



**OREGON BOARD OF ACCOUNTANCY**  
**COMPLAINTS COMMITTEE**  
PUBLIC SESSION MINUTES  
July 30, 2014

3218 Pringle Rd SE #110  
Salem, OR 97302  
2<sup>nd</sup> Floor Conference Room  
503-378-4181

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

**Committee Members Present**

Josh Dunlap, CPA (Vice-Chair), Acting Chair  
Haley Lyons, CPA  
Kent Bailey, CPA  
Joe Sullivan, CPA  
Fred Peterson, CPA  
Bills Holmes, CPA  
Chris Walter, CPA

**Excused Absence**

Rob Nicklos, CPA

**Guests**

None

**Staff**

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

**Board Liaison**

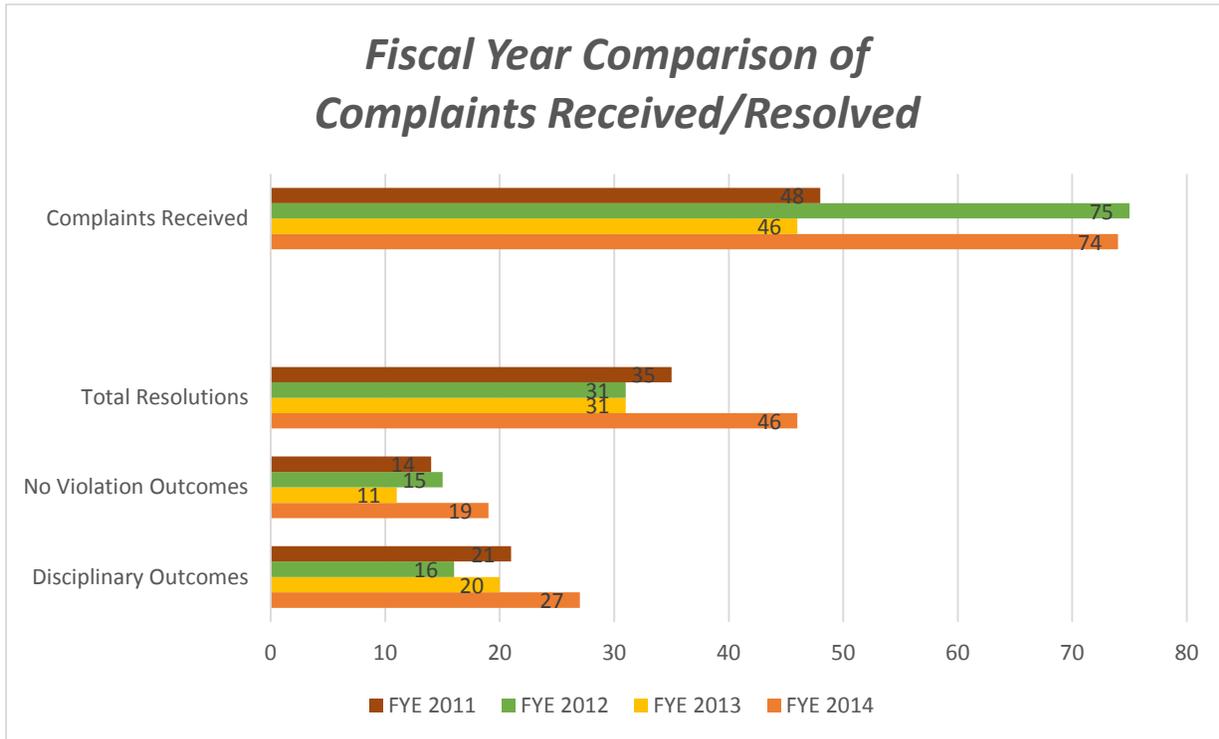
Larry Brown, CPA

**Board Counsel**

Susan Bischoff, AAG

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1. **CALL TO ORDER** – Josh Dunlap convened the Public Session of the July 30, 2014 Complaints Committee at 8:36 a.m. and announced that the meeting was being recorded.
  2. **Review and Approval of Agenda**  
The agenda was accepted as presented.
  3. **Review of Board Action**
    - A. None – there was no Board action since the previous BOACC meeting of July 14, 2014.
  4. **New Business**
    - A. **Survey of BOACC Member Expertise**  
Director Pittioni explained that staff might need input on specific cases. Board staff might request the members review cases in their area of experience, before those cases come before the BOACC. Each BOACC member present filled out a survey indicating the subjects in which they would be willing to provide guidance and feedback.
      - B. **Recruitment of New BOACC Members**  
Director Pittioni stated that two long-standing members would be ending their terms on the BOACC as of December 31, 2014. He asked those present to consider the recruitment needs of the BOACC. A list of all licensees who self-identified, on their license renewal, a willingness to serve on a BOA Committee was distributed. He requested that recommendations, either of licensees on the list or licensees not on the list, be given to either himself or Mr. Brown.
  5. **Old Business**
    - A. **Annual Report**  
Director Pittioni discussed the disciplinary actions completed over the last several years. At the previous BOACC meeting, he had distributed the Chronological Disciplinary Action Report (DAR), which

is a list of all of the disciplinary actions since January 1, 2011 in chronological order. At this meeting, he distributed a bar graph depicting the number of complaints and the number of resolutions for the past four fiscal years, 2011 – 2014. Here is the graph:



|                            | <u>FYE 2014</u> | <u>FYE 2013</u> | <u>FYE 2012</u> | <u>FYE 2011</u> | <u>Total</u> |
|----------------------------|-----------------|-----------------|-----------------|-----------------|--------------|
| * Disciplinary Outcomes    | 27              | 20              | 16              | 21              | 84           |
| ** No Violation Outcomes   | 19              | 11              | 15              | 14              | 59           |
| <b>Total Resolutions</b>   | <b>46</b>       | <b>31</b>       | <b>31</b>       | <b>35</b>       | <b>143</b>   |
| <b>Complaints Received</b> | <b>74</b>       | <b>46</b>       | <b>75</b>       | <b>48</b>       | <b>243</b>   |

\* Disciplinary Outcomes = Final Order Written and Approved or Adopted by the Board.

\*\* Board voted based in the investigatory record that the complaint did not have sufficient evidence of a violation of BOA statute or rule.

Director Pittioni discussed the information as follows:

- “Final” means a final order of some kind has been issued, not just that the BOACC has made a recommendation or the Board has made a preliminary finding of violation, or the case was finalized because the Board found insufficient evidence of any violations in the matter.
- The graph covers July 1, 2010 to June 30, 2014.
- Over the four-year time span, the difference between the number of complaints received (243 total) and the number of resolutions (143 total), is 100 cases.
- We had as many resolutions in FY 2014, as we had complaints in FY 2013, which means we kept up with the case load, but did not address the backlog.
- Although you cannot see it from this data, the Compliance Docket shows there are 87 pending cases that have not yet been heard by the Board.
- Looking at resolutions over time is a valuable measure. The agency is resolving more cases, in part because we now have a second investigator.
- We will be asking for the continuation of the second investigator position as part of the budget process.
- Fiscal Year '07-'08 was the first time this agency had a peak of 75 complaints. We are expecting to have 70+ cases again in 2014 for the third time. Based on this, it no longer appears that 70 cases a year is an aberration, so I think we need to plan on receiving at least 60 cases year going forward.
- I hope this puts the work the BOACC does in context.

Mr. Dunlap asked how the number of cases tracks with the number of licensees. Mr. Pittioni replied that both the number of exam candidates and the number of licensees is very steady, with about 8,000 licensees, 900 firms, and a consistent number of exam candidates. Because of this, he said that it appears the number of cases is driven by something other than the total number of licensees. Mr. Pittioni added that he had not correlated the profile of practitioners who get into trouble. In other Boards he has directed, new licensees accounted for 1/3 of complaints, but it was practitioners with 15-20 years of experience who were most likely to have complaints. Mr. Brown noted that might be because new practitioners are more closely supervised. From his observation, it seems the Board gets more experienced practitioners before them than new practitioners, and it seems that recently there has been an increase in the number of practitioners with more than 25 years' experience.

Mr. Pittioni added that the Board has new processes, so more complaints related to licensing are being self-initiated. He also explained that staff use an escalating process. Often, staff first opens an Inquiry to obtain more information and determine if a case needs to be opened. If the practitioner cooperates and resolves deficiencies, the case is not automatically opened into an investigation, but is evaluated on the seriousness of the conduct. If the person refuses to come into compliance, the case is opened into an investigation. Serious problems that are discovered during the renewal process are also investigated. As an example of a serious problem, staff recently discovered a person who, at a large firm and with full knowledge of the firm's compliance office, practiced in Oregon for four years without a license. That case has been opened to investigate that matter. He said that in the past, Board staff did a lot more Administrative Actions when problems were discovered during renewals, for things like failing to update

the Board with a change of address. Those Administrative Actions never came before the BOACC or the Board. Staff are no longer doing Administrative actions because of the volume and urgency of other matters.

Mr. Brown suggested it might be effective to prioritize investigations where a single practitioner has multiple complaints that could be combined into a single investigation report. Mr. Peterson noted that the BOACC has been having long meetings with many cases. He did not see how the BOACC could consider 55 cases in a year without increasing the number of meetings. Mr. Pittioni acknowledged that increasing the number of meetings might be necessary in the future, but there are no cases where the investigation has been completed but not heard by the BOACC. There is no backlog of cases ready to be heard. Mr. Brown suggested that perhaps simple cases could go straight to the Board in order to reduce the demand on the BOACC.

**6. Convene Executive Session Pursuant to ORS 192.660(2)(f)**

Public session was adjourned and the executive session was convened at 9:02 a.m.

**7. Complaints Committee Recommendations**

Public session was reconvened at 1:48 p.m.

**Case #13-026**

**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, for not responding to client email and failing to communicate with a managing member of the company without specific instruction that the governing documents had been changed.

**Vote:** 7 ayes - Unanimous

**Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010(4), Tax Standards, with regard to Treasury Circular No. 230.

**Vote:** 7 ayes - Unanimous

**Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010(4), Tax Standards, with regard to conflicts of interest.

**Vote:** 7 ayes - Unanimous

**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), Due Professional Care, for failure to elect S-corporation status as required by the company's operating agreement.

**Vote:** 7 ayes – Unanimous

[Note: the correct reference for the Due Professional Care violation should have been OAR 801-030-0010(1)(b), but the (b) was not verbally stated during the motion. – Board Staff]

**Comments:** Mr. Bailey noted that the Respondent hasn't provided any responses demonstrating that he has learned anything. Mr. Dunlap commented that the Respondent was in a difficult position. Mr. Bailey  
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disagreed that the Respondent was in a difficult position, and added that if the Respondent had followed the operating agreement and responded to the Complainant in any way, even if only to tell that he could not discuss it with her, the Respondent probably would not have even come before the BOACC.

### **Case #13-012**

**Committee Action:** Moved by Mr. Peterson and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of ORS 673.320, Use of the term CPA.

**Vote:** 7 ayes – Unanimous

**Committee Action:** Moved by Mr. Peterson 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.

**Vote:** 7 ayes - Unanimous

**Committee Action:** Moved by Mr. Peterson and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010(4), Tax Standards, related to tax preparation.

**Comments:** There was no evidence that the prepared tax returns were not up to standards.

**Vote:** 7 ayes - Unanimous

**Committee Action:** Moved by Mr. Peterson and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010(4), Tax Standards, for failure to obtain a waiver of conflict of interest.

**Discussion:** The BOACC discussed how many violations they wanted to recommend, one or three, and the consensus was one.

**Vote:** 7 ayes - Unanimous

**Committee Action:** Moved by Mr. Peterson and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0015(2), Requested Records.

**Vote:** 7 ayes - Unanimous

**Committee Action:** Moved by Mr. Peterson and seconded to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct, related to giving incorrect information to the investigator.

**Discussion:** Mr. Dunlap said he thought the Respondent was sloppy and did not confirm the information before providing it in writing to the investigator, so he thinks it is a violation. Mr. Sullivan said he thinks it is a violation, but not a very serious one. The Respondent provided information without verifying it.

**Vote:** 2 ayes (Lyons, Walter), 5 no. **MOTION FAILS.**

**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(1), Professional Misconduct, related to giving incorrect information to the investigator.

**Vote:** 5 ayes, 2 no (Lyons, Walter)

**Committee Action:** Moved by Mr. Peterson and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(7), Board Communications, for failure to respond to an email, primarily because the Respondent did respond later and said he did not get the email.

**Vote:** 7 ayes – Unanimous

**Comments:** Mr. Brown said his biggest concern is that the Respondent said he didn't know he was using his CPA number to file his tax returns. Mr. Peterson said he has concerns that the Respondent is planning to reinstate when he doesn't follow the rules or isn't competent. Ms. Lyons added that she felt there was disregard for the rules. She said the Respondent said he didn't know his software submitted documents with his number on them, but he should have known. Mr. Bailey asked when the Respondent's license would expire entirely if not renewed. Mr. Pittioni replied that the 6-year in lapsed status rule only started in 2012, so the license could remain in lapsed status for several more years. Mr. Bailey commented that he thinks the Respondent has unintentional disregard for the rules, because he doesn't know the rules. There was consensus that the level of egregiousness is about 6 or 7 on a scale of 1-10. Mr. Dunlap said it seems like the Respondent doesn't care and has a lack of desire to comply because he looks at preparing tax returns as a way to help friends. Mr. Sullivan observed that there were many problems. In contrast, Ms. Lyons said she felt the Respondent was forthcoming and that the problems seemed like honest mistakes.

#### **8. Announcements and Adjournment**

The next meeting will be held on Friday, September 26, 2014.

**The public session adjourned at 2:22 p.m.**