



OREGON BOARD OF ACCOUNTANCY
COMPLAINTS COMMITTEE
PUBLIC SESSION MINUTES
April 24, 2015

3218 Pringle Rd SE #110
Salem, OR 97302

1st Floor Conference Room

503-378-4181

Committee Members Present

Josh Dunlap, CPA
Kent Bailey, CPA (by telephone)
Bill Holmes, CPA
Joe Sullivan, CPA
Haley Lyons, CPA
Nancy Young, CPA

Excused Absences

Chris Walter, CPA
Jessie Bridgham, CPA

Guests Present for All or Part of Public Session

Cynthia Anderson
Steve Yaw (by telephone)
Peggy Cole, CPA

Staff

Martin Pittioni, Executive Director
Noela Kitterman, CPA, Investigator
Theresa Gahagan, CPA, CFE, Investigator
Bethany Reeves, Compliance Specialist

Board Liaison

Scott Wright, CPA

Board Counsel

Susan Bischoff, AAG

1. Call to Order

Acting Chair Mr. Dunlap called the public session to order at 8:35 a.m. and announced that the meeting was being recorded. Since this was the first meeting where new Board Liaison Scott Wright and new BOACC member Nancy Young were in attendance, everyone present introduced themselves and briefly commented on their areas of practice.

2. Review and Approval of Agenda

No changes were made to the agenda.

4. Approval of Minutes

A. BOACC Public Session Minutes, January 16, 2015

Discussion: Nancy Young announced she would abstain because she was not present at the January 16, 2015 BOACC meeting.

Committee Action: Moved by Mr. Holmes and carried to accept the January 16, 2015 public session minutes.

Vote: 5 ayes – unanimous, 0 – nays, 1 – abstain (Young)

3. Old Business - Review of Board Actions from February 2, 2015

Mr. Wright reported that the Board agreed with virtually all of the Complaints Committee recommendations from the January 6, 2015 and the January 16, 2015 BOACC meetings. He reviewed the

cases that were unanimously voted on by the Board in line with the BOACC recommendations, and specifically noted the cases where the Board had a split vote or voted differently than the BOACC recommendations. The differences were:

- Case #14-055 - Leon Fu – Split vote with 4 ayes and 2 nays on the motion of sufficient evidence for finding a violation of practicing public accountancy when not properly licensed to do so, by being employed at a public accounting firm while in lapsed status.
- Mr. Pittioni noted that the Board may be challenged to resolve cases such as this if Respondents do not agree because there is tension on how many resources the Board should expend on a contested case process when there is little or no evidence of risk of harm to the public. He added that for that reason in some cases there may end up not being a disciplinary outcome even with violation votes on the record.
- Mr. Wright commented that when considering the costs and benefits, a non-disciplinary letter of concern may be a better outcome for less serious conduct.
- Case #14-020 – George Cornwall – The Board did not find a violation of providing compilation services in an unregistered firm because the compilation(s) the Respondent allegedly prepared could not be documented. However, the Board did add a charge of Professional Misconduct for practicing without license.
- Case #14-028 – Gary Schutz – Split vote with 5 ayes and 1 nay on the motion of sufficient evidence for finding a violation of Due Professional Care for failing to determine if the translation service business income should be included on the client’s individual income tax return; and the motion of finding a violation of Professional Misconduct for failing to timely deliver invoices failed with a split vote.

Chair Dunlap noted that he found the detailed descriptions of where the Board differed from the BOACC helpful, and said he thought they could skip the review of actions where the Board vote was the same as the BOACC recommendations.

5. Update from Executive Director

Mr. Pittioni provided information on the following points:

- The Ways and Means subcommittee has approved two fully funded investigator positions.
- Investigator Noela Kitterman will be retiring on July 1, 2015. The announcement of recruitment for the open position was just posted and will close on May 18, 2015. Mr. Pittioni asked those present to encourage potential candidates to apply.
- Two days ago the Court of Appeals released a significant decision in the Kenneth Gustafson case [BOA Case #09-116CNK]. Mr. Gustafson received a client’s \$103,000 IRS refund check without the client’s knowledge or permission by changing the address on the client’s tax return to his office address. He negotiated the check by depositing the money in his own account, took out the fees he was owed by the couple [over \$60,000], and then sent them a check for the remainder. The client filed a complaint indicating that the refund was not Gustafson’s money, it was the client’s money. The Board completely prevailed at the appellate level but it took three years to get a decision from the appellate court.
- Ms. Bischoff added that attorney Kelly Gablicks tried the case. The ALJ in the case agreed with the Board that a violation had occurred, but instead of the 3-year suspension the Board wanted to impose, the judge considered the standards that apply to lawyers, and recommended a 60-day suspension in the proposed order. The Board issued a final order with a 2-year suspension. Gustafson appealed that final order. Through this decision, the Court upheld the Board’s right to interpret its statutes.

6. New Business – GovSpace Update and Implementation

Ms. Reeves provided an update for the group on the GovSpace electronic collaboration tool. She noted that this was the first meeting where all of the meeting materials were available electronically to the entire Complaints Committee. She added that staff are considering scanning the documents on a lower resolution to keep the file size smaller. She noted that she is happy to help resolve any technical issues BOACC members may have, and invited input from the BOACC members on their experience using GovSpace. Mr. Pittioni noted that the Board is exploring other options, such as the possibility of issuing a Board-owned iPad to each BOACC member, which would be controlled by the Board and used only for Board purposes, and which might facilitate the electronic distribution of information. He added that he used this process at another agency and found it very efficient and secure. Mr. Holmes asked if hard copies would still be distributed in that scenario. Mr. Pittioni said it was a less-preferred option, but hard copies could be provided.

7. Convene Executive Session

At 9:29 am, executive session was convened pursuant to ORS 192.660(2)(f), for the purpose of examining exempt public records.

8. Committee Recommendations

After the executive session concluded, public session was reconvened at 3:08 pm. Mr. Yaw joined the meeting by teleconference. He was notified that the meeting was being recorded. Mr. Dunlap announced to all present that the meeting was being recorded.

A. Case #14-021

1. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010 (1)(b) - Due Professional Care, for failing to obtain an engagement letter.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays
2. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1) - Professional misconduct, for allowing third parties access to client financial information.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays
3. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1) - Professional misconduct, for tenant lock out.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays
4. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b) - Due Professional Care, for preparing investor promissory notes.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays

5. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(8) - Business transactions with client, for making loans to the client after client relationship had been established.
Discussion: Chair Dunlap noted that this motion was only in relation to the loans.
Vote: 6 ayes – unanimous, 0 – nays

6. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(2) - Integrity & objectivity, for failing to disclose a conflict of interest and obtain a waiver of conflict of interest.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays

7. **Discussion:** Mr. Holmes noted that he used the wrong citation on motion #2, related to confidential client information. He said he incorrectly used the reference for Professional Misconduct in OAR 801-030-0020(1), instead of using the reference for Confidential Client Information OAR 801-030-0015(1). Ms. Bischoff recommended that if he thought there is not sufficient evidence for finding a violation of either Professional Misconduct or Confidential Client information with respect to confidential client information, that he make a separate motion for Confidential Client Information.
Committee Action: Moved by Mr. Holmes and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0015(1) - Confidential Client Information, for allowing third parties access to client financial Information.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays

Discussion of the Egregiousness of the Violation(s): Chair Dunlap noted that during the discussion with the Respondent in executive session, the Respondent seemed completely unaware of the business transactions with a client rule, and there was a definite lack of understanding of the rules. Ms. Lyons commented that she did not believe there was an intent to deceive at any time. There was consensus that it was a low level of egregiousness.

B. Case #11-056A1

1. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b), Due Professional Care, for not tracking both personal and trust loans.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays

2. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b), Due Professional Care, for not calculating interest on loans with stated interest rates for the purpose of calculating the loan summary.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays

Discussion: Mr. Holmes noted that it seemed like a matter of professional judgment to him. Mr. Bailey added that he had no objections.

C. Case #13-052

- 1. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(a), Professional Competence, for not possessing adequate software to handle a tax return as complex as the Complainant's tax return.
Discussion: Mr. Holmes clarified that he intentionally did not include a possible violation of Due Professional Care in his motion because the matrix said "and/or", and he felt the gravity of the situation was best captured by Professional Competence.
Vote: 6 ayes – unanimous, 0 – nays
- 2. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b), Due Professional Care, for not filing a tax extension for a client.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays
- 3. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation of OAR 801-030-0015(2), Client records and working papers, for not returning client's workpapers timely. **Discussion:** None
Vote: 6 ayes – unanimous, 0 – nay
- 4. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional misconduct, for signing client's name to the tax return without having the power of attorney or authority to do so.
Discussion: None
Vote: 6 ayes – unanimous, 0 – nays

Discussion of the Egregiousness of the Violation(s): Chair Dunlap and Mr. Sullivan agreed the act of signing the client's tax return without authorization was egregious. They felt the other recommended violation was less serious.

D. Case #14-041

Mr. Dunlap recused himself from voting on Case #14-041 because he was out of the room while this case was discussed by the BOACC in executive session.

- 1. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation OAR 801-030-0010(1)(a) - Professional Competence and OAR 801-030-0010(1)(b) - Due Professional Care, when serving as Trustee
Discussion: None
Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)

2. **Committee Action:** Moved by Mr. Holmes and carried to **defer** making a recommendation on a violation of OAR 801-030-0010(4), Tax Standards, related to tax returns prepared by Respondent for Respondent's farming operation, because the matter was still pending in the 9th Circuit Court of Appeals.
Discussion: None
Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)
BOACC RECOMMENDATION DEFERRED

3. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional misconduct, for failure to resign as trustee.
Discussion: None
Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)

4. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020), Board communications and investigations, for failure to respond to the Board.
Discussion: None
Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)

Discussion of the Egregiousness of the Violation(s): Chair Dunlap expressed concern that that the Respondent recently been the subject of another investigation. However, Ms. Bischoff and Mr. Pittioni noted that the previous issue had no nexus to the practice of public accountancy, no disciplinary action had been taken by the Board, and the conduct in that investigation was completely unrelated to this case. Ms. Lyons added that the Respondent seemed to have a general disregard for the rules, as evidenced by his responses to the Board with respect to the plural firm name issue. She noted that she interpreted his responses as signaling a position of defiance. Ms. Young commented that she viewed this conduct to be more egregious, because she believes the Respondent took on a role as trustee that he did not have the capacity to fulfill. Mr. Sullivan noted that possibly the conduct may not have been that bad, but there was general disregard for the rules.

E. Case #14-042

Mr. Dunlap recused himself from voting on Case #14-042 because he was out of the room while this case was discussed by the BOACC in executive session.

1. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation OAR 801-030-0010(1)(a) - Professional Competence and OAR 801-030-0010(1)(b) - Due Professional Care, when serving as Trustee
Discussion: None
Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)

2. **Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional misconduct, for failure to resign as trustee.
Discussion: None
Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)

- 3. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020 Board communications and investigations, for failure to respond to the Board.

Discussion: None

Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)

Discussion of the Egregiousness of the Violation(s): Ms. Young noted that this Respondent did not appear to have as much disregard for the rules as the Respondent in case #14-041, and that this Respondent seemed to be sharper, but that the conduct was still fairly egregious. Ms. Bischoff noted that when there are co-trustees, the co-trustee fully shares the responsibility, and if there is any doubt of the ability of one of the trustees to fulfill the duties, the co-trustee has an even greater responsibility.

F. Case #14-043

Mr. Dunlap recused himself from voting on Case #14-043 because he was out of the room while this case was discussed by the BOACC in executive session.

- 1. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation OAR 801-030-0020(6)(c), Plural Firm Names (2012 Edition), by failing to employ a fourth licensee.

Discussion: None

Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)

- 2. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional misconduct, for reporting an individual as an employee when, in fact, the individual was not an employee.

Discussion: None

Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Dunlap)

- 3. Committee Action:** Moved by Mr. Holmes and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violation of OAR 801-030-0020 Board communications and investigations, for failure to respond to the Board.

Discussion: Ms. Lyons asked if the firm had failed to respond and if the Board had struggled to get information. Ms. Kitterman replied that Board staff asked for material several times but it was not provided, which is why the case was opened. Mr. Pittioni added that the Board attempts to resolve issues, and sometimes doesn't even open a case once the firm comes into compliance with licensing, but in this instance a case was opened and staff still had trouble getting the documents and the firm is still not in compliance.

Vote: 3 ayes (Holmes, Young, Bailey), 2 – nays (Lyons, Sullivan), 1 – Abstain (Dunlap)

Discussion of the Egregiousness of the Violation(s): Mr. Bailey noted that he thought it was a minor matter, but he did not like the way the Respondent said, "I'm gonna do what I wanna do".

G. Case #14-052

Mr. Holmes disclosed a conflict of interest and recused himself from participation in the discussion and vote and left the room.

- 1. Committee Action:** Moved by Ms. Lyons and carried to recommend that there is sufficient evidence to make a preliminary finding of violation OAR 801-030-0020(1), Professional misconduct. Ms. Young specified that the conduct was: failing to disclose an open investigation by another Board of Accountancy, failing to disclose his full employment history, and failing to disclose that he continued to prepare tax returns after a specified date.

Discussion: None

Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Holmes)
- 2. Discussion:** On the allegation of a violation of OAR 801-030-0020(1) - Professional misconduct, for embezzling over \$5,000 from a prior employer, the BOACC did not take a vote. Mr. Dunlap voiced concerns whether the Board would have jurisdiction to find a violation for this conduct because the conduct occurred before Hall was licensed in Oregon. Ms. Bischoff noted, however, that if the Board had known about the conduct at the time the Respondent applied for initial licensure, the Board probably would not have granted him a license. Ms. Bischoff said the Board could consider the conduct in that respect, and asked the Board Liaison to take the BOACC’s comments back to the Board.
- 3. Discussion:** On the allegation of a violation of Plural Firm Name, Ms. Lyons said she did not know whether or not there was a second licensee at the firm that would meet the requirements of Plural Firm Name, and she doesn’t know if the firm was registered in Oregon or not. Ms. Gahagan said the other person named in the firm name had died, and the firm had been registered in Maine but the registration expired, and the firm had never been registered in Oregon. Ms. Gahagan continued that a firm could include the name of a deceased person, but there would have to be another Oregon licensee employed by the firm to comply with the plural name rules. Ms. Gahagan added that the Respondent had never represented that there was another licensee at the firm. Ms. Kitterman noted that the statute edition would need to be matched to the date of the conduct, because the cite reference changed in 2015. Susan said the BOACC would not need to give the citation when making the motion, but could say “violation of plural firm name”.

Committee Action: Moved by Ms. Lyons and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of Plural Firm Names. (cite purposefully omitted)

Discussion: None

Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Holmes)
- 4. Committee Action:** Moved by Ms. Lyons and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of [ORS 673.160(1)(a), Registration of Business Organizations] failing to register a firm.

Discussion: None

Vote: 5 ayes – unanimous, 0 – nays, 1 – Abstain (Holmes)

Discussion of the Egregiousness of the Violation(s): Chair Dunlap noted that the facts were somewhat unclear in this case, and some of the conduct occurred before the Respondent was licensed with the Board. Ms. Lyons said she thought the Respondent purposefully left certain information off his application for licensure, but that the conduct was about a 5 on a scale of 1 to 10. Mr. Bailey said that if the Board had known all the facts at the time the Respondent applied, he believes they would have denied him a license. Ms. Young noted that taken individually, the allegations against this individual give her concern, and taken in aggregate, she views the conduct as very egregious.

9. Announcements and Adjournment Mr. Wright notified the group that he would not be attending the June 5, 2015 BOACC, and that John Lauseng would be attending as the Board Liaison in his stead. He also noted that April 24, 2015 BOACC Public Session Agenda incorrectly listed the next BOACC meeting as May 29, 2015, not June 5, 2015.

Chair Dunlap added that he and Mr. Holmes had some ideas for streamlining the investigation reports and adding summaries, so that the members of the BOACC could review the materials more quickly. Ms. Young suggested that detailed interview information be included as an exhibit in the investigation report, and a summary of the important points of the interview be included in the body of the investigation report, and the supporting evidence documents and exhibits be uploaded separately into GovSpace. Mr. Pittioni said he would welcome suggestions and invited them to talk with him later.

Chair Dunlap adjourned the meeting at 3:58 pm.