr. Bailey and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(7), Board Communications and Investigations.

VOTE: 5 ayes, 0 nays, 1 excused absence (Nicklos)

Committee Action: Moved by Mr. Bailey and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-050-0020(1), Peer Review Enrollment and Participation.

VOTE: 5 ayes, 0 nays, 1 excused absence (Nicklos)

Discussion: The members of the BOACC viewed the violations as low level, and Mr. Dunlap noted that CPE would be an appropriate penalty.

The Respondent in this case left the meeting at 4:35 pm.

10. Convene Executive Session #3 Time - 4:35 pm

Public session adjourned at 4:35 pm, and executive session was convened again at 4:35 pm pursuant to ORS 192.660(2)(f). Mr. Brown rang off the line and left the meeting at 5:20 pm. Public session was called to order again at 5:21 pm.

11. Committee Recommendations #3 Time - 5:21 pm

A. Case #13-010

Committee Action: Moved by Mr. Bailey and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct, for opening a tax practice within 20 miles even though she had signed an agreement not to compete.

VOTE: 5 ayes, 0 nays, 1 excused absence (Nicklos)

Discussion: Mr. Bailey suggested that the Board consider sending a letter of concern, because the Respondent's actions were concerning, even if they are deemed not to have risen to the level of a violation. Mr. Bischoff added that the Board should consider the policy question of whether or not it wants to be the referee between parties who really should be in court when there is a legitimate dispute.

The Respondent in this case left the meeting at 5:24 pm.

12. Announcements and Adjournment Time - 5:24 pm

Acting Chair Dunlap announced the next BOACC meeting on December 12, 2014, and adjourned the meeting at 5:25 pm.