



PUBLIC BOARD MEETING MINUTES

Monday, December 15, 2014

Board of Accountancy
2nd Floor Conference Room
3218 Pringle Rd SE, Salem, Oregon 97302

Present:

Jessie Bridgham, CPA, Chair
Larry Brown, CPA, Vice Chair
Scott Wright, CPA, Treasurer
Roger Graham, Public Member
Al Crackenberg, PA
John Lauseng, CPA
Candace Fronk, CPA

Susan Bischoff, Legal Counsel
Martin Pittioni, Executive Director
Noela Kitterman, Investigator
Theresa Gahagan, Investigator
Bethany Reeves, Compliance Assistant
Kimberly Fast, Licensing Manager

Guests:

Harry Bose, OSCP
Sherry McPherson, OSCP
Stuart Morris, OAIA

Ron Johanesen, CPA, OAIA
Chip Paternoster, Esq. 1:25 pm
Dayna Underhill, Esq. 1:25 pm

1. **CALL TO ORDER**

Chair Bridgham called the meeting to order at 8:00 a.m. and announced the meeting would be recorded.

2. **RULEMAKING ACTION ITEMS**

Mr. Lauseng advised the Board members that very few substantial comments were received from members of the public and licensees. The comments consisted mainly on the experience rule changes in regards to government employment. The rules no longer address government as a separate category, but instead will be considered by what type of work the applicant is performing as to what path they will apply under.

Board members agreed to add a margin note on rule amendment document located on the Board's website explaining how government employment will be considered. Further explanation in the margin notes was also requested for internship credits.

The Board discussed the firm rule amendments and noted other possible amendments. Although a few firm related rules were changed, the majority of work was scheduled for phase two, which will begin in the Fall of 2015.

Comments from members of the public brought to our attention that the specificity of part-time employment in relation to experience was not removed as intended. In addition, in Division 030 under records retention, a reference to the modified records retention of seven years was not changed. Board staff have corrected these issues in the final version submitted by staff for Board consideration.

The Board adjourned public session at 9:20 and convened in Executive Session pursuant to ORS 192.660(2)(f)(h).

Public Session reconvened at 1:22 p.m.

3. **RULEMAKING ACTION ITEMS (continued)**

Board members reviewed text of final rule amendments prepared by staff that incorporated the feedback from Board members from the morning discussion.

Mr. Pittioni explained that the staff proposal for a January 8, 2015 effective date was intended to ensure compliance with the APA requirements for rulemaking, which include a minimum 49 day differential between the date rulemaking notifications to legislators occurred and the rule effective date. Mr. Pittioni advised that the e-mail notifications to legislators and all licensees and stakeholders was delayed to ensure that the contributions of the Board's Qualifications Committee from November 14, 2014 could be included in the draft rules text proposals sent out for comment.

BOARD ACTION: Mr. Lauseng moved to approve final rule amendments to Chapter 801, Divisions 001, 005, 010, 030 with an effective date of January 8, 2015.

VOTE: 7 ayes.

4. **COMPLAINTS COMMITTEE / Motions on Cases**

A. Minutes of November 7, 2014

Minutes were provided for Board information only.

B. **Rodney L. Manser / Rodney L. Manser CPA PC, Case #14-037**

BOARD ACTION: Moved by Mr. Brown to find that there is sufficient evidence to make a preliminary finding of violation of ORS 673.160, failure to register a firm.

Licensee continued to practice with a lapsed firm registration.

VOTE: 7 ayes.

BOARD ACTION: Moved by Mr. Brown to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(7), Board Communications and Investigations.

Licensee failed to respond to Board communications within the specified time frame.

VOTE: 7 ayes.

BOARD ACTION: Moved by Mr. Brown to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-050-0020(1), failure to enroll in Peer Review.

Licensee was dropped from the Peer Review program and did not enroll in a different program and continued to issue reports subject to peer review.

VOTE: 7 ayes.

Board Discussion: Board was concerned at the lack of communication from the licensee and recommends a low civil penalty and CPE with emphasis on SSARS Standards.

C. Case 13-010

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0020(1), Professional Misconduct for opening a tax practice within 20 miles even though the licensee had signed an agreement to not compete.

VOTE: 7 ayes.

D. Case 14-045 and 14-046

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional misconduct for advising a client against filing for bankruptcy.

VOTE: 7 ayes.

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct for advising plaintiffs that it would be financially beneficial to rapidly sell their property.

VOTE: 7 ayes.

BOARD ACTION: Moved by Mr. Brown to find 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 licensee purchased from the client; for contracting with the client to perform road and site work on licensee's home.

VOTE: 7 ayes.

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(2) Integrity and Objectivity for a conflict of interest when licensee entered into a contract to purchase land from client at the same time as licensee was advising client regarding his debt workout.

VOTE: 7 ayes.

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct for intimidation.

VOTE: 7 ayes.

While Board members believe the licensee used poor judgment in this matter they do not believe it rises to the level of violation of Board rules. It was recommended that the Board staff prepare a letter of concern to the licensees involved in this matter.

E. Case #14-051

BOARD ACTION: Moved by Mr. Brown to find 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: 7 ayes

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct for intimidation.

VOTE: 7 ayes.

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(9), Business transactions with clients.

VOTE: 7 ayes

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(2), Integrity and Objectivity, for a conflict of interest.

VOTE: 7 ayes

This case is related to cases 14-045 and 14-046 above and again it was recommended that the Board send a letter of concern for using poor judgment.

F. Keith B. Martin Case #14-047

Mr. Martin was convicted of forgery and identity theft, a Class C Felony on October 23, 2014. The Board will accept a license resignation from Mr. Martin, however, if he is not agreeable, the Board will issue a Notice of Revocation.

BOARD ACTION: Offer Mr. Martin the opportunity to resign his CPA license under investigation in lieu of disciplinary action and if not, the Board will issue a Notice of Revocation.

VOTE: 7 ayes.

G. Case #14-001

A case was opened against a non-licensee for practicing in an Oregon registered firm without an Oregon license. The respondent was notified on January 3, 2014 and by January 9, 2014 submitted an application for reciprocity, which was approved and a license issued on January 30, 2014.

The respondent did not sign any statements, form or reports while employed at the CPA firm and also rectified the situation in a prompt timeframe.

BOARD ACTION: Moved by Mr. Brown to close the case without a finding of violation.

VOTE: 7 ayes.

H. **Deyette Perry, Case #13-001**

Mr. Brown reminded Board members that a verification letter signed by Ms. Perry was in question. The Board was provided ten such letters, three of which were signed by Ms. Perry. Only one of these letters was on letterhead (firm) and the remaining were on blank paper.

BOARD ACTION: Moved by Mr. Brown to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(1), Independence, based on the relationship between respondent and contractor in a BETC verification provided by Respondent.

VOTE: 6 ayes; 1 nay (Graham)

BOARD ACTION: Moved by Mr. Brown to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(2), Integrity and Objectivity, for subordinating her judgment to others.

VOTE: 6 ayes, 1 nay (Graham)

BOARD ACTION: Moved by Mr. Brown to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct.

VOTE: 0 ayes, 7 nays **MOTION FAILS**

Wright advised that he thought the Board should have a discussion with the Department of Energy (DOE) to provide better guidance to licensees going forward. Mr. Pittioni agreed that he would reach out DOE.

Mr. Lauseng commented that the Board should also emphasize to our licensees, that if you issue a letter that resembles very, very closely the template of an AUP letter, as put forth by the AICPA, PPC, etc., and the template only excludes one phrase in saying that it is an AUP, that in fact and reality it is still an attest engagement. If the Board has consensus on that, we should communicate that to our practitioners.

Mr. Wright concurred that in his office, any time the words "certify" or "verify" or "confirm" are used – in essence any time you get into any kind of assurance - that should make any practitioner think long and hard about whether or not they are in a position to do that.

Mr. Graham observed that to him the issue is writing a report where you have a direct or indirect financial stake in it.

Mr. Brown agreed with the previous statements, adding that the work done here is an assurance or attest report. Mr. Brown added that in his view, there are case-specific issues of the integrity and objectivity and independence of those that issued the report. Separate from that is the larger issue of if this was an attest engagement. On that issue BOACC was unanimous, and there appears to be a

significant majority in this room that believe this was an attest engagement. In his view, there was an attest engagement, and there was a relationship issue.

I. **Jeff Edison and Edison Perry & Company, Case #14-044**

BOARD ACTION: Moved by Mr. Brown that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct regarding verification letters that certify costs of a project subject to a tax credit.

VOTE: 6 ayes, 1 nay (Crackenberg)

BOARD ACTION: Moved by Mr. Brown to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(1), Independence. Independence is required of individuals who directly supervise or manage the agreed-upon procedures engagement.

INITIAL VOTE: 4 ayes, 3nays (Wright, Fronk, Graham)

Mr. Brown advised that upon further reflection on the matter, especially the fact that it was not Mr. Edison who signed the verification letter, he would like to change his vote to nay.

FINAL VOTE TALLY: 3 ayes; 4 nays (Brown, Fronk, Graham, Wright) MOTION FAILS

BOARD ACTION: Moved by Mr. Brown to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(2), Integrity and Objectivity. As the owner of Northside, the licensee asked Ms. Perry to prepare the agreed-upon procedure engagement for Northside. As the Managing Partner of the firm, the licensee asked Ms. Perry to sign the Verification Letter independently from the firm. In these actions the Licensee created a conflict of interest which could not be waived.

VOTE: 4 ayes, 3 nays (Graham, Wright, Fronk)

BOARD ACTION: Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-050-0020(4), Peer Review Participation for not properly reporting the agreed-upon engagement to peer review in a timely manner.

VOTE: 7 ayes

Mr. Brown requested direction from Board members to staff to resolve this matter and the matter of 13-001 / Deyette Perry.

Mr. Crackenberg stated he thought Ms. Perry had less culpability than Mr. Edison and that this should be reflected in the civil penalties assessed the cases.

Mr. Wright disagreed. To him the issue was that Ms. Perry subordinated her judgment.

Mr. Lauseng observed that Respondent Perry did not appear to understand this was an attest engagement, significant evidence to the contrary. Mr. Lauseng agreed that the penalty for Ms. Perry should not be less than for Mr. Edison. Mr. Lauseng further recommended technical CPE.

Ms. Fronk added she would like to see financial reporting CPE. Mr. Wright agreed.

Mr. Pittioni requested clarification. Mr. Lauseng stated that whatever CPE is out there that would help

Ms. Perry understand that this was an independence issue.

Mr. Brown added that while there is a significant disparity on how practitioners handled this type of BETC engagement, his focus is on the case-unique issues of integrity and objectivity.

Ms. Gahagan asked what level of civil penalties the Board thought appropriate.

Mr. Lauseng said that in his view there is no good answer – both cases need a civil penalty but in his view you either have independence and objectivity or you do not. An ethics class is not going to fix this.

Mr. Wright requested a moderate-to-high end civil penalty. Mr. Crackenberg thought penalties should emphasize the firm. Mr. Lauseng said in his view low to moderate penalties would be appropriate.

Mr. Brown polled Board members on civil penalty levels, with five members agreeing to a moderate civil penalty and one member each supporting a low end and high end penalty.

Mr. Brown opened discussion on penalties for case 14-044, and observed that he does not believe the Respondent should be singled out for the attest function.

Mr. Wright suggested that since we have a Board vote finding against the individual and firm on the attest function, would it be appropriate to approach this with a firm-wide CPE requirement.

Board members discussed the matter further. Mr. Brown stated that he thought a letter of concern on the attest issue to the Respondent and issued to those practitioners that did not view this as an attest engagement would be sufficient. The penalty issue really is the independence piece.

Ms. Fronk suggested low level penalty plus ethics CPE. Mr. Brown advised that some level of penalty and ethics CPE would be appropriate.

5. **APPROVAL OF BOARD MINUTES**

A. **October 19, 2014**

BOARD ACTION: Moved by Mr. Wright and carried to approve the minutes as written.

VOTE: 7 ayes.

B. **October 20, 2014**

Some minor amendments were discussed.

BOARD ACTION: Moved by Mr. Wright and carried to approve the minutes with amendments.

VOTE: 7 ayes.

C. **August 11, 2014 AMENDED**

The minutes from August 11th are being resubmitted to the Board for approval. The case against Cathleen Donnellan was omitted from the minutes when originally approved.

BOARD ACTION: Moved by Mr. Wright to approve the amended minutes as presented.

VOTE: 7 ayes.

6. **REPORT OF CHAIR**

Ms. Bridgham reported that she attended the NASBA Annual Conference. The style of the meetings have changed to short blocks of learning, otherwise known as "nano" learning. Ms. McPherson from the OSCP added that is a new trend.

Mr. Wright and Mr. Brown have been reappointed to serve their next term and Ms. Lynn Kingston has been appointed to fill Ms. Bridgham's vacancy.

7. **REPORT OF VICE-CHAIR**

Mr. Brown thanked the Board and Staff for completing the evaluation documentation for Mr. Pittioni's annual performance review.

Mr. Brown also mentioned that he and Mr. Pittioni spoke at the OSCP Professional Update Conference in early December and it was a positive experience with great speakers.

8. **TREASURER REPORT**

Mr. Wright reported on the cash flow material in the Board packets. The Board's ending cash balance wend down from \$942,000 to \$918,000. The Board's spending is slightly less than allotted.

The Board fees are currently set in statute and it appears a significant fee increase is necessary. It is projected that if the Board has a 70% increase in statutory fees with no other adjustments, with the 2015-17 budget as proposed as a basis, the Board would be back in a negative ending balance by 2023.

Mr. Wright and Mr. Pittioni met with the OSCP and the OAIA to address this issue and discuss options for cost savings. During the meeting the investigation process was discussed and options for improvement. Frustration was expressed that a significant portion of the fee increase is necessary to cover cost reallocation by the Department of Administrative Services (DAS) for back end services with out of control increases in costs especially over the next two biennia..

9. **EXECUTIVE DIRECTOR REPORT**

Mr. Pittioni reported that he is working on transitioning the Board office from DAS supported IT to a Board run server and contracted IT services, which are far less expensive. Mr. Brown cautioned staff to be careful and ensure a successful transition. Ms. Fast assured Board members that we are simply working on the transition and simple fixes to the database. There are no significant projects at this time.

Mr. Brown encouraged Mr. Pittioni to attend the NASBA Executive Director's conference in March 2015.

10. **REPORT OF THE OSCPA**

Mr. Bose thanked Mr. Brown and Mr. Pittioni for attending and participating at the Professional Update conference. He also reported that the OSCPA is re-writing their by-laws to address resignation in lieu of revocation for their members. They are also gearing up for new CPE courses available in February.

11. **REPORT OF THE OAIA**

Mr. Morris reported that the OAIA has just wrapped up their fall trainings and he noticed younger licensees in attendance. The Association also had a discussion on the Board raising fees and are not happy, but they understand the need. He mentioned that the Board of Tax Practitioners are also facing the same issues. Mr. Pittioni is scheduled to speak at an OAIA event on January 9, 2015.

12. **NEW BUSINESS**

A. **Committee Vacancies & Appointments**

The BOACC has two vacancies. Both Stewart Parmele and Nancy Young have agreed to serve. Ms. McPherson noted that Mr. Parmele currently serves on the OSCPA's Peer Review Acceptance Body (RAB). Board members were under the impression that a member of the RAB was not eligible to serve on the BOACC.

BOARD ACTION: Moved by Mr. Wright to appoint Nancy Young to serve on the BOACC.

VOTE: 7 ayes.

Ms. Bridgham expressed interest in serving on the BOACC.

BOARD ACTION: Moved by Mr. Wright to appoint Jessie Bridgham to serve on the BOACC.

VOTE: 7 ayes.

B. **Board Officer Elections for 2015**

BOARD ACTION: Mr. Graham nominated Mr. Brown to serve as Chair of the Board.

VOTE: 7 ayes.

BOARD ACTION: Mr. Graham nominated Mr. Lauseng to serve as Vice-Chair

VOTE: 6 ayes; (not voting: Mr. Brown)

BOARD ACTION: Ms. Fronk nominated Mr. Wright to continue serving as Treasurer.

VOTE: 7 ayes.

Mr. Brown advised that he felt uncomfortable with departing from the customary approach to officers moving up in their positions.

BOARD ACTION: Mr. Graham rescinded his nomination of Mr. Lauseng for Vice-Chair.

VOTE: 7 ayes.

BOARD ACTION: Ms. Fronk rescinded her nomination of Mr. Wright to serve as Treasurer.

VOTE: 7 ayes.

BOARD ACTION: Mr. Lauseng nominated Mr. Wright to serve as Vice-Chair.

VOTE: 7 ayes.

BOARD ACTION: Mr. Wright nominated Mr. Lauseng to serve as Treasurer.

VOTE: 7 ayes.

Mr. Brown would like to continue the 2014 Board liaison roles until the February 2015 Board meeting, at which time he will announce the new liaison structure for Board committees.

C. Recognition of Service by Jessie Bridgham

Board members expressed their appreciation of Ms. Bridgham's leadership over the past years. Ms. Bridgham has served on committees and the Board for many years and most recently as Chair of the Board.

Mr. Brown presented a plaque of appreciation to Ms. Bridgham.

D. Services by Licensees to Marijuana Businesses – Initial Discussion

Mr. Don Aubry of the Washington Board of Accountancy provided the Board material from the IRS relating to the passage of legal marijuana. Ms. McPherson commented that the society has been getting inquiries on this issue as well. The Washington Board are telling their licensees that while they don't encourage practitioners performing tax work for these businesses they will not discipline the licensee for dealing with a federally banned business that is legal under state law.

Licensees want a statement from the Board on what our policy is. The issue gets complicated when you look at Board rules that reference respect for the laws of the nation, which of course include federal law. Mr. Pittioni would like the Board to discuss in more detail at the meeting in February 2015.

E. Proposed Settlement for Kyle David Cummings

On March 16, 2012 the Board opened an investigation against Kyle Cummings. Mr. Cummings was employed as the CFO with the Summit 1031 Exchange and/or Summit Accommodators, Inc.

In February 2014 the Board voted to make a preliminary finding that Mr. Cummings was in violation of OAR 801-030-0020(1), Professional Misconduct.

A stipulated agreement was drafted and signed by Mr. Cummings assessing a \$5,000 civil penalty, 10 hours of CPE to be reported by June 1, 2015.

Ms. Fronk advised the Board that Mr. Cummings is a CFO for one of her clients and therefore she will recuse herself from discussion and voting. Mr. Wright asked to be recused also.

BOARD ACTION: Moved by Mr. Brown to approve the proposed Settlement Agreement and Stipulated Final Order for Mr. Kyle David Cummings as presented.

VOTE: 5 ayes, 2 recused (Fronk, Wright)

14. **OLD BUSINESS**

A. **2015 Revised Meeting Calendar**

This was for Board member review only.

15. **CPE COMMITTEE**

A. **Minutes of November 18, 2014 (for information only)**

B. **Recommendations for Approval to Municipal Roster**

1. Mitchell Boylan
2. Mercy Liaw
3. Amanda McCleary-Moore
4. Matthew Schott
5. Jordan Zwygart
6. Jennifer Farr

BOARD ACTION: Moved by Mr. Wright to approve the applicants listed above to the Municipal Auditor Roster.

VOTE: 7 ayes

C. **Annual Report**

The annual report of the CPE committee was presented for information and reference only.

16. **QUALIFICATIONS COMMITTEE**

A. **Minutes of September 24, 2014 (for information only)**

B. **November 18, 2014 (for information only)**

C. **Recommendations for Approval**

1. Kyle Walker
2. Yevgeniya Williams
3. Halie Henderson
4. Susan Hoshida
5. Heather Robison

6. Bruna Pinheiro*

BOARD ACTION: Moved by Mr. Graham to approve the above named applicants for licensure.

* Ms. Pinheiro was recommended to approve by the committee pending additional information which has since been received.

VOTE: 7 ayes.

D. **Recommendations for Denial**

1. Tsz Cheng
2. Yan Li Gao

Ms. Cheng was previously denied by the Board and a previous Board employee sent a letter to the applicant advising her that some of her competencies were met. Upon closer look by the current reviewer, none of the competencies were met. This was of concern to the committee since the applicant specifically worked on competencies she thought she needed rather than all the competencies.

The committee had a difficult time getting in touch with Ms. Gao's employer to verify additional information regarding competencies.

The Board discussed out of country applicants and the reason they apply in Oregon. This is a concern the Qualifications committee also shares.

BOARD ACTION: Moved by Mr. Graham to allow the above applicants to withdraw their application for licensure. If they do not, they will be issued a Notice of Denial.

VOTE: 7 ayes.

E. **Annual Report**

The Qualifications committee needs additional members, however, according to the current Board by-laws, the next member should be from public practice. Mr. Graham requested the Board allow an additional industry member and an individual from education.

Mr. Brown would like the Board to review the by-laws at a future meeting and revisit the requirements for members in certain practice areas. It may be wise to consider a licensee with a diverse practice experience.

17. **RATIFICATION REQUESTS**

1. CPA Certificates / Permits
2. Firm Registrations

BOARD ACTION: Moved by Mr. Graham to approve the individuals and firms on the ratification list.

VOTE: 7 ayes.

The Board meeting was adjourned at 4:33 p.m.