

**OREGON BOARD OF ACCOUNTANCY**  
**May 23, 2005 Minutes**  
**3218 Pringle Road SE #110**  
**Salem OR 97302**  
**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.  
Working Lunch*

**Board Members Present**

Stuart Morris, PA, *Chair* (excused 2:30)  
Lynn Klimowicz, CPA, *Vice-Chair*  
Kent Bailey, CPA *Treasurer*, (phone)  
Jens Andersen, CPA  
James Gaffney, CPA (excused 2:55)  
Ray Johnson, CPA

**Excused**

Anastasia Meisner, *Public Member*

**Staff Members**

Carol Rives, *Administrator*  
Noela Kitterman, *Investigator*  
Kimberly Bennett, *Committee Coordinator*  
Joyce Everts, *Committee Coordinator*  
Heather Shepherd, *Committee Coordinator*

**Guests Attending**

Christine Chute, *Asst. Attorney General*  
Phil Hopkins, CPA, *SOS – Division of Audits*  
Jim Aldrich, PA, *OAIA Representative*  
Jim Houle, CPA, (phone)

**1. CALL TO ORDER**

The meeting was called to order at 9:00 a.m.

**A. Appoint Process Observer**

Jens Andersen was appointed process observer.

**B. Introduction of Guests**

Guests were introduced and welcomed to the meeting.

**2. APPROVAL OF MINUTES**

**A. February 14, 2005, Board Meeting**

**BOARD ACTION:** Moved by Klimowicz and carried to approve the minutes.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

**3. REPORT OF CHAIR**

**A. Action from Executive Session** (see *Legal Section 12*)

**B. NASBA**

1. Selection of 2005-06 Vice-Chair

Mr. Wesley P. Johnson, CPA, received the nomination as Vice Chair of NASBA, 2005-2006. Mr. Johnson will accede to Chair in 2006-2007.

2. NASBA Award nominations (*information*).

3. Nomination for Director-at-Large

Idaho Board of Accountancy nominated. Samuel K Cotterell, CPA, Vice President and Controller, Boise Cascade, L.L.C.

Arizona Board of Accountancy nominated Sandra R Wilson, CPA, Auditing and Computer Partner, Wilson & Wilson.

**Board Discussion:** *Both candidates are well qualified for the position. With the changes happening in private industry the knowledge of Mr. Cotterell would be invaluable. It is unclear if any other individuals will be nominated. Ms Rives is directed to send a letter to NASBA indicating that Oregon believes both nominees are highly qualified and would serve NASBA well.*

4. NASBA Committee Interest Form

This information was received and forwarded to Board members during tax season. NASBA is recruiting for the 2005-2006 committees. The deadline to submit an interest form was May 2, 2005. If members are interested they should submit the form to NASBA as soon as possible.

**4. REPORT OF VICE CHAIR**

**A. Action from Work Session**

**1. Establish Oswald West Award**

**Board Discussion:** *The Board discussed creating an award to honor individuals who make outstanding contributions to the profession. The award may be presented to a CPA or a non-CPA. It was suggested that the award be named after past Oregon Governor Mr. Oswald West who signed into law the act establishing the Board of Accountancy in 1913. The Board will accept nominations for individuals who have made outstanding contributions to the accounting profession. The award will be considered when nominations are presented, rather than at regular intervals. Nominations will be accepted for individuals who have made outstanding contributions to the accounting profession or when an individual's accomplishments are brought to the Board's attention. Staff is directed to prepare a press release announcing the establishment of the Oswald West Award and to inquire whether OSCPAA would include an announcement in its journal. The following inscription for the award was judged to be appropriate.*

Oregon Board of Accountancy  
Honors  
(Name of recipient)  
Oswald West Award  
(Year)

**BOARD ACTION:** Moved by Klimowicz and carried to establish the Oswald West award.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**B. Recipient of Oswald West Award**

Representative Thomas Butler, CPA nominated Catherine Pollino, Oregon State Auditor, as the first recipient of this award. Ms. Pollino has been an advocate and active participant in advancing public accountancy on both state and national levels. Ms. Pollino consistently demonstrates support for the profession by providing professional development and certification opportunities to her audit staff.

**Board Discussion:** *The August Board meeting is a good opportunity to present the award. Board staff should attempt to identify any Oswald West family members and extend an invitation to attend the award presentation. Other invitations should include OAIA, OSCPAA, Rep. Butler, Secretary of State Bill Bradbury and individuals identified by Ms. Pollino.*

**BOARD ACTION:** Moved by Klimowicz and carried to award the first Oswald West Award to Catherine Pollino.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

## **C. Administrative Rule Revisions**

### **1. Division 001**

On advice of legal counsel, staff prepared a new rule in Division 001 regarding the requirement for respondents in administrative actions to state claims and defenses on which respondent relies before administrative hearings. Under this rule individuals who fail to put all claims and defenses in writing prior to the hearing will be presumed to waive such claims.

**BOARD ACTION:** Moved by Klimowicz and carried to approve the new rule in Division 001.

**VOTE:** 6 ayes, 1 excused (Meisner)

### **2 Division 005**

Among the changes to Division 005, the Board wants to leave the words “directly or indirectly” in the definition of contingent fee. All definitions that were in Division 030 will be moved to Division 005 to avoid discrepancies when a definition occurs in more than one division. A new definition was added for fees, which Christine Chute will research further. The definition of peer review should be compared with the definition in Division 050 to assure uniformity. Johnson suggested that he review how the contingent fee rule relates to the independence rule and report back to the Board.

**BOARD ACTION:** Defer approval to August Board meeting.

### **3. Division 010**

No proposed changes.

### **4. Division 020**

No proposed changes.

### **5. Division 030**

The Board reviewed proposed changes to Division 030 which included a request that the reference to the Secretary of State Division of Audits in the Independence rule be removed. The Code of Conduct Committee agrees. The State of Oregon is no longer tracking its scholarship program and all provisions referencing same are removed. Christine Chute will work on provisions relating to misleading advertising to be presented at the August Board meeting.

**BOARD ACTION:** Moved by Johnson and carried to approve proposed changes to Division 030.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

### **6. Division 040**

A revision to Division 040 recommended by the CPE committee requires the licensee to provide a written statement for the CPE audit only if staff is unable to determine by the course title that the course would enhance professional competence in public accounting.

**BOARD ACTION:** Moved by Klimowicz and carried to accept proposed changes to Division 040.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

**7. Division 050**  
**OAR 801-050-0020**

Subsection (2) of this rule adds *internal control engagements* to the attest services that are subject to the peer review requirement.

**OAR 801-050-0035**

The OSCPAs questioned whether the rules require the program sponsor to provide peer review documents to the Board. Program sponsors are generally restricted by confidentiality agreements with regard to peer review reports.

**Board Discussion:** *Subsection (3)(a) makes it clear that the reports to be provided for specific review will be provided by firms. The other provisions in this section are necessary to provide oversight of the program. Subsection (2)(d) provides for a random review of peer reviews performed by sponsors. While this rule is discretionary, it is contemplated that documents would be produced by the sponsor, and that such documents could be redacted by the sponsor to preserve confidentiality. The purpose is not to pass judgment on any specific report, but to assure that the process is conducted according to the standards.*

**OAR 801-050-0040 “Significant issues”**

OAR 801-050-0040(2)(d) refers to *Two consecutive report review reports with “significant issues” as defined by the AICPA Peer Review requirements*. A definition will be added to section 050-0010 to clarify “significant issues”. The Board requests task force comments.

**OAR 801-050-0040(1)(c)**

This is a new section that will require a check box on the firm renewal form. The Board will audit firms that claim to be exempt from the peer review requirement and also firms that claim to be exempt from the requirement to report substandard peer review reports.

**OAR 801-050-0040(2)**

The Task force recommended an additional requirement for firms to provide copies of peer review reports that express a scope limitation. The AICPA Peer Review Standards regarding scope limitation reports have been expanded under the 2005 revisions. Scope limitation reports may occur when the firm is unable or refuses to provide information to the peer reviewer, or refuses to sign the management letter, or the firm does not cooperate with all aspects of the peer review.

**Board Discussion:** *The Board members expressed their appreciation and approval of the work of the Peer Review Task Force, which Mr. Andersen will convey at the next meeting. The Board requests that the additional revisions to Division 050 be referred to the Peer Review Committee and Peer Review Task Force for review. Final approval of Division 050 is deferred to the August Board meeting.*

**8. Attest Letters**

Licensees are often asked to “attest” to various client matters for insurance companies, banks, mortgage brokers and other businesses. Concern arises when the word “attest” is used for these purposes. Licensees have requested guidance on whether or not they are prohibited from providing these responses, and if not, to provide guidelines.

**Board Discussion:** Board members were familiar with the requests. It was noted that a licensee can simply cross out any word or words that pertain to “attest” or “certify”, and not opine on work that the licensee has not performed. The licensee should avoid making conclusions, and provide only factual information. Licensees should be warned against providing client information that is confidential and to structure any response so that it does not come within the definition of “attest”. Jim Gaffney and Ray Johnson will work on developing a FAQ for the Board website for guidance to licensees.

#### **9. NASBA Exposure Draft UAA Rules 5-2, 5-3**

NASBA circulated an Exposure Draft revising the education requirements in rules 5-1 and 5-2 of the UAA. The stated purpose for the revisions is to avoid competition between states that one version of the 150 hour requirement is better than another, and to set acceptable standards on a national basis.

The Board received letters of concern from the University of Portland and the OSCP. Both believe the revisions place unnecessary requirements on the candidate and would create undue hardship on the colleges and universities.

**Board Discussion:** (A comprehensive discussion is recorded in the minutes of the May 22, 2005 work session.) The Board wants to respond with comments expressing Board concerns about the value of the changes presented, noting that the added cost that such changes would impose on students and institutions of higher education removes flexibility, limits choice and may reduce the number of students who are interested in entering the profession. Ray Johnson and Carol Rives will work on the response. A copy of the letter should be directed to OSCP and to the University of Portland.

#### **5. REPORT OF SECRETARY-TREASURER**

##### **A. Financial Reports**

Bailey reviewed the 2005 January, February, March and April financial reports and compared them with last years report. Bailey noted that both exam and licensing fees are below budget, civil penalty collections are over budget and expenditures are close to budget targets.

**BOARD ACTION:** Moved by Bailey and carried to accept the budget reports.

VOTE: 6 ayes, 1 excused (Meisner)

#### **6. REPORT OF ADMINISTRATOR**

##### **A. and B. Oswald West Award**

(See discussion and action under 4.A.)

##### **C. Board Policy, 05-028**

This policy establishes procedures for posting the minutes of Board meetings on the Board website. Minutes will be posted after final approval by the Board. Board minutes for the two most current years will be maintained on the website.

**BOARD ACTION:** Moved by Johnson and carried to adopt the policy.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

#### **D. Legislative Update**

**HB 2157** – The Board of Accountancy is included in this bill that authorizes agencies to conduct criminal background checks for initial license applicants. The fee for criminal background checks is to be paid by the agency and not the licensee. The bill has legislative support and it is anticipated that it will pass. If the bill is approved, the Board will need to consider both funding sources and implementation.

**HB 2166A** – Phil Hopkins, explained that this bill was introduced as a “housekeeping” bill by the Secretary of State Audits Division. Representative Butler introduced an amendment that would remove the requirements for membership on the Municipal Auditors Roster.

**Board Discussion:** *(Phil Hopkins, Division of Audits, and Jim Houle, CPA and former Board member, participated in the conversation.) Oregon is one of two or three states that has additional licensing requirements to conduct municipal audits. When the OSCP first heard of Representative Butler’s amendment, it proposed an amendment that would require the auditor to comply with Generally Accepted Governmental Accounting Standards (GAGAS). OSCP has decided they will not support the bill as they feel it may harm sole proprietors and small firms in Oregon, with the main impact on the Eastern side of the state. HB 2166 with both the Butler and the OSCP amendments passed the House with 56 ayes, and will go to the Senate as HB 2166A.*

*The Yellow Book has increased the required number of hours of continuing education to 80 hours, which is more than the 24 hours required by Oregon for current municipal auditor designation. If this bill passes there may be sole proprietors and small firms that decide to leave government auditing, which could be positive, because there are probably some practitioners in small communities who only do one or two municipal audits as a community service. These licensees probably don’t have enough experience to be competent in Yellow Book Standards.*

*Mr. Houle stated that he stopped doing muni audits because he did not want the burden of being competent. He does not feel the Oregon 24 CPE hour requirement is enough to keep up. Houle also believes that this change would be positive for the profession, rather than negative, and that rather than diminish public protection, the bill would increase public protection. The change may also encourage some very competent licensees to start doing governmental audits.*

*Most municipal audits that are performed are required to meet GAGAS, depending on the funding source, but some municipalities are only required to have a review. Under current ORS provisions, the muni auditor license is required to perform either reviews or audits. Governmental reviews may not be subject to GAGAS, but they are still subject to GAAP standards.*

*If the bill does pass, there are several levels of protection, starting with the general obligation to maintain competency under the Code of professional Conduct. In addition, the continuing education requirements will be verified during peer review because the peer reviewer is required to verify that the CPE has been completed before the audit begins and if not, it would be documented as a finding in the report. The Audits Division receives a copy of all audits and conducts selective reviews. The enforcement process provides a final safeguard.*

*Hopkins states that the Division of Audits supports HB 2166A (which includes both the Butler and OSCP amendments). He does not agree with OSCP that it is a geographical issue. Hopkins thinks that, with increased attention to the audit function and Sarbanes Oxley requirements, if Oregon doesn’t make this change now, it will happen later.*

**BOARD ACTION:** Moved by Gaffney and carried to support HB 2166A.  
**VOTE:** 6 ayes, 1 excused (Meisner)

### **E. Certificate of Public Management Program**

This program is a partnership among the Willamette Atkinson Graduate School, the Oregon Legislature and the Oregon Executive Office. Successful completion of eight courses that extend over a one-year period leads to a Certificate in Public Management. The cost of the program is \$6,000 for the program. Classes convene for a half day one day a week. The Administrator requests Board approval to submit an application to attend the program.

**Board Discussion:** *Comments from others in state government who have completed the program have been very positive. Ms. Rives does an excellent job in her position now and the Board commends Ms Rives for her willingness to devote the time that will be required. The Board supports every opportunity to provide additional training and education.*

**BOARD ACTION:** Moved by Johnson and carried to approve the expenditure for Carol Rives to participate in the Certificate of Public Management Program.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

### **F. Board Policy, 05-029**

This policy establishes policy and procedures relating to workplace harassment and implementation of affirmative action directives in ORS 659A.012 and 659A.015 and the Governor's Executive Order 05-01. Even though the Board has previously approved policies for both workplace harassment and affirmative action, the Executive branch requires all agencies to adopt the policy in this format.

**BOARD ACTION:** Moved by Klimowicz and carried to adopt the policy.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

### **G. Delegated Authority**

Ms. Elena G. Nunez submitted a voluntary resignation of her CPA permit and license in the State of Oregon.

**BOARD ACTION:** Moved by Gaffney and carried to accept the resignation of Ms. Nunez.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

Two proposals for delegated authority were brought before the Board. The first is to delegate to the Board Administrator authority to approve voluntary licensee resignations and second, to devise database entry information that will distinguish between voluntary resignation and resignations that are submitted when the licensee is the subject of a Board investigation.

**Board Discussion:** *Currently all resignations are brought to the Board for approval. If a licensee is resigning the permit due to relocation or retirement without a pending investigation, it should be approved administratively. If a licensee requests resignation with a pending investigation, it will be brought to the Board for approval.*

*Ms. Rives suggested that information in the database should indicate the difference between a permit that is resigned voluntarily and one that is surrendered in the face of a Board investigation. The members agreed that this concept would enhance the Board's mission to protect the public.*

**BOARD ACTION:** Moved by Johnson and carried to delegate to the Board Administrator authority to approve voluntary licensee resignations and to establish a distinction between volunteer resignation and resignation while under Board investigation.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

#### **H. Board Member Terms**

Four Board member terms will expire before the end of 2005. Mr. Andersen and Mr. Johnson have both agreed to serve an additional term. Ms. Rives will verify with Mr. Bailey his intention on serving an additional term. Mr. Morris has served two terms and is willing to serve an additional term. There are specific conditions for serving a third term:

1. Approval from the Board members, and
2. Appointment from Governor

**Board Discussion:** *Mr. Morris is a valuable member to the Board of Accountancy. The OAIA will fully support Mr. Morris in serving a third term on the Board. The Public Accountant Board position is difficult to fill because the number of licensed public accountants is limited. The Board would be pleased to have Stuart Morris serve a third term.*

**BOARD ACTION:** Moved by Johnson and carried to approve Mr. Morris for a third term.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner). *Board members Bailey and Meisner expressed their support of the motion in a subsequent conversation.*

#### **7. REPORT OF OAIA**

Aldrich reported that the State of Pennsylvania had recently challenged IRS to recognize Public Accountants as the same as a Certified Public Accountant. PAs are required to follow the same rules and regulations as CPAs. IRS has allowed PAs in Pennsylvania and New Jersey the same authority as CPAs in these states. The OAIA will be pursuing this authority in Oregon. The OAIA would like the Board to support this in writing.

**Board Discussion:** *Oregon PAs are as competent as Oregon CPAs. Both designations are regulated by the same statutes and rules. Mr. Morris mentioned that under IRS rules, a Public Accountant is not allowed to file an extension on behalf of clients in Oregon. The Public Accountant can be listed as a contact which allows minimum power of attorney. An Oregon PA is considered to be a preparer only. The Board requested that OAIA send a request in writing for Board support of this concept, so that the Board may take formal action.*

*Mr. Morris commended the OAIA for creating one schedule that included all continuing education for the 2005 calendar year. This will assist practitioners in scheduling their education.*

#### **8. REPORT OF OSCPA**

Robert Moody, OSCPA Representative, requested to be allowed to report for the OSCPA at the work session because he is unable to attend the meeting on May 23, 2005. His report is recorded in the minutes of the May 22, 2005 Work Session.

#### **9. CONTINUING PROFESSIONAL EDUCATION**

##### **A. Report of CPE Committee, March 8, 2005**

##### **1. Acceptance of Minutes**

**Board Action:** Moved by Gaffney and carried to accept the minutes of March 8, 2005.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

##### **2. Consent Agenda**

##### **a. Recommendations**

**\*A.** Michael Mueller, deny

**B.** Jason Cunningham, accept

**BOARD ACTION:** Moved by Gaffney and carried to accept the Consent Agenda.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

**3. Municipal Auditor Applications**

**a. Summer Sears**

COMMITTEE RECOMMENDATION: Accept; the applicant completed the requirements for the municipal audit roster, as required by OAR 801-020-0690.

**BOARD ACTION:** Moved by Gaffney and carried to accept the Municipal Auditor application.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**4. Items Removed from Consent Agenda**

**1. A.2.a.A. Michael Mueller, deny**

COMMITTEE DISCUSSION: The Board made a decision to restrict self-study CPE programs to NASBA QAS approved programs because it was impossible to determine if all the self-study programs available were quality programs. If the committee starts looking at programs and making recommendations to the Board, the committee will likely be reviewing many courses; thereby pre-empting QAS. The committee does not review QAS programs and does not feel it appropriate to make decisions about CPE that may not be consistent with decisions of the organization that is responsible for this process.

COMMITTEE RECOMENDATION: Deny; self-study programs are required to be NASBA QAS. This recommendation is consistent with prior decisions.

**Board Discussion:** Board rules do not contemplate a waiver for QAS and the Board intends to be consistent in the QAS requirement for independent study programs.

**BOARD ACTION:** Moved by Gaffney and carried to accept the committee recommendation.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**B. Report of CPE Committee meeting May 3, 2005**

**1. Acceptance of Minutes**

**BOARD ACTION:** Moved by Gaffney and carried to accept the minutes of May 3, 2005.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**2. Consent Agenda**

**a. Recommendations**

**\*A.** Thomson/RIA 2004 CPE program, deny

**B.** Sharie Lewis, accept

**BOARD ACTION:** Moved by Gaffney and carried to accept the consent agenda.

VOTE: 5 ayes. 2 excused (Bailey, Meisner)

**3. Municipal Auditor Applications**

**a. Scott A. Turner**

COMMITTEE RECOMMENDATION: Accept; the applicant completed the requirements for the municipal audit roster, as required by OAR 801-020-0690.

**b. Lynn O. Larsen**

COMMITTEE RECOMMENDATION: Accept; the applicant completed the requirements for the municipal audit roster, as required by OAR 801-020-0690.

**BOARD ACTION:** Moved by Anderson and carried to accept the Municipal Auditor applications.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**4. Items Removed from Consent Agenda**

**1. B.2.a.A. Thomson/RIA 2004 CPE program, deny**

COMMITTEE DISCUSSION: Ms. Rives reported that this topic was not a discussion item at the NASBA Executive meeting. The Board received a letter dated April 29, 2005, from the NASBA CPE Advisory Committee indicating that the committee voted unanimously to deny the Thomson/RIA appeal to allow credit for this program. Based on the letter that the Board received from a licensee who had taken the program, Oregon licensees who took the course received notice from Thomson/RIA about the problem. The committee recommends that licensees who report this CPE program should not receive credit for the program, however they will not be assessed the 16 hour Penalty if denial of the credits causes a violation of the annual 24 hour requirement. The make-up hours, if necessary, should be reported within a 30-day period.

COMMITTEE RECOMMENDATION: Deny, Thomson/RIA did not follow proper procedure when obtaining the QAS designation. Staff will communicate with licensees on an individual basis if this program is included on CPE reports.

**BOARD ACTION:** Moved by Gaffney and carried to accept the committee recommendation.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**10. PEER REVIEW OVERSIGHT**

**A. Report of Peer Review Oversight Committee**

**1. Acceptance of Minutes**

**a. May 10, 2005**

**BOARD ACTION:** Moved by Andersen and carried to accept the minutes of May 10, 2005.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**B. Consent Agenda**

**1. None**

**11. COMPLAINTS COMMITTEE**

**A. Report of Complaints Committee**

**1. Acceptance of Minutes**

**a. April 22, 2005**

**BOARD ACTION:** Moved by Klimowicz and carried to accept the minutes of April 22, 2005.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**B. Consent Agenda**

**BOARD ACTION:** Klimowicz moved and it was carried to accept the consent agenda

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**1. Complaint Investigations**

- |     |                                    |           |
|-----|------------------------------------|-----------|
| a.  | Hough & MacAdam LLC/Moss Adams LLP | 03-03-009 |
| b.  | Stephen Greer & Associates         | 03-04-017 |
| *c. | Jerome Levey, CPA                  | 04-12-094 |
| *d. | Brooks Peacock, CPA                | 05-01-003 |
| e.  | Doug Parham, CPA                   | 05-03-008 |
| f.  | Cherina Hart, CPA                  | 04-07-061 |
| g.  | David Klinger, CPA                 | 04-08-068 |
| *h. | Melanie Correa, CPA                | 04-12-093 |
| i.  | Holmes Royer, LLP                  | 05-01-001 |

**\*Items 11.B.1.c., 11.B.1.d., and 11.B.1.h.**

**C. Items Removed from Consent Agenda**

**11.B.1.c. Jerome Levey, CPA 04-12-094**

ALLEGED VIOLATIONS:

OAR 801-030-0015(2)(b) Requested Records

OAR 801-030-0020 (1) Professional Misconduct

Jerome Levey (Levey) prepared Amy Miller's (Miller) 2001 tax year. Levey offered clients "Extended Tax Service" (ETS). ETS was explained by Levey as a guarantee that he would represent Miller at no extra cost if a taxing authority selected Miller's tax return for audit. When Miller's 2001 tax return was selected for audit by Oregon Department of Revenue (DOR), Levey refused to represent Miller.

INVESTIGATOR RECOMMENDATION(S):

OAR 801-030-0015(2)(b) Requested records

\$5,000 civil penalty for not providing a copy  
of the 2001 tax return

\$ 5,000

Other Responsibilities and Practices

801-030-0020 (1) Professional misconduct

\$5,000 Civil penalty for not honoring the

ETS contract for audit of Millers 2001 tax return

5,000

Total Civil Penalties

\$10,000

Levey joined the Complaints Committee meeting by phone conference at 10:18 am. Levey faxed a two-page comment document for the Committee to review (Attachment E) and a one page document from a client expressing remarks about the Extended Tax Service (Attachment F). The documents are attached and made a part of the committee minutes. Levey expressed dissatisfaction with inconsistencies in the investigator's report and in Miller's documents.

Levey stated that the tax invoice has been in use for 16 years. Levey further stated that he has a conversation with new clients about Extended Tax Service (ETS) and gives new clients a paper explaining ETS. Levey stated that he sent a fax on December 1, 2001 to Miller stating that he was out of town when Miller was audited. Kitterman stated that Miller said she sent the letter to Levey the day of the audit. Levey left the phone conference at 10:35 am.

COMMITTEE DISCUSSION: Miller received a copy of the 2001 tax return when the original tax return was issued, and there should not be a penalty for record retention.

COMMITTEE RECOMMENDATION: Moved and carried to recommend no violation on OAR 801-030-0015(2)(b) Requested records.

COMMITTEE DISCUSSION: The Committee concurred that Levey was not given enough notice to represent the client at the audit, however, Levey's invoice is

a contract and the invoice states that he will represent the client if audited. When Miller received her final tax return she knew she was going to find another CPA, but did not know that Levey would cancel ETS. Levey was obligated to provide ETS under the terms stated on his invoice.

**COMMITTEE RECOMMENDATION:**

Moved and carried to assess a civil penalty of \$2,500 for Professional Misconduct for not honoring the ETS contract for the audit of Millers 2001 tax return.

**Board Discussion:** *Levey's client purchased Extended Tax Service, which is an agreement that Levey would represent the client if she were audited by Internal Revenue Service or Department of Revenue. When the client was notified of an audit by Department of Revenue, Levey refused to honor the agreement and represent the client.*

**BOARD ACTION:** Klimowicz moved and it was carried to accept the Committee recommendations.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**11.B.1.d. Brooks Peacock, CPA 05-01-003**

**ALLEGED VIOLATIONS:**

ORS 673.320(3) Permit or registration required

J Brooks Peacock (Peacock) is employed by Creamer Green & Associates, PC. Peacock holds an active license in Washington. Peacock surrendered his Utah license. Peacock is not licensed in Oregon. Peacock used the title "Certified Public Accountant" on his business card.

**INVESTIGATOR RECOMMENDATION(S):**

ORS 673.320(3) Permit or registration required

Civil penalty of \$1,000 for holding out as a CPA \$1,000

Peacock arrived in person at the complaints committee meeting at 9:30 am. Peacock stated that he came to Creamer Green & Associates from Utah intending to bring his clients to Oregon from Washington and Utah. Peacock stated that he intends to be licensed in Oregon, however he needs to resolve issues with the Utah Board of Accountancy. Peacock stated that he had no direct client contact in Oregon, he prepared tax returns and he did not sign the returns. Peacock left the meeting at 9:40 am.

**COMMITTEE DISCUSSION:** The committee concurred that Peacock violated Oregon rules when he used the CPA designation on business cards and on the "Academy of Dental CPAs" website.

**COMMITTEE RECOMMENDATION:** Moved and carried to accept the investigator's recommendation.

Mr. Brooks Peacock arrived at the Board meeting at 1:55 P.M. to discuss this investigation. Peacock stated that his work in Oregon has not been with Oregon clients and that he has removed his business cards from the office lobby in the Salem office. He did not request reciprocity immediately upon arriving in Oregon

because the issues in Utah had not been resolved. He distributed the business cards to clients in Washington and Utah. Mr. Peacock left the meeting at 2:15 P.M.

**Board Discussion:** *The Board concurred that Peacock held out as a CPA when his business cards with the CPA designation were made available to the public.*

**BOARD ACTION:** Klimowicz moved and carried to accept the Committee recommendation.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**11.B.1.h. Melanie Correa, CPA 04-12-093**

ALLEGED VIOLATIONS:

- 801-030-0015 (2) Client records and working papers
- (b) Requested records

Melanie Correa (Correa) provided public accounting services to clients until December 2002. Correa notified clients that she was closing her business and referred them to another Certified Public Accountant (CPA).

Martha Bundren received the notification from Correa. Bundren delayed having tax returns prepared for the next two years due to an illness. In 2004, Bundren needed a copy of her depreciation schedule and left telephone messages for Correa. Correa did not return Bundren's calls.

INVESTIGATOR RECOMMENDATION:

- Responsibilities to Clients
- 801-030-0015(2) Client records and working papers
- (b) Requested records

\$1,000 civil penalty for failure to provide Bundren  
with a copy of the depreciation schedule \$1,000

COMMITTEE DISCUSSION: Correa should have provided client with a depreciation schedule.

COMMITTEE RECOMMENDATION: Moved and carried to accept the investigator's recommendation.

**Board Discussion:** *The Board determined that licensees are required to retain client tax records for six years. Correa had a responsibility to provide client with a depreciation schedule. Correa did not provide the client with a depreciation schedule until after the Board notified Correa of the complaint.*

**BOARD ACTION:** Gaffney moved and it was carried to accept the Committee recommendation.

VOTE: 4 ayes, 3 excused (Bailey, Meisner, Morris left at 2:40 P.M.)

**12. LEGAL**

**A. Report of Legal Items**

**1. Proposed ALJ Orders**

**a. Donald Sherry dated April 7, 2005**

**Board Discussion:** *The Board reviewed the Proposed Final Order issued by the ALJ April 7, 2005. The Board concurred that Sherry violated the rule of contingent fees on the face of the advertisement.*

**b. Donald Sherry: Exceptions to Proposed Order, dated April 22, 2005**

**Board Discussion:** *The Exceptions to the Proposed Order do not present any new arguments that would alter the recommendation of the ALJ, or the Board's decision. The arguments Sherry presents are (1) that there is more than one interpretation to the rule, and (2) that no one asked for a refund based on his advertisement; however the controlling factor is not whether clients requested their money back. The fact is that Sherry's offer presented a contingency that is prohibited under the rules.*

**BOARD ACTION:** Moved by Andersen and carried to accept the ALJ Proposed Order without change.

VOTE: 5 ayes, 2 excused (Bailey, Meisner)

**2. Proposed Consent Orders**

**a. Lance Brant**

**BOARD ACTION:** This item was deferred for lack of a quorum. Board members were excused to meet with legislative representatives.

**b. Doris Rose**

**Board Discussion:** *Staff presented a consent order to be ratified. The original consent order assessed a civil penalty of \$17,000. The Consent Order reduced the civil penalty from \$17,000 to \$15,000 with a payment plan. The civil penalty was paid according to the scheduled payment plan and there are no additional terms for the licensee to meet.*

**BOARD ACTION:** Moved by Gaffney and carried to ratify the Consent Order.

VOTE: 5 ayes, 2 absent (Meisner, Bailey)

**c. Gwendolyn Hanavan**

**Board Discussion:** *Hanavan presented a Consent Order that changes the violation from professional misconduct to competency. Hanavan attempted to carry back a net operating loss for her client using Internal Revenue Service's Form 1045 after twelve months had passed. When notified by IRS that the time period to file Form 1045 had passed, Hanavan did not file Form 1040X causing the client to lose a tax refund. This is a competency issue, not misconduct.*

**BOARD ACTION:** Moved by Gaffney and carried to approve the Consent Order.

VOTE: 5 ayes, 2 absent (Meisner, Bailey)

**B. Other**

**1. Krystal Pease – prior Consent Order**

**Board Discussion:** The Board does not wish to take further action or reconsider the Pease Consent Order.

**2. Stacy Elmore – request for late hearing**

**Board Discussion:** *Elmore submitted a late request for hearing that was approved administratively. Because of clerical error, Elmore's attorney did not receive a copy of either the notice or the default order. Elmore did not respond to either document when she received them because she was in the process of relocating, and also because she assumed her attorney would make the appropriate response.*

**BOARD ACTION:** Moved by Klimowicz and carried to ratify approval of late request for hearing.  
**VOTE:** 5 ayes, 2 absent (Meisner, Bailey)

**3. Theresa Wilcox – request for relief from penalties assessed**

**Board Discussion:** *Fines assessed against Wilcox are appropriate and there is no basis for the Board to waive or forgive penalties assessed against Wilcox in a final order, as requested by Wilcox' representative. Wilcox violated the trust of the public and her clients.*

**BOARD ACTION:** Moved by Johnson and carried to deny the request from M.S. Hurtt, who holds power of attorney for Theresa Wilcox, to forgive the civil penalties assessed against Theresa Wilcox.

**VOTE:** 5 ayes, 2 absent (Meisner, Bailey)

**13. QUALIFICATIONS COMMITTEE**

**A. Report of Qualifications Committee**

**1. Acceptance of Minutes**

**a. April 28, 2005**

**BOARD ACTION:** Moved by Johnson and carried to approve the minutes.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

**B. Consent Agenda**

**BOARD ACTION:** Moved by Andersen and carried to accept the consent agenda.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

**1. Recommendations**

**a. Chiafulio, Carolyn**

Ms. Chiafulio gained her experience with the following employer:

Intel                      90 mos.                      All competencies

Ms. Chiafulio passed the CPA Examination in May 2000. Intel is a Board approved certification program. The committee did a full review on the write-up for Ms. Chiafulio. The committee commented that the write up was very complete and well laid out. The report clearly demonstrates that the applicant has met the competencies.

**COMMITTEE RECOMMENDATION:** Moved by Emberland and carried to approve application. 4 ayes, 1 excused (Selid).

**b. Ek, Amy**

Ms. Ek gained her experience with the following employer:

Intel                      49 mos.                      All competencies

Ms. Ek passed the CPA Examination in November 2003. Intel is a Board approved certification program. The committee did a full review on the write-up for Ms. Ek. The committee reviewed the application and documentation provided and determined that the applicant had sufficiently completed all the competencies.

**COMMITTEE RECOMMENDATION:** Moved by Rawls and carried to approve application.

4 ayes, 1 excused (Selid).

**c. Martin, Todd**

Mr. Martin gained his experience with the following employer:

Intel                      62 mos.                      All competencies

Mr. Martin passed the Uniform CPA Exam in May 2000. Intel is a Board approved certification program. The committee reviewed Mr. Martin's file and determined that he had sufficiently completed all competencies.

COMMITTEE RECOMMENDATION: Moved by Emberland and carried to approve application. 4 ayes, 1 excused (Selid).

**d. Martin, Valerie**

Ms. Martin gained her experience with the following employer:

Intel                    33 mos.            All competencies

Ms. Martin passed the Uniform CPA Exam in November 2003. The committee reviewed Ms. Martin's file and the documentation provided to support the competencies. The write up was thorough and the committee determined that Ms. Martin had sufficiently met the requirements.

COMMITTEE RECOMMENDATION: Moved by Emberland and carried to approve application. 4 ayes, 1 excused (Selid)

**e. Mullen, Patrick**

Mr. Mullen gained his experience with the following employer:

Intel                    60 mos.            All competencies

Mr. Mullen passed the CPA exam on November 30, 2004. The committee reviewed the application and supporting documents and recommend approval.

COMMITTEE RECOMMENDATION: Moved by Carey and carried to approve the application. 4 ayes, 1 excused (Selid)

**f. Passmore, David**

Mr. Passmore gained his experience with the following employer:

CNF Inc.                    19 mos.            All Competencies

Mr. Passmore passed the CPA Exam in May 2003. CNF is a large transportation company where Mr. Passmore works in the internal audit department. The company provided work samples and a thorough write up of the applicant's experience.

COMMITTEE RECOMMENDATION: Moved by Emberland and carried to approve application. 4 ayes, 1 excused (Selid)

**g. Cyphers, Joshua D.**

Mr. Cyphers gained his experience with the following employers:

Corillian Corp.            16 mos.            All competencies

Arthur Andersen            12 mos.            All competencies

Mr. Cyphers passed the CPA exam in May 1999. Mr. Carey reviewed the application and supporting documents and believes that it adequately reflects competency in all seven areas.

COMMITTEE RECOMMENDATION: Moved by Carey and carried to approve application. 4 ayes, 1 excused (Selid)

**2. Approval of Applications issued administratively**

**a. CPA Certificates/Permits**

61 Certificates

**b. PA Licenses/Permits**

None

**c. Firm Registrations**

15 registrations

**d. Substantial Equivalency Authorizations**

14 authorizations

**C. Items Removed from Consent Agenda**

1. None

**14. CODE OF PROFESSIONAL CONDUCT COMMITTEE**

**A. Approval of Minutes**

1. May 11, 2005

**BOARD ACTION:** Moved by Johnson and carried to accept the minutes.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

**B. CONSENT AGENDA**

1. AICPA Exposure Draft: Financial Relationships

**C. Items Removed from Consent Agenda**

1. AICPA Exposure Draft: Financial Relationships

The Code of Professional Conduct Committee reviewed the Exposure Draft written by the AICPA. The content refers to direct and indirect financial relationships, i.e. retirement plans, 529 plans, college plans etc. The committee reviewed and concluded that the guidance was solid and no comments were appropriate at this time. The exposure draft simply clarifies what is currently understood.

*Board Discussion: Johnson asked the Board if it would be appropriate for the committee to review items relating to outsourcing. The committee discussed this at their meeting and is looking for Board direction. The Board agreed. Ms. Rives noted that the discussion of outsourcing was overlooked in the committee minutes.*

**D. Licensees Recommended for Committee Membership**

1. Scott E. Miller
2. Norbet Charles "Chuck" O'Connor
3. Martha Sargent

The committee needs additional members. The licensees named above are recommended by the Committee. Staff will send an invitation to the licensees to serve on this committee.

**BOARD ACTION:** Moved by Gaffney and carried to approve the list of licensees for committee membership.

**VOTE:** 5 ayes, 2 excused (Bailey, Meisner)

**15. CPA EXAM**

**A. NASBA Resolution of Board of Directors re: Fee Increases**

NASBA published a resolution of the Board of Directors regarding fee increases for the CPA Exam. The NASBA fee increase will not occur before January 1, 2007, and fee adjustments will not occur more than once per year. The NASBA per section fee will increase from \$10 to \$15 January 1, 2007.

## **B. AICPA Grading Fee Increase**

The AICPA is increasing the “per section grading fee” from \$45 to \$65 for all testing events that occur beginning January 1, 2007. This provides 18 months for states to prepare for the increase. The AICPA is also estimating that the fee in 2008 will be \$80 to \$95 by 2009.

## **C. Exam Review Board Letter**

The CPA Exam Review Board reviewed the AICPA procedures for scoring candidate exams. The psychometric consultant reviewed all policies and procedures and found them to be reliable.

## **D. Candidate Problem Report Summary**

The Board reviewed a summary of candidate problems at Prometric testing centers. The most common problem related to software and the copy/paste function which has been corrected.

## **E. CBT Statistics**

Statistics for the CBT exam were reviewed by the Board.

## **F. Top Scores**

AICPA will calculate top scores once each year, for a one year period beginning with the April-May testing window and including all testing windows through March of the following year. Top scores will be calculated for each exam section. Only candidates who have successfully completed all sections of the exam will be considered.

The Board recognizes candidates who receive top scores on the CPA Exam each year at the OSCP Awards Banquet. The following individuals received the top score in one of the four sections of the exam of all candidates who tested during the four testing windows from April 1, 2004 to February 28, 2005, and were honored May 12, 2005.

### **Audit**

Allegra Dungey received a 97 in audit. She graduated with a Master of Science in Accounting from the University of Texas, and passed in the October/November testing window.

### **Business Environment and Concepts (BEC)**

Britt Williamson received a 92 in BEC. Ms. Williamson graduated from the University of Oregon with a Bachelor of Arts, and passed in the July/August window.

### **Financial Accounting and Reporting (FAR)**

Brandon Une received a 97 in FAR. Mr. Une graduated from University of Portland with a Master in Business Administration, and passed in the July/August window.

### **Regulation (REG)**

Allegra Dungey received a 95 in REG. Ms. Dungey also received the top score in audit.

## **G. State Responses to CBT Issues: CA, NE, TX**

The Board reviewed letters regarding the CBT exam that were submitted to NASBA by California, Nebraska, Texas and New York Boards of Accountancy. Issues addressed

include fee increases, late score reporting, diagnostic reports, hardware and software problems and poor quality simulations.

#### **H. Exam Error**

On February 24, 2005 incorrect versions of the Audit and BEC sections were released to Prometric testing centers. These versions were scheduled for administration during the April/May testing window rather than the January/February window. The error affected 517 candidates, including 2 Oregon candidates. The candidates were given the option to retest in the same window at no cost, or to keep the exam and wait for their scores to be released in June 2005 with the other scores for the April/May testing window.

The CBT Administration Task Force sent an explanatory memo to boards explaining the situation and assured that steps have been taken to prevent future occurrences.

#### **I. Site Visit Report**

Anastasia Meisner provided her exam site checklist of the Prometric testing center in Milwaukie. There were no significant findings.

#### **J. AICPA Response to State Concerns about the CBT.**

A letter from Craig Mills, Executive Director of Examinations addressed the responses to six issues presented by NASBA to the AICPA for response. The issues include: simulations and simulation design, AICPA system weaknesses, performance reports, costs and web cast for hearing impaired.

### **16. OLD BUSINESS**

#### **A. Isler & Co. LLC Request**

Isler requested information from the Board regarding commissions and contingent fees. The Board asked Isler to provide clarification of their questions and invited Isler to attend the May Board meeting for further discussion. Isler did not respond.

### **17. NEW BUSINESS**

#### **A. Ending Balance Discussion**

A joint committee of the House and Senate asked the Board to consider the amount of the cash reserves held by the Board as the ending balance. Dallas Weyand, LFO and Satish Upadhyay, BAM attended the meeting to assist the Board in its discussion. The Joint Legislative Committee is shut down and the Board will be required to respond to the House and Senate separately.

**Board Discussion:** *(A comprehensive discussion of the cash reserve question is recorded in the minutes of the May 22, 2005 worksession.) The Board reviewed a forecast projecting costs of investigation and litigation services that will be incurred for investigations that are currently pending. The Board expressed concern about the high cost of litigation, and the need to maintain adequate funds to regulate the profession and protect the public. It was noted that some states have authority to recover costs or to maintain a "major case" fund to insure their ability to regulate and protect the public. The Board agreed that Board representatives will attend the legislative hearings and also that Board members will meet with legislators from the House and Senate to explain the Board's need to retain the Board's ending balance.*

**18. PROCESS OBSERVER REPORT**

Mr. Andersen noted that numerous items were added to the agenda, which can be confusing. The discussions before lunch were very productive. After lunch the meeting was less organized, partly because Board members were excused to meet with legislators. Some business in the afternoon was deferred for lack of a quorum.

**19. NEXT MEETING**

Date: August 22, 2005  
Location: Salem, OR, Board office  
Time: 8:00 Exec Session  
9:00 Board Meeting  
4:00 Oswald West Award Presentation

**20. ADJOURNED**

There being no further business, and a quorum no longer being present, the meeting was adjourned at 3:10 p.m.