

**OREGON BOARD OF ACCOUNTANCY  
2008 FALL WORK SESSION  
MINUTES**

**October 5, 2008**

**3218 Pringle Rd. SE #110**

**Salem, Oregon**

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

**Board Members**

Jens Andersen, CPA, *Vice Chair*  
Kent Bailey, CPA, *Chair*  
Eric Lind, *Public Member, Co-Treasurer*  
James Gaffney, CPA  
Stuart Morris, PA  
Roberta Newhouse, CPA  
Ray Johnson, CPA, *Co-Treasurer*

**Staff Members**

Carol Rives, *Administrator*  
Noela Kitterman, *Investigator*  
Joyce Everts, *Cmte. Coordinator*  
Heather Shepherd, *Cmte. Coordinator*

**Guests**

Jeff Dover, AAG  
Cheryl Langley, OSCPA  
Janice Essenberg, CPA, OSCPA  
Karey Schoenfeld, CPA, OSCPA  
Steve McConnel, CPA, OSCPA  
Sherry Bango, AICPA  
Ken Bishop, NASBA  
Noel Allen, Esq., NASBA

**CALL TO ORDER**

A quorum being present, Vice Chair Andersen called the meeting to order at 8:31 a.m. Roberta Newhouse was appointed process observer and guests were introduced.

**2. Professional and Regulatory Issues**

**A. Mobility**

The OSCPA presented a draft mobility bill that was submitted for drafting and presentation in the 2007 legislative session. Mr. Gaffney outlined discussions from meetings of the mobility task force and noted that the task force did not reach consensus on the question of mobility, and that the OSCPA bill does not resolve all of the Board concerns. The Board has not yet stated its position regarding the bill. The Board wants to assure that Oregon citizens who have legitimate claims against an out of state CPA who provided services in Oregon are not denied access to the courts for redress.

Mrs. Bango stated that the goal of the AICPA is to establish uniformity, noting that the original UAA Section 23 resulted in disparities among the state requirements that caused confusion. AICPA asserts that there has been no lapse of public protection in the four states that adopted pure mobility.

Noel Allen and Ken Bishop have visited different state Boards and have responded to many of the same questions that the Oregon Board presents. Mr. Allen believes that the “no escape” provision is enforceable and would not be dependent on another state’s willingness to take on out-of-state conduct. He bases this premise on similar licensing provisions in the insurance industry and the securities industry. Noting the increasing use of electronic communication to perform professional services including audits, Allen questioned whether state boards can control that activity. He noted that most state boards have cease and desist authority over any individual, not limited to licensees. Allen also questions whether electronic practice is subject to a cease and desist order.

Allen explained the differences between “overt” consent, “implied” consent and “deemed” consent. “Deemed” consent is implicit in the proposed mobility provisions, and has been sustained by the courts. It is stronger than “implied” consent, but will nevertheless be interpreted differently by the appellate courts.

Mr. Dover agreed with Allen’s general statements but disagrees that enforcement will be simple or inexpensive. The cost of bringing a case in another state would be very high. “Automatic” jurisdiction does not correlate to “automatic” procedural requirements.

Board members also questioned the level of discipline that another state might take in a case that is referred for conduct in Oregon. Some states have very minimal disciplinary procedures. Oregon’s authority to discipline could be watered down if we cannot take appropriate action against the non-licensee under “deemed” consent.

Mr. Allen stated that under “deemed” consent, the licensee is lawfully practicing in your state, and that disciplinary actions should focus on wrongdoing rather than the lack of a license. A violation of licensing requirements could be conducted against an individual *in absentia* through an administrative hearing. Noting that there is already a strong federal overlay on the public accountants (IRS, SEC, PCAOB), actions taken for licensing requirements (i.e. technical violations) open the Board to pre-emption arguments and actions.

Mr. Gaffney introduced the idea that firms could choose to register with the OR Secretary of State as a foreign business, and avoid the requirement to license individuals within the firm through substantial equivalency. Mr. Allen countered that this action may have unintended consequences, and that the authority for public redress is already in the UAA. The driving force was not to placate large firms, and that the provisions should work for firms of any size.

Mr. Bishop noted that the concerns of the Oregon Board have been considered and overcome by other state boards. The requirement that a state board *shall* investigate is a wide brush, and it is the board has great discretion in its determination of the extent of investigation that may be required. Some states have entered interstate compacts.

Board members agree that Oregon requirements should not present an impediment to interstate practice, but it is imperative that the Board retains its authority to protect Oregon citizens.

## **B. 150 Hour Requirement**

NASBA has issued a draft paper addressing the educational requirement for candidates to sit for the Uniform CPA exam, specifically whether an individual should be allowed to sit for the exam with 120 semester hours of education. No license would be issued until they have completed 150 semester hours of education. The Board discussed the following issues:

- If eligibility for exam is 120 semester hours, no longer in compliance with the UAA
- Whether candidates entering the work force are better qualified based on the additional education
- Whether candidates taking advantage of the additional educational requirement or just completing the hours i.e. master programs or accounting related course work

The Board would like to add this topic to the Fall 2009 Work Session for additional discussion and consideration.

## **C. CPA Exam Fingerprint Requirement**

Deferred to Spring 2009 Work Session

## **D. CPA Exam Ownership**

Deferred to Spring 2009 Work Session

## **3. Staff and Board Reports – Informational**

### **A. Biennial Report of legal fees**

### **B. 2009-11 Budget Status**

1. Agency Request Budget
2. Governor's Request Budget (December 31)

## **4. Administrative Matters**

### **A. Administrative Rule Development**

1. Rules to be filed for January 1, 2009 effective date

#### **a. Division 001**

Revises the effective date of professional standards to January 1, 2009.

#### **b. Division 010**

A new rule implements and clarifies the Board's statutory authority (2005) to obtain cost recovery of Board investigations;

Clarify CPA examination rules;

Clarify that sole proprietors may register as a professional corporation or limited liability company.

Modify exam rules to establish a 90-day period in which exam candidates must complete the application process. This includes filing an application and having all transcripts or other necessary documents forwarded to the Board. If not completed within 90 days, the Board will deny the application as incomplete and the candidate forfeits the application fee. The Board directed staff to include this requirement in candidate information.

**c. Division 030**

Revisions require written disclosure when licensees and clients engage in business transactions that may affect the licensee's objectivity. The purpose of this revision is to assure that clients are informed if the licensee's objectivity is impaired. The Board can clarify specific examples in an FAQ on the website.

**d. Division 040**

Revisions require new licensees to complete an Oregon specific ethics course during the first renewal cycle. All other active licensees will be required to report 4 hours of general ethics each renewal cycle.

Revisions also reduce reinstatement fees for certain applicants.

The Peer Review committee recommendation that licensees who perform audit or attest services be required to have audit and attest specific CPE. The Board did not approve this provision, based on the general requirement that licensees take CPE that contributes to professional competency.

**e. Rule Hearing, December 1, 2008**

Stuart Morris agreed to officiate.

The hearing will be at the Board office from 10 a.m. to 12:00 noon.

**B. Complaint Investigation Process Review**

1. The Board reviewed revised the definitions of possible disciplinary actions:

**No Violation**

*Investigation of complaint allegations resulted in finding that alleged conduct does not violate Board statutes or rules*

**No Action**

*Investigation of complaint allegations resulted in the following non-exclusive determinations:*

- *Insufficient evidence provided by either complainant or licensee to support a conclusion that a violation did or did not occur;*
- *In its discretion the Board determines that investigation of the complaint is not necessary for various reasons, including: (1) other agency with greater nexus to the conduct has taken disciplinary action that is deemed to be sufficient; (2) investigation and subsequent disciplinary action is beyond the resources of the Board*
- *Complaint is submitted anonymously and allegations cannot be independently confirmed*

**No Jurisdiction**

*Investigation of Complaint allegations results in finding that conduct is not within the Board's regulatory authority, statutes or rules. Examples include:*

- *fee disputes*
- *conduct that occurred contemporaneously with professional accounting services, but that is not the responsibility of the licensee (legal services)*
- *conduct complained of occurred in another jurisdiction, or individual is not licensed by the Board, or not required to be licensed by the Board*

**2. Complaint Inquiry process**

The Board requested that the Complaints Committee review the attached disciplinary inquiry process and report back to the Board. (*Attachment A*)

### **3. Review and investigation of municipal audit review letters** *(no item)*

The Board requested the Division of Audits (DOA) to submit copies of its audit review letters to the Board of Accountancy, and has received seven (7) audit letters from the DOA. It was noted that in some cases, the Board perceives there are audit standard errors in cases that the DOA letter does not indicate errors. Hopkins responded that his office prefers to make no judgments about firm violations of auditing standards.

Rives noted that if the Board decides to open a complaint against a Firm based on such letters, the case will be reviewed by a paid consultant. The Board of Accountancy has no in-house resources to review these cases.

Janice Essenberg, CPA is a member of the OSCP Board of Governmental Accounting. This group is working on a taskforce to determine guidelines for audit reviews. Cheryl Langley stated that members of the OSCP Governmental Audit Committee are frustrated with the DOA audit review procedures. The Committee would like to have better communications with DOA and better guidelines to minimize violations in grey areas. Langley suggested improving education regarding firm audit reviews.

The Board agreed that is important to review the audit reports. The OSCP taskforce to determine guidelines for audit reviews is meeting November 12, 2008; Board member Ray Johnson and Board investigator Noela Kitterman were invited to attend the meeting.

### **4. Legal preparation for administrative hearings**

Preparation for Administrative Hearings include the following:

- Prior to Board vote on any disciplinary action, Board Chair asks AG for comments regarding the proposed motion.
- When request for hearing is received, Board staff sends complete copy of investigation file to AAG.
- Pre-hearing conferences should be used as settlement opportunities.
- Hearing dates should remain on docket whenever reasonable to provide leverage for settlement.
- Prior to hearing, AAG should:
  - Clarify and address inconsistencies on Respondent's Answers and Defenses, and notify Administrator of relevant issues
  - Conduct witness interviews and witness preparation of all witnesses, including board staff
  - Use witness affidavits when appropriate

Dover stated that the pre-hearing conferences are currently used as an opportunity for settlement. Witness affidavits may be helpful if there is a possibility that the witness may change their position, but they are labor intensive and Dover does not recommend using them as a standard procedure. He suggested that the Board record conversations when guests attend Board meetings; tapes are easy to save and easy to share, and he sees no disadvantage in doing so.

### **C. Administrator Recruitment**

First round interviews were conducted September 29, 2008. Final round interviews are scheduled October 7, 2008.

### **D. Performance Measures and Policies - informational**

#### **1. 2008 Annual Performance Progress Report**

The Board reviewed the report with no discussion.

### **E. Request to Approve Foreign Accreditation Evaluation Service**

Board rules limit foreign transcript evaluations to those that are completed by an evaluation agency that is a member of the National Association of Credential Evaluation Services, Inc. (NACES). ACREVS is an accreditation evaluation service that has requested the Board to accept its credentials and extend the rules to allow ACREVS to provide evaluations for Oregon CPA exam and licensure purposes. ACREVS Inc is not a member of NACES. This change would require administrative rule changes to 801-010-0085.

Mr. Johnson agreed to review the information submitted and to prepare a recommendation for the Board to review at the December 2008 meeting.

### **5. Process Observer Report**

Mrs. Newhouse reported that there was a little confusion because guests were scheduled at the beginning of the meeting although the item of discussion was not the first item on the agenda. The conversation on Mobility went longer than scheduled but was appropriate and allowed all individuals time to speak. The Board was able to recover part of the time with shorter discussion on other areas of the agenda.

### **6. Adjourn**

The meeting adjourned at 3:30 p.m.