



Mission:

Protecting consumers by ensuring that Oregon tax professionals are competent and ethical in their professional activities

**OREGON BOARD OF TAX PRACTITIONERS
PUBLIC BOARD MEETING MINUTES
Thursday, January 7, 2016**

Board Members:

Nutan Arora, LTC, EA, Chair
Susan Gallagher-Smith, LTC, EA, Vice-Chair
Michael Addington, LTC, EA
Jo Anne Vetter, LTC, EA
Glen Longworth, LTC, EA

Board Staff:

Howard Moyes, Executive Director
Heather Shepherd, Compliance Specialist
Shari Barrett, Licensing Specialist
Jane Billings, Exam & Ed Coordinator
Catriona McCracken, Sr. Asst. Atty. General

1. Call to Order

Chair Arora called the meeting to order at 9:05 a.m. Roll call was completed.

2. Amendments to Agenda

Susan Gallagher-Smith asked for time at the end of the agenda to discuss proposed Oregon Administrative Rule changes.

Michael Addington asked that approval of the November 5, 2015 Board Meeting Minutes be added to the agenda. Mr. Addington also asked for time at the end of the agenda to make comments.

3. Executive Session

Chair Arora closed the public session at 9:10 a.m. to convene in Executive Session pursuant to ORS 673.730(3) and 192.660(2)(f). The Executive Session is closed to the public. The Executive Session concluded at 12:00 p.m.

4. Public Session

Chair Arora called the public meeting to order at 12:20 p.m.

5. Approval of November Board Meeting Minutes

Chair Arora made a motion to approve the November 5, 2015 minutes.

Motion passed 5-0

6. Administration Update

Mr. Moyes provided a status report on the Board's revenues and expenses for the first five months of the 2015-2017 biennium. Revenues for the July 2015 through November 2015 period were \$174,701. Expenses for the same period were \$233,570. Expenditures are in line with the Board's legislatively approved spending authority. Mr. Moyes also noted that the flat-fee agreement with the Department of Justice has already saved the Board more than \$13,000 in the current biennium.

Mr. Moyes then provided the Board with an update on the database migration project. A contract between the Board and BES Technologies was signed in December and a test file was successfully uploaded to BES. Once DAS completes their server upgrades, BES will provide the Board with a fully functional test database. Online license renewals and electronic payment processing are expected to be available in April 2016.

Mr. Moyes concluded his update by presenting a template for a one-page monthly newsletter to replace the current 12-page newsletter that is published in July and November. The Board discussed the pros and cons of publishing a monthly newsletter. Points in favor included more frequent communication with stakeholders, more timely information, and much quicker and easier to produce. Comments of concern included the need to have content every month and that tax practitioners may not have time to read a newsletter published between January and May. The Board also wanted to ensure that the majority of monthly newsletter articles continued to be written by Board Members. Mr. Moyes assured the Board that the majority of the content would come from the Board Members. The monthly newsletter will be published on a trial basis beginning January 2016 and will be revisited at future Board Meetings.

7. Licensing Update

Ms. Barrett presented data on the number of licensees and registered businesses. As of December 31, 2015, there were 1,818 active Licensed Tax Consultants and 1,642 Licensed Tax Preparers. That is slightly less than December 2014, which had 1,846 Licensed Tax Consultants and 1,657 Licensed Tax Preparers. Business registrations also declined marginally from 2014 to 2015. There were 1,109 registered businesses and 209 registered branch offices in December 2015. In December 2014, the numbers were 1,122 and 233, respectively.

Mr. Moyes asked the Board for guidance on how to process applications for licensure in which the applicant checked "Yes" to any of the compliance questions in Section 2 of the application. The Board members asked that all such applications be placed on hold until they could be presented to the Board for review and approval/disapproval.

8. Exam & Education Update

Ms. Billings presented reports showing the pass rate on the Board's preparer and consultant exams for the years 2011 through 2015. Pass rates on the preparer exam were: 64% in 2011; 58% in 2012; 58% in 2013; 51% in 2014; and 48% in 2015. Pass rates on the consultant exam were: 23% in 2011; 30% in 2012; 32% in 2013; 20% in 2014; and 18% in 2015. For the consultant state-only exam, the pass rates were: 67% in 2011; 58% in 2012; 61% in 2013; 53% in 2014; and 65% in 2015. The Board made changes to the preparer exam, which took effect in September 2015. Since that time, 385 preparer exams have been taken with an overall pass rate of 55%. The number of people taking exams remained relatively steady between 2014 and 2015.

Ms. Billings advised the Board that reports showing instructor pass rates would not be available for 2015 due to numerous problems with the current database. Board members discussed the efficacy of re-entering all the data for 2015 so reports could be produced. A consensus emerged that it would be better to wait until the new database is operational and reports with clean and reliable data would be produced in 2016.

The next item Ms. Billings discussed was the status of the continuing education audits. Due to the large number of exams taken in November and December, the audits were placed on hold. Ms. Billings said she will begin reviewing the outstanding audits and notifying licensees of their status. The Board asked for a report at its May meeting, including the names of licensees who did not pass the audit.

The final item in the Exam and Education update was a discussion about whether a proposed two-hour, Oregon-specific continuing education course developed by an external organization should be approved by the Board. The Board asked Ms. Billings to contact the organization and request additional information about the course content, practice exam questions and answers, and reference materials. The Board will wait to make a decision until the information has been provided and it has been reviewed. The Board also suggested that staff develop written criteria for evaluating proposed educational courses in the future.

9. Compliance Update

Ms. Shepherd gave an overview of calendar year 2015 compliance cases. She noted there were 61 complaints during the previous 12 months. Out of that number, 38 have been closed (includes issuance of civil penalty, warning, no action taken, no violation, etc.), 7 are pending legal action, 6 are open investigations, and 10 are pending investigation. The largest number of violations were for unlicensed and/or unregistered activity, followed by advertising, competency, supervision, and continuing education.

Ms. Shepherd also noted that Board staff would be conducting compliance site visits in the coming weeks.

Disciplinary Cases/Votes

Holly Peterson – Gresham, Oregon

Moved by Vice-Chair Gallagher-Smith that the Board approve the Settlement Agreement and Stipulated Final Order as presented.

The motion passed 5-0.

Case #540

Motion #1

Moved by Vice-Chair Gallagher-Smith that the Board approve the Final Order by Default regarding the Cease and Desist Notice issued June 24, 2015 in Case # 540 as presented.

The motion passed 5-0.

Motion # 2

Moved by Vice-Chair Gallagher-Smith that the Board issue a Notice of Intent to Impose Discipline and Right to a Hearing (Civil Penalties) for:

One-hundred fifty (150) violations of ORS 673.615(2) and OAR 800-010-0030(4), unsupervised activity, at \$100 per violation;

One-hundred fifty (150) violations of ORS 673.643(1)(b) and OAR 800-025-0040(1), no Designated Consultant, at \$50 per violation;

One-hundred fifty (150) violations of ORS 673.673(1)(b) and OAR 800-025-0060(1), no Consultant in Residence, at \$50 per violation;

Two (2) violations of OAR 800-010-0050(3) and (6), advertising, at \$50 per violation;

Fifteen (15) violations of ORS 673.615(1), unlicensed activity, at \$250 per violation;

Revocation of License per ORS 673.700; and
the costs associated with the disciplinary or other actions taken by the Board in this
matter.

The motion passed 5-0.

Mary Wohler – Portland, Oregon

Moved by Vice-Chair Gallagher-Smith in Case # 526 that the Board approve the
Settlement Agreement and Stipulated Final Order as presented.

The motion passed 5-0.

Case # 514

Motion # 1

Moved by Vice-Chair Gallagher-Smith that the Board deny the late hearing request
received from Mr. Nguyen on June 2, 2015 for the reason that good cause was not
shown regarding Case # 514.

Motion #2

Moved by Vice-Chair Gallagher-Smith that the Board approve drafting of a Final Order
by Default regarding Case # 514 Notice of Intent to Impose Discipline and Right to
Request Hearing (Civil Penalty) issued on April 20, 2015 and served on April 22, 2015 to
include all cost associated with this action.

The motion passed 5-0.

Donald Ullman – Dallas, Oregon

Moved by Vice-Chair Gallagher-Smith in Case # 548 that the Board approve the
Settlement Agreement and Stipulated Final Order as presented.

The motion passed 5-0.

Case # 524

Moved by Vice-Chair Gallagher-Smith that the Board approve the Final Order by
Default as presented regarding Case # 524.

The motion passed 5-0.

Case # 546

Moved by Vice-Chair Gallagher-Smith in Case # 546 that the Board issue a Notice of
Intent to Impose Discipline and Right to a Hearing (Civil Penalties) for:

One (1) violation of ORS 673.700(3) and OAR 800-010-0017(2), negligence, at \$100 per
violation; and

the costs associated with the disciplinary or other actions taken by the Board in this
matter.

The motion passed 5-0.

Case # 547

Moved by Vice-Chair Gallagher-Smith in Case # 547 that the Board dismiss the case.

The motion passed 5-0.

Case # 549 Moved by Vice-Chair Gallagher-Smith in Case # 549 that the Board issue a Notice of Intent to Impose Discipline and Right to a Hearing (Civil Penalties) for:

Two (2) violations of ORS 673.700(3) and OAR 800-010-0017(2), negligence, at \$100 per violation; and

the costs associated with the disciplinary or other actions taken by the Board in this matter.

The motion passed 5-0.

Case # 550 Moved by Vice-Chair Gallagher-Smith in Case # 550 that the Board issue a Notice of Intent to Impose Discipline and Right to a Hearing (Civil Penalties) for:

Three (3) violations of OAR 800-010-00171(1), incompetence, at \$500 per violation;

Three (3) violations of ORS 673.700(3) and OAR 800-010-0017(2), negligence, at \$500 per violation;

Three (3) violations of ORS 673.705(7) and OAR 800-010-0025(8), integrity, at \$500 per violation;

Three (3) violations of OAR 800-010-0045, experience and competence, at \$500 per violation; and

the costs associated with the disciplinary or other actions taken by the Board in this matter.

The motion passed 5-0.

Case # 551 Moved by Vice-Chair Gallagher-Smith in Case # 551 that the Board issue a Cease and Desist Order to include Notice of Intent to Impose Discipline and Right to a Hearing (Civil Penalties) pursuant to ORS 673.730(5) and (6) for:

One (1) violation of ORS 673.615(1), unlicensed activity, at \$250 per violation; and

the costs associated with the disciplinary or other actions taken by the Board in this matter.

Cara Keener – Eugene Oregon

Motion #1

Moved by Vice-Chair Gallagher-Smith in Case # 530 that the Board Withdraw the Motion to Issue a Notice of Intent to Revoke License and Right to a Hearing (Civil Penalties) made on May 14, 2015.

The motion passed 5-0.

Motion #2

Moved by Vice-Chair Gallagher-Smith in Case # 530 that the Board staff be directed to enter into Settlement Agreement and Stipulated Final Order discussions with Respondent.

The motion passed 5-0.

Waiver Requests

Amy Hobson submitted a request to be the Designated Consultant for Liberty Tax 15629 of Hillsboro, Oregon; and Expert Tax Service of Hillsboro, Oregon. The request is based on Amy being the sole owner and only employee of Expert Tax Service.

Moved by Vice-Chair Gallagher-Smith that the Board **approve** the request for waiver by Amy E. Hobson for Designated Consultant pursuant to OAR 800-025-0040(5-8).

The motion passed 5-0.

Wanda Conlin submitted a request to not have a Designated Consultant or Consultant in Residence for the business registration application that she was submitting.

Moved by Vice-Chair Gallagher-Smith that the Board **deny** the request for waiver by Wanda Conlin for Designated Consultant pursuant to OAR 800-025-0040(5-8) and Consultant in Residence pursuant to OAR 800-025-0060(1-8).

The motion passed 5-0.

Daniel Stearns submitted a request to be the Designated Consultant and Consultant in Residence for North Willamette Tax Services LLC of Canby, Oregon; and Conlin & Company LLC of Canby, Oregon.

Moved by Vice-Chair Gallagher-Smith that the Board **approve** the request for waiver by Daniel Stearns for Designated Consultant pursuant to OAR 800-025-0040(5-8) and Consultant in Residence pursuant to OAR 800-025-0060(1-8).

The motion passed 5-0.

10. Rulemaking Update

Susan Gallagher-Smith noted that she and Michael Addington had completed their review of the suggested rule changes developed by the Rules Advisory Committee. Ms. Gallagher-Smith asked that the Board review their suggested changes at the May 2016 Board Meeting. Mr. Moyes said the proposed changes would be posted to the Board's web site so the public has an opportunity to review and comment on them before the May meeting.

11. Public Comments

Dale Marino asked the Board if it would find a licensed practitioner to be in violation of its rules and statutes if the practitioner prepared and filed a return that included revenue from a marijuana business. The Board noted that Federal law and Oregon law treat marijuana businesses differently. Therefore, the practitioner would need to ensure that the federal return conformed to all the requirements of federal law and the Oregon return conformed to all state requirements. The Board also commented that federal tax law requires reporting of all revenue, whether or not it was earned legally. As such, reporting income from marijuana sales (as applicable) on the federal return should be expected. In such a scenario, the Board would not view the act of reporting revenue from marijuana sales as an act that would jeopardize their status as a licensed tax practitioner in Oregon.

Randy Shimek noted that the instructor pass/fail reports are important and that course instructors take their student pass/fail rates very seriously. He asked the Board to ensure that any reports produced from the new database be as consistent and comparable as possible to previous reports.

12. Board Member Comments

Mr. Addington expressed concern that there didn't appear to be written procedures for some of the Board's processes and administrative activities. He also requested that future Board meetings start promptly at 9:00 (or the applicable noticed starting time).

13. Adjournment

With no other business or public comments, Chair Arora adjourned the meeting at 2:40 p.m.