

OREGON BOARD OF ACCOUNTANCY
BOARD MINUTES
October 4, 2010

Board of Accountancy

Great Hall

Sunriver, OR

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

BOARD MEMBERS:

Dr. Ray Johnson, CPA, *Chair*
Roberta Newhouse, CPA, *Vice Chair*
Jessie Bridgham, CPA, *Treasurer*
Kent Bailey, CPA
Al Crackenberg, PA
Dr. Roger Graham, *Public Member*

BOARD STAFF:

Pat Hearn, Executive Director
Kimberly Bennett, Exec. Assistant
Noela Kitterman, Investigator

GUESTS:

Stuart Morris, PA, OAIA Representative
Cheryl Langley, OSCP Representative
Debbie Hollingsworth, CPA, OSCP Representative
Carol VanHouten (8:30 a.m.)
Judy Alexander (8:30 a.m.)
Nancy Hubbard (9:00 a.m.)

EXCUSED:

Ann Ferguson, CPA

1. CALL TO ORDER

Chair Johnson called the meeting to order at 8:06 a.m., and announced the meeting was being recorded. Jessie Bridgham was asked to serve as process observer for this meeting. Representatives from both the OAIA and the OSCP were welcomed.

2. APPROVAL OF MINUTES – August 23, 2010

BOARD ACTION: Moved by Mr. Bailey and carried to accept the minutes as written.
Vote: 6 ayes, 1 absent (Ferguson)

3. REPORT OF VICE CHAIR

A. Rule Amendments from discussion in Work Session

1. Inactive Status

The Board would like staff to add language that will require licensees performing attest or compilations or otherwise required to register as a firm to hold an active license. The Board believes inactive CPAs working in a public accounting firm is misleading to the public and should not be allowed.

2. Retired Status

The Board would like to create a retired status which is irrevocable and can be attained once a licensee has been actively licensed as a CPA for 20 years, or if they become permanently disabled or no longer gainfully employed in the profession of accounting. Individuals who choose retired status will be allowed to use the term "CPA – Retired".

3. Practice of Public Accountancy definition

The current definition is unclear as to what an active or inactive licensee may or may not perform. The Board would like staff to draft a rule based on the Oklahoma Board of Accountancy's rule and ensure that the rule clearly applies to all licensees, not just individuals in *public accounting*.

4. Qualification Rules

The Board would like to proceed with the drafted rule revisions for CPA applicants. They made one change to the period of time an applicant is supervised by a single supervisor licensee from 25% to 3 months.

5. Complaint Procedures

The Board would like to proceed with the revisions presented at the work session.

6. Firm

The Board would like to proceed with rules that would terminate a firm registration after a 30-day grace period. Firms that lapse will be required to submit a reinstatement form to the Board and apply reactivation.

The Board directed staff to research the current rules regarding the procedure to follow when a named partner's license is revoked or suspended.

BOARD ACTION: Moved by Ms. Newhouse and carried to move forward with the above rule changes and present to the Board at the next meeting in December.

VOTE: 6 ayes

B. Strategic Business Plan

The Board reviewed the strategic business plan during the work session. The Board would like to add that the Board is seeking semi-independent status during the upcoming legislative session. In addition, the Board would like add to the administrative section of the plan consideration to lowering licensee fees, researching office space options and the online licensing project as well as maintain a reasonable fund balance.

BOARD ACTION: Moved by Mr. Bailey and carried to accept the Strategic Business Plan with the noted revisions.

VOTE: 6 ayes

C. Board and Committee By-Laws

The Board discussed the use of Sturgis Rules of Parliamentary Procedures, currently referred to in the Board and Committee By-Laws. It was decided to replace Sturgis with Robert's Rules.

BOARD ACTION: Moved by Ms. Newhouse and carried to amend the by-laws to reflect the use of Robert's Rules of Parliamentary Procedures.

VOTE: 6 ayes

D. New Policy for Board Minutes & Newsletters on Website

The Board directed staff to draft a policy that minutes and newsletters remain on the Boards website for no longer than 7 years.

5. REPORT OF TREASURER

Ms. Bridgman deferred to Mr. Hearn to give the report. Mr. Hearn was asked to estimate the cost of state services currently provided by the Department of Administrative Services, which could be eliminated if semi-independent status is passed. Mr. Hearn estimated around \$200,000 for the biennium. Chair Johnson would like to work towards reducing licensee fees.

6. COMPLAINTS COMMITTEE

A. Minutes of September 30, 2010 (Information Item)

B. Complaint Investigations

(1) Consent Agenda

*a. Carol VanHouten 10-023CNK
Removed from consent agenda for discussion

b. Carol Urman 10-028CNK

Ms. Urman's brother was in business with another individual. They formed an LLC and developed condominiums in Seaside, Oregon. Ms. Urman's brother suggested she assist with the bookkeeping for the company. The partner accused Ms. Urman of using the CPA designation while inactive and being unprofessional in her conduct. Upon investigation, all claims made by the

complainant were unsubstantiated. The committee found there was insufficient evidence to make a preliminary finding of any violation.

c. Nancy Ayres

10-032CNK

Ms. Ayres finds individuals on the Department of Housing and Urban Development (HUD) website that may have a refund due to them. She contacts them and offers to help them retrieve the refund for a fee. After the complainant agreed to use Ms. Ayers' services, she received a "Limited Personal Service Contract" from Ms Ayers. This contract would have allowed the licensee to serve as the power of attorney for the client, receive the check, take her percentage (fee) and give the remaining money to the client. It was determined, however, that HUD makes the check payable to the client, not the licensee.

There is no evidence that the licensee intercepted a HUD reimbursement check that belonged to her client, or that she held a client's refund check until her services were paid or that she violated the contingent fee rules.

The committee found that there was insufficient evidence to make a preliminary finding of violation.

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

VOTE: 6 ayes

C. Investigations for Discussion

1. Daniel Parr

10-025CNK

Mr. Parr prepared a tax return that included earnings information from an ownership in a Limited Liability Company (LLC). In 2009, the State of Oregon audited the clients' tax return and found that they reported losses in excess of the basis in the LLC.

Mr. Parr did not obtain enough information from the client to realize that the client received distributions in excess of the partnership basis. He only relied on the amount reported in the K-1. Both the Complaints Committee and the Board members believe that Mr. Parr should have asked follow-up questions to his client regarding the basis. Mr. Parr reports that his office is now tracking basis.

The committee found that there is sufficient evidence to make a preliminary find of a violation for due professional care and failure to provide a written response to the Board.

BOARD ACTION: Moved by Ms. Newhouse and carried to accept the committee recommendation.

VOTE: 6 ayes

2. Kurt Ostermiller

10-083CNK

Mr. Ostersmiller was granted a CPA license on April 29, 1996. His license lapsed July 1, 1996 (2 months later). He used the CPA designation on business cards, a website and a "membership profile". The Board notified Mr. Ostermiller that an investigation had been opened.

The Board did not receive a response from Mr. Ostermiller, to the "21-day letter" informing him of an investigation. The investigator then called Mr. Ostermiller. He promptly replied and stated that he had, indeed, responded to the first letter from the Board. He admitted that he had used the CPA designation and also stated that he had the education and ethics of a CPA. He has since removed the designation from the website and business cards.

Mr. Ostermiller participated in the complaints committee meeting. He stated that he has the qualifications to hold himself out as a CPA, despite the fact that he has not maintained an active license for the past 14 years. He stated that he has used the CPA designation only since January 2009.

The Complaints Committee moved that there is sufficient evidence to make a preliminary finding of a violation of ORS 673.320, using the CPA designation on business cards, membership profile and website (3 counts).

Board Discussion: The Board finds this case extremely egregious. Mr. Ostermiller was only licensed for two months, yet held himself out to the public as a CPA. He is now working as a management consultant through his own company, Bridgeport Consulting.

BOARD ACTION: Moved by Ms. Newhouse and carried to find that there is sufficient evidence to issue a Cease and Desist Order to Mr. Ostermiller for 3 instances of holding out as a CPA, assess the maximum penalty for each and revoke his lapsed license.

VOTE: 6 ayes.

3. Nancy Hubbard 10-088CNK

Ms. Hubbard utilized a website provider that incorrectly listed her as a CPA. This was due to a box being incorrectly checked. Ms. Hubbard immediately called the company asking for the error to be corrected; however, the Internet search engines had already captured the erroneous listing, making it nearly impossible to completely correct the problem. Her website also indicated that she offered audit, review and compilation services. It was clear, after conversations with Ms. Hubbard, that she was not using the CPA term "review", but rather the layman's use of that term.

The Board determined that it is nearly impossible for Ms. Hubbard to correct every area on the internet that still has the incorrect information.

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

Discussion: The website errors were an issue, however, it is not necessarily Ms. Hubbard's violation, it was a problematic error and there was no public harm since it is clear that Ms. Hubbard was not performing the items listed on her website.

BOARD ACTION: Ms. Newhouse moved to amend her motion and state that the Board finds there was a violation of ORS 6730320(8), however, no sanctions will be imposed.

VOTE: 6 ayes.

4. Carol VanHouten

10-023CNK

Ms. VanHouten was present with her counsel, Judy Alexander. Ms. Bischoff stated that Ms. Alexander is not a member of the Oregon State Bar and the Board, by permitting her to appear today as Ms. VanHouten's attorney, may be endorsing the unlawful practice of law. Ms. Alexander states that she was told, by the Oregon State Bar, that her presence and representation of Ms. VanHouten was allowable as this meeting is not part of an adjudicatory process. Ms. Alexander agreed that she would allow Ms. VanHouten to speak on behalf of herself and only give her advice when needed.

Ms. Newhouse gave the background of the case. Board staff received a copy of Ms. VanHouten's resume that she purportedly provides to potential clients. The resume indicates that she provides accounting and consulting services in addition to preparing nonprofit tax forms such as Form 990 and the CT-12.

The Complaints committee recognized that Ms. VanHouten was using the safe harbor language when issuing a report. The confusion is whether or not Ms. VanHouten is considered a "permit" holder while on inactive status.

BOARD ACTION: Moved by Ms. Newhouse and carried to accept the committee recommendation that there is insufficient evidence to proceed with a preliminary finding of a violation of ORS 673.160, performing compilation services without registering as a business organization; insufficient evidence to make a preliminary finding of a violation of ORS 673.220(2)(b), Inactive status; insufficient evidence to make a preliminary finding of a violation of ORS 673.320(1), Providing compilation services without an active license; insufficient evidence to make a preliminary finding of a violation of ORS 673.320(3), assuming or using the title or designation "CPA"; and insufficient evidence to make a preliminary finding of a violation of OAR 801-010-0120(1)(b)(B), falsely certifying to the Board that licensee will not perform any public accounting services during the period in which the licensee is granted inactive status.

Board Discussion: Ms. VanHouten reiterated what she told the Complaints Committee and noted that she had letters from clients who state that they were in no way led to believe that Ms. VanHouten held an active license to practice public accountancy. Ms. VanHouten stated that she services about 15 clients, all of which are very small not-for-profit organizations. She enjoys being able to help these organizations with work that costs them considerably less than what a CPA would charge them. Ms. VanHouten has always tried to stay within the laws and rules of the state. She asserts that she called the OSCPA and was told that she was in compliance with the rules if she used

the 'safe harbor language', found at ORS 673.325. Ms. VanHouten takes courses to keep up with changes in the tax law and not-for-profit specific changes.

The Board agrees that the definition of "practice of public accountancy" is confusing. The statute and rule for use of safe harbor language are also confusing, in that they states it can be used by individuals who do not hold a permit issued under ORS 673.150, which is how the Board has interpreted inactive status. Ms. VanHouten offered to relinquish her license all together; however, it is unclear if she would be found in violation for practicing without a permit.

Ms. Newhouse withdrew her previous motion.

BOARD ACTION: Moved by Mr. Bailey that, subject to Ms. VanHouten's surrender of her inactive permit and transfer to lapse status, move to direct staff to enter into a consent order finding no violation of statutes and rules at issue.

Discussion: No further Board action will be necessary and surrender of permit and transfer to inactive will be effective upon execution of the consent order.

VOTE: 6 ayes

7. PROPOSED CASE SETTLEMENTS

A. Paveena Wong

The Board was presented with a Stipulation and Order signed by Ms. Wong. The order requires that Ms. Wong's license be suspended for 2-years, \$7500 in civil penalties and 24 additional hours of CPE.

The Board agreed that this was an appropriate end result. The Order is effective when approved by the Board.

BOARD ACTION: Moved by Mr. Bailey and carried to accept the Stipulation and Order presented.

VOTE: 6 ayes

B. Donald VanLue

The Board was presented with a Stipulation and Order signed by Mr. VanLue. The order requires Mr. VanLue to pay \$750.00 in civil penalties for due professional care, and take an additional 16-hours of CPE, which must be pre-approved by the Board. The CPE must be completed no later than April 1, 2011.

BOARD ACTION: Moved by Ms. Bridgham and carried to accept the Stipulation and Order for Mr. VanLue.

VOTE: 6 ayes

C. Debra Blasquez

The Board was presented with a Stipulation and Order signed by Ms. Blasquez. The order requires Ms. Blasquez to pay a \$750 civil penalty for failing to respond to her client.

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

VOTE: 6 ayes

D. Richard Lefor

The Board was presented with a Stipulation and Order signed by Mr. Lefor. Mr. Lefor is required to pay \$500 civil penalty for violation of due professional care.

BOARD ACTION: Moved by Mr. Bailey and carried to accept the Stipulation and Order presented.

VOTE: 6 ayes

Mr. Bailey congratulated staff on catching up on the 'old' investigations. He noted that there are some outstanding Secretary of State investigations to be completed.

8. REPORT OF EXECUTIVE DIRECTOR

A. On-line licensing project update

The process is still plugging along. It is a slow process and will not be ready for the spring 2011 renewals. Mr. Hearn reported that it will necessary to meet with the Board's budget analyst and develop our request with costs based upon similar projects that are comparable. If we are unable to obtain approval of an increased spending limitation at the December Emergency Board, it will be difficult to do so once the Legislature is in session.

B. Board Staff Changes

Mr. Hearn reported that Joyce Everts' position was filled by Dianna Brainard.

Linda McLaughlin, Licensing specialist with the Board office will be retiring after 33 years with the Board of Accountancy. Linda will work until October 22, 2010 and will officially retire from state service on December 1, 2010.

Mr. Hearn hired a temporary, part-time investigator. Don Crabtree, formerly employed with the Oregon Government Ethics Commission, will be working on non-technical cases, such as conflicts of interest and client records matters and those sorts of complaints. Mr. Hearn has known Mr. Crabtree for many years,

as they worked together at the Ethics commission. Mr. Crabtree is a very skilled investigator and will help reduce the pending caseload.

C. Douglass & Company PC

Douglass & Company submitted their firm renewal on January 6, 2010. The firm had previously requested an extension to complete the current peer review and indicated that they were working with Pauly Rogers & Company to get the review completed. On January 29, 2010, the Board received a letter stating that the firm had been sold and is no longer providing any type of compilation or accounting services. In the letter it also stated that the firm is working to get all required documentation to the peer reviewers and complete the process. Board staff continued to check back for status reports and, on August 6, 2010, issued a Proposed Notice to impose a civil penalty of \$5100, for failure to provide peer review and \$100 for failure to respond.

Mr. Douglass wrote to the Board on August 27, 2010 requesting that the penalties be waived. He has also requested a hearing on the Notice.

Board Discussion: The peer review was due in December 2009. The Board questioned why the late notice by the firm and why they submitted a firm renewal, requested an extension to only weeks later sell the firm.

The Board would like staff to investigate if the firm has, in fact, been sold and if so, to whom. If, after reviewing the sale, it appears that he has sold his client base to someone other than a person who worked for him or a relative, we can waive the peer review requirement, but the penalties will remain.

D. Amendment to June 28, 2010 Minutes

The Board considered case 09-046CNK, regarding a complaint filed against Mr. Edd Doorn, during their June 28, 2010 Board meeting. The meeting minutes did not correctly reflect the actual motion. Board staff offered the proposed revision to the Board for consideration.

From June 28, 2010 Board Meeting:

BOARD ACTION: Moved by Johnson and carried to proceed with notice of intent for violation for the following:

- ~~• OAR 801-030-0020(1) and (2) Professional Misconduct, failed to repay loan to client prior to filing for bankruptcy (1999)~~
- ~~• OAR 801-030-0020(1) and (2) Professional misconduct, Doorn didn't disclose that he was filing for bankruptcy when borrowing money from client in August and November 1999 (loan) while in the process of filing for bankruptcy.~~
- • OAR 801-030-0005(2), Integrity and objectivity, Doorn borrowed money from client in August 1999 and November 1999, which caused a conflict of interest with client.

- OAR 801-030-0020(1) and (2), Professional misconduct and OAR 801-030-0020(8), Business transactions with clients. Doorn entered into a rental/purchase agreement with client. Doorn didn't disclose in writing, to client, their differing interests to client (2004).
- OAR 801-030-0020(1) and (2), Professional misconduct ~~and OAR 801-030-0020(8), Business Transactions with Clients~~. Doorn failed to pay rent to client for a period of eight (8) months.
- [OAR 801-030-0020\(8\) Business transactions with clients when, on April 10, 2007, Mr. Doorn entered into a written agreement to repay \\$85,000 to client, but did not disclose, in writing, their differing interests.](#)
- OAR 801-030-0020(1) and (2) Professional misconduct ~~and OAR 801-030-0020(8) Business Transactions with Clients. Doorn signed an agreement to repay outstanding 1999 loan. When entering into agreement, Doorn didn't disclose their differing interests to client. (2007)~~ [when Doorn failed to repay \\$85,000 to client according to the terms of the April 2007 agreement.](#)

For each potential violation, the Board recommends the maximum civil penalty. In addition, the Board recommends that Mr. Doorn's license be suspended for a period of one to two years.

VOTE: 7 ayes

BOARD ACTION: Moved by Mr. Graham and carried to amend the Board minutes on the Edd Doorn case at the June 28, 2010 meeting.

VOTE: 6 ayes.

E. Daniel Wilson, Reinstatement Application

Mr. Daniel Wilson let his CPA license lapse on June 30, 2010. Mr. Wilson is also an owner of the firm Luther & Wilson, CPA. The firm did not submit evidence of their peer review and was sent a Notice of Proposed Imposition of a Civil penalty. The firm did not respond and the Board issued a Final Order by Default on September 8, 2010.

Mr. Wilson wrote to the Board on September 22, 2010 asking that the Board waive the penalty of \$5,100. He indicates that he just recently became aware that his individual license had lapsed and also just became aware that the firm was non-compliant on their peer review requirement.

Mr. Wilson states that the firm Luther & Wilson will be dissolved effective September 30, 2010 and that he would like to comply with the peer review requirements under Daniel E. Wilson CPA as a sole proprietor.

The Board would like further investigation into this matter before making a decision on whether or not to waive the penalties.

9. PUBLIC COMMENTS
None

10. REPORT OF OAIA

Mr. Morris reported that the OAIA's continuing education courses are well attended despite the bad economy. They will be keeping up with any legislative actions so that they have an oversight of all developments.

11. REPORT OF OSCPA

The OSCPA will hold their Professional Update on December 3, 2010. Dr. Johnson and Mr. Hearn will attend and make a presentation. The 2011-12 slate of officers has been announced.

12. OLD BUSINESS

A. Dan Christensen Letter

Mr. Christensen sent a letter to the Board expressing his gratitude for their action against his brother, David Christensen.

13. CONTINUING PROFESSIONAL EDUCATION

A. Minutes of September 14, 2010 (Info)

B. Consent Agenda

(1) Municipal Auditor Applications

- a. Russell C. Cramer
- b. Jonathan David Grover
- c. Cara Renee Kness
- d. Kari Jean Ott

BOARD DISCUSSION: Mr. Bailey noted that many of the application brought before the committee were deferred because of the confusion on proper courses eligible for the municipal auditor license.

BOARD ACTION: Moved by Mr. Bailey and carried to approve the consent agenda.

VOTE: 6 ayes.

C. Secretary of State Audits Division Report Review Letters

The committee deferred all review letters at their meeting. In the past, the committee had made a decision on whether or not to forward to the Complaints Committee solely based on what Mr. Phil Hopkins' letter stated. The committee would like the licensee's side before making that decision.

In addition, the committee is also receiving reports from Mr. Hopkins that require field review letters, some are numerous, others are not. Mr. Bailey asked the Board whether they would like to view those reports. Ms. Bridgham believes that, if Mr. Hopkins finds a deficiency that is egregious, it is his duty as a CPA to report it to the Board in the form of a complaint.

BOARD ACTION: Moved by Mr. Bailey and carried to advise the CPE Committee that they need to review the field reports.

VOTE: 4 ayes, 1 nay (Bridgham) 1 abstention (Graham) *Mr. Graham abstained because of a lack of understanding of the topic.*

14. PEER REVIEW OVERSIGHT COMMITTEE
No meeting

15. QUALIFICATIONS COMMITTEE

(Board Member Ferguson participated by telephone in the Qualifications Committee segment)

A. Minutes of September 15, 2010 (Information Item)

B. Consent Agenda

(1) Recommendations

- a. Kathryn Buzbee/Approve
- b. Ethel Gallares/Approve
- c. Erin Galyean/Approve
- d. Gabriela Phillips/Approve
- e. Luketan Somnasang/Approve
- f. Jeffrey Stevens/Approve

(2) Approval of Applications

- a. 26 CPA Certificates/Permits
- b. 0 PA Licenses/Permits
- c. 3 Firm Registrations

BOARD ACTION: Moved by Ms. Ferguson and carried to accept the consent agenda.

VOTE: 7 ayes.

Board Discussion: Ms. Ferguson joined the meeting by phone to discuss some concerns raised by the Qualifications Committee at their last meeting. The Board would like the committee to focus on the quality of the competencies achieved rather than the time element. Mr. Johnson volunteered to participate in the upcoming Qualifications sub-committee meeting to give support and guidance.

16. CPA EXAM

A. Exam Statistics

Exam passing rates continue to increase. There will be an influx of candidates the last quarter of 2010 in anticipation of the new format, including testing on IFRS, in January 2011.

17. CODE OF PROFESSIONAL CONDUCT
No Meeting Held

18. NEW BUSINESS

Mr. Morris, OAIA Representative and Peer Review Oversight Committee member, announced that he had recently attended an OSCP RAB (Review Acceptance Board) meeting. He indicated he was very impressed with the processes and that the system can be trusted.

19. PROCESS OBSERVER REPORT

Ms. Bridgham commented on the process of the meeting, noting the ample discussion on rules pertaining to the VanHouten case and the confusing terms in statute and rule. She thanked the members for their time, effort and energy this weekend.

20. The meeting adjourned at 2:05 p.m. The next meeting will be held on December 6, 2010 in Salem, Oregon.