

**OREGON BOARD OF ACCOUNTANCY**  
**Minutes, October 8, 2007**

**Salishan Resort**

**Gleneden Beach, OR**

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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 Present**

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

**Staff Members**

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

**Guests Attending**

Jeffrey Dover, *Asst. Attorney General*  
Scott Wright, *OSCPA*  
Ivan Besemann, *CPA, OAIA*  
Robin Gintner, *CPA, Inactive*  
William Sleasman, *CPA*

**1. CALL TO ORDER**

A quorum being present, Chair Klimowicz called the meeting to order at 9:15 a.m. and appointed Jens Andersen as Process Observer.

**2. APPROVAL OF MINUTES**

**A. August 6, 2007**

**BOARD ACTION:** Moved by Johnson and carried to approve the August 6, 2007 Board meeting minutes.

**VOTE:** Chair Klimowicz voted; 7 ayes

**3. REPORT OF CHAIR**

**A. Best Practices for Boards and Commissions**

**1. Self-evaluation Report**

The Board conducted the annual review of Best Practices for Board and Commissions on August 7, 2007. The Board currently meets each of the targets. The following policies were discussed and are presented for approval:

- Board Administrator Performance Evaluation
- Evaluation of Best Practices by Board of Accountancy
- Board of Accountancy Strategic Planning

**BOARD ACTION:** Moved by Lind and carried to accept the Self-evaluation report and three new policies. (Attachment A)

**VOTE:** Chair Klimowicz voted; 7 ayes

**B. Expiration of Board Member Terms**

**1. Letter to Governor**

The Board administrator submitted a letter to the Governor's office, as directed at the August 6, 2007 Board meeting, in support of Ms. Roberta Newhouse.

**C. NASBA**

**1. Annual Conference**

Mr. Bailey will attend the annual conference October 28 through 31, 2007 in Hawaii. The Board asked Mr. Bailey to bring the PCAOB confidentiality agreement concern to the attention of other states and NASBA. Board committee members review the confidential reports that are received; yet no action can be taken based on the findings unless part C of the report becomes public information.

## **2. Rives NASBA Committee Membership**

Ms. Rives attended a NASBA committee meeting in Tennessee September 23 and 24, 2007. The committee's mission is to develop support for state Boards to use in the legislative process. The information collected will be on a website within the next year as a resource for state boards. A survey of the state Boards indicated that many states do not get directly involved in legislation but rely on the state society to initiate legislation. Ms. Rives gave notice that she will no longer be able to serve on this committee based on her work schedule at the Board office.

## **4. REPORT OF VICE CHAIR**

### **A. Appointment of Board Liaisons to Committees**

The following proposed slate of committee liaisons for 2008 was presented:

<b>Complaints</b>	Jens Andersen	<b>Peer Review</b>	James Gaffney
<b>CPC</b>	Ray Johnson	<b>CPE</b>	Stuart Morris
<b>Qualifications</b>	new board member		

Eric Lind, Public member, is requested to attend one meeting for each committee.

### **B. Action from Work Session**

#### **1. Division 001: 801-001-0035**

Amendment changes the effective date of Board approved standards to January 1, 2008.

#### **2. Division 005: 801-005-010(38)**

Definitions of "practice of public accountancy" and "professional services" are modified to include services provided by licensees in industry, government and education. The amendment was recommended by the Code of Professional Conduct committee, and drafted by the Board. The proposed revision will be presented to the committee for review at the meeting scheduled November 28, 2007.

#### **3. Division 010: 801-010-0340(3)**

Provides an extension for public accounting firms to meet firm ownership requirements in the event of death or other unforeseen circumstance.

#### **4. Division 030: 801-030-0015(2)(e) 801-030-0020(6) 801-030-0020(13)**

- The term "management advisory services" is replaced by current term "consulting services".
- The record retention period for audit working papers is changed from seven years to five years, thus conforming to retention period in professional standards.

- Clarifications to firm name requirements and disclosure of confidential client information provisions
- Creates new section in 801-030-0020 prohibiting licensees from entering into non-disclosure agreements that would inhibit any party to the agreement from reporting alleged violations to the Board of Accountancy or that inhibit cooperation with any board, state or federal investigation.

5. Division 040: 801-040-0030(3)

Amendments clarify that CPE taken through a distance-learning program provided by an accredited university or college, as described in ORS 673.050 are not required to be QAS approved.

**BOARD ACTION:** Moved by Bailey and carried to approve proposed revisions to OAR Divisions 001, 005, 010, 030 and 040.

**VOTE:** 7 ayes, Chair voted.

6. **Sarbanes Oxley Confidentiality Provisions**

PCAOB inspection reports received by the Board consist of three parts, one of which is confidential. The reports do not disclose whether the work reviewed was conducted by an Oregon branch office or for Oregon clients. Confidentiality provisions prohibit the Board from using the PCAOB reports as a basis for opening an investigation.

The Board reviewed a letter from the Nevada Board of Accountancy rescinding their confidentiality agreement with the PCAOB for the same problems Oregon is facing.

The PCAOB offered to respond to questions Oregon may have about the inspection process. The Board requested that the PRO committee develop questions and request a letter of interpretation from the PCAOB. The Board will defer action relating to continuation of the confidentiality agreement until the PCAOB response is received. It was also suggested that Board members contact Congressional representatives to express concern about the restrictions that Sarbanes Oxley places on state regulators.

**BOARD ACTION:** Moved by Andersen and carried to direct the Peer Review Oversight Committee to develop questions to clarify the Board's ability to use the information in PCAOB reports. Committee review of PCAOB reports shall be suspended until further notice. Include a self reporting provision on the firm renewal applications regarding publication of Part C of the PCAOB review.

**VOTE:** 7 ayes, Chair voted.

7. **Pre-issuance Review Procedures**

The Board will organize a task force to develop procedures for the performance of special reviews that are sometimes required by the Board in disciplinary actions. Reviews received by the Board to date vary in format and content. A benchmark of standards would be helpful. In addition, the Board needs to determine what action they will take if substandard review is received. The OSCPA offered to assist on the task force. Jens Andersen and Jim Gaffney agreed to participate and to recruit volunteers from the PRO committee.

The Board agreed that when pre-issuance review is part of a consent order, completion of the review described satisfies the terms of the order. If the Board finds it

necessary to take additional action based on a substandard review report, a new investigation must be opened. The Board believes that this issue is a priority and should be dealt with as quickly as possible.

**BOARD ACTION:** Moved by Bailey and carried to organize a task force to develop pre-issuance review procedures.

**VOTE:** 7 ayes, Chair voted.

## 8. Budget Development

### a. Approve development of policy package

The Board is considering a policy package for two additional staff members: a mid-level position to assist the investigator and the administrator, and a staff member to meet the needs of the increased workload. The Board administrator and a board member will review the financials and determine how the cost of these two positions can be supported in 2007-09. Administrator will report the findings at the December meeting.

## 9. 2007 Performance Review Report

The 2007 Annual Performance Progress Report was submitted to DAS and LFO for final approval. The Board was directed to revise the performance measure for complaint investigations. The Board liaison to the Complaints Committee and the Board Investigator are directed to review outstanding complaints on a quarterly schedule so that serious complaints are prioritized and the potential for continued risk of harm to the public is minimized.

## 5. REPORT OF TREASURER

### A. Month 25, 2007 (05-07 Budget)

### B. 03-05 Revenue Report

### C. 03-05 Ending Report

Mr. Andersen reported that the Board's 05-07 ending balance has increased to nearly one million dollars, noting that proposed expenditures in 07-09 will result in corresponding reduction.

**BOARD ACTION:** Moved by Andersen and carried to approve the financial report.

**VOTE:** Chair Klimowicz voted; 7 ayes

## 6. LEGAL

### A. REPORT OF LEGAL ITEMS

#### 1. Proposed Consent Orders

##### a. James Rose

**BOARD ACTION:** Moved by Johnson and carried to approve the Consent Order received October 5, 2007 assessing a civil penalty in the amount of \$35,000 for violations of ORS 673.320 (Use of the CPA and PA designation without a permit or registration) and ORS 673.170(4) for issuing a review report on financial statements using the letterhead and electronic signature of another person without that person's knowledge or consent. \$10,000 of civil penalty is due immediately, \$2,500 is due on or before September 1, 2008. The remaining \$22,500 is stayed for a period of five years pending no further violations of ORS chapter 673 or OAR chapter 801.

**VOTE:** Chair Klimowicz voted; 7 ayes

**b. Grove Mueller Swank**

**Board Discussion:** Mr. Sumner, Esq, requested clarification about specific items in the proposed consent order. Ms. Rives responded to Mr. Sumner's questions. It should be emphasized that pre-issuance reviews should be performed as agreed upon engagements under AT 201, and the reviewer must be approved by the Board in advance.

**2. Proposed Orders from OAH**

None

**3. Other**

**a. Richard Goulette**

**Board Discussion:** Johnson, Gaffney and Lind recused themselves from the discussion and from voting. Mr. Goulette sent an e-mail agreeing to a three (3) year suspension of his CPA permit but asks that no civil penalty be assessed. The Board's notice proposed revocation of Goulette's CPA permit and a civil penalty of \$32,000. The Board discussed maintaining the \$32,000 civil penalty with a stay of a portion if Goulette has no further violations of ORS chapter 673 or OAR chapter 801. The Board instructed Mr. Dover, AAG to continue with the negotiation of the civil penalty. If the licensee does not accept the Board's offer, the Board is willing to proceed to hearing.

**BOARD ACTION:** Moved by Morris and carried to direct counsel to negotiate a three (3) year suspension and civil penalty not less than \$35,000 (\$10,000 due immediately and \$25,000 stayed)

**VOTE:** Chair Klimowicz voted; 4 ayes, 3 abstained (Johnson, Gaffney, Lind)

**B. Other**

**1. Linda Hall – Consent Order**

Information only – no action required

**7. COMPLAINTS**

**A. Report of Complaints Committee**

**1. Acceptance of Minutes**

a. August 29, 2007

**BOARD ACTION:** Moved by Johnson and carried to accept the Complaints Committee minutes dated August 29, 2007.

**VOTE:** Chair Klimowicz voted; 7 ayes

**B. Consent Agenda**

**1. Complaint Investigations**

*a. Frank Dunn	02-05-034
*b. Lawrence Levinson	05-03-006
*c. Robin Gintner	05-06-015
d. Rory Foley	05-06-016
*e. William Sleasman	06-12-047
*f. Anitian Enterprise Security	07-01-001
*g. Dawna Vance	07-07-021
*h. Timothy Steers	07-07-019

*\*Items moved to 7.C. for discussion*

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

**VOTE:** Chair Klimowicz voted; 7 ayes

## **C. Items Removed from Consent Agenda**

### **1. Frank Dunn**

**02-05-034**

In 1983 Complainant purchased a limited partner interest to invest in real estate (Group). Frank Dunn (Dunn) was general partner of the investment Group. The Group invested in commercial properties located in California, Nevada and Oregon. Beginning in 1998, Complainant did not receive Group accounting information other than the Group K-1.

In 2002 the Board opened a complaint against Dunn. Dunn did not respond to the Board's letter of complaint.

#### **ALLEGED VIOLATION(S)**

##### ***ORS 673.320(3) (2004 - 2005)***

*A person shall not assume or use the title or designation "certified public accountant" or the abbreviation "C.P.A.", or any other title, designation, words, letters abbreviation, sign, card or device tending to indicate that the person is a certified public accountant, unless the person holds a valid certificate of certified public accountant issued under ORS 673.040 and a permit issued pursuant to ORS 673.150.*

Dunn's CPA permit lapsed July 1, 2004 when Dunn failed to timely submit a renewal application. While lapsed, Dunn used the CPA designation on a building sign, business cards, and a website. In September 2005 Dunn submitted an application for reinstatement and reported that he used the CPA designation while lapsed.

##### ***OAR 801-030-0020(1) (1998 through 2004)***

*(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.*

*(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.*

Dunn did not provide to the limited partners the results of the 1998 vote in which limited partners were solicited to vote on the dissolution of Group.

Dunn did not respond to Complainant's request for information about Group. As the general partner, Dunn had a duty to provide accurate and complete financial information to the limited partners.

##### ***OAR 801-030-0020(8) Board communications and investigations (2002)***

*(a) Communications from the Board to licensees shall be sent by first class mail, addressed to the licensee at the last official address to the Board by the licensee. The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive any Board communication requesting the licensee to provide a written response to a filed complaint shall:*

*(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed, and*

*(B) Respond fully and truthfully to inquiries from and comply with all Board requests.*

*(b) Licensees shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.*

Dunn did not submit a written response to the Board's notice of complaint. A timely response was due on or before July 29, 2002. Dunn did not submit a written response to the Board's courtesy letter. A timely response to the courtesy letter was due on or before July 22, 2002.

Dunn did not timely respond to the Board's September 16, 2005 request for information. A timely response was due on or before October 7, 2005.

***OAR 801-030-0020(10) Notification of change of address, employer or assumed business name (2002)***

*Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery.*

*The information required under this rule will not be accepted over the telephone:*

*(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;*

*(b) The name and address of licensee's current employer; and*

*(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.*

Dunn did not maintain a current record with the Board and did not provide written notification within 30 days of a change in mailing address.

**INVESTIGATOR SUMMARY**

**ORS 673.320(3) (2002 - 2007)**

Used the CPA designation while lapsed:

1x on a building sign

3x on business cards

1x on website

**OAR 801-030-0020(1) Professional misconduct**

Did not provide Complainant with information:

1x results of limited partner's 1998 vote

1x did not respond to Complainant's 1999 request for information

7x did not provide limited partners with accurate and complete accounting information for years 1999 through 2004. (3 prior to January 1, 2000, 4 after January 1, 2000)

**OAR 801-030-0020(8) Board communications and investigations (2002)**

3x failure to provide written response to Board communications

**OAR 801-030-0020(10) Notification of change of address, employer or assumed business name (2002)**

1x failure to notify Board of a change of address

Committee Discussion: Dunn offered limited partnerships to investors. Dunn is licensed with the Department of Finance and Corporate Securities (DFCS). We referred the complaint to DFCS and they are in the process of investigation. The outcome of the DFCS investigation is not yet available to us. Dunn did not provide a written response to the Board regarding the complaint against him. He did not respond to a 14-day courtesy letter and at a later date a letter addressed to Dunn was returned to the Board office. Dunn did not notify the Board of a change of address. Dunn did not respond to requests for information from one of the limited partners. Dunn submitted copies of financial statements prepared for years ending December 31, 1994 and December 31, 1995. When Dunn issued the financial statements he did not issue an accompanying compilation report, and the financial statements do not include a reference to the compilation report.

COMMITTEE RECOMMENDATION: Moved by Aldrich and carried to recommend a total civil penalty of \$31,100 as follows:

- \$1,000 for violation of OAR 801-030-0020(1); professional misconduct – did not respond to limited partner (complainant) request for information;
- \$2,000 for violation of OAR 801-030-0010(4) (1994-1995); Missing Compilation reports and financial statements did not include a reference to see the compilation report
- \$3,000 for violation of OAR 801-030-0020(8) (2002); failure to respond to Board communication (\$1,000 x 3);
- \$25,000 for violation of ORS 673.320(3); use of the CPA designation while in lapsed status (\$5,000 x 5);
- \$100 for violation of OAR 801-030-0020(10) (2002); failure to notify Board of a change of address.

**Board Discussion:** *Dunn submitted financial statements prepared for Clarkdale for years 1994 and 1995. The financial statements have omissions of required information including a compilation report, footnotes and disclosures for long-term debt required by Generally Accepted Accounting Principals (GAAP). Three times Dunn failed to respond to Board requests for information.*

**BOARD ACTION:** Moved by Bailey and carried to revoke Dunn's CPA permit for gross negligence in preparing a financial statement, omissions of footnotes and long term debt, and for omissions of a compilation report, in violation of OAR 801-030-0010(1)(b) and (d) and carried to assess a total civil penalty of \$31,100 for violations of the following:

- \$1,000 for violation of OAR 801-030-0020(1) professional misconduct;
- \$2,000 for violation of OAR 801-030-0010(4)(1994-1995) missing compilation reports;
- \$3,000 for violation of OAR 801-030-0020(8)(2002) Failure to respond to Board communication (\$1,000 x 3);
- \$25,000 for violation of ORS 673.320(3) Use of CPA designation while lapsed (\$5,000 x 5);

- \$100 violation of OAR 801-030-0020(10)(200) Failure to notify Board of a change of address.

**VOTE:** Chair Klimowicz voted; 7 ayes

## **2. Lawrence Levinson**

**05-03-006**

Client received an advertisement from Tax Problem Resolution Services, Inc. (TPRS) owned by Lawrence Levinson (Levinson). The advertisement offered to resolve Client's debt problems with the Internal Revenue Service (IRS). Client complained that Levinson 1) did not provide her with detailed billings 2) berated and belittled her, and 3) did not return Client's original documents. Client also stated that the TPRS advertisement disclosed confidential information by listing client names.

### **ALLEGED VIOLATION(S)**

#### **ORS 673.160 Registration of business organizations. (2005)**

*(1) Business organizations of certified public accountants or of public accountants shall register with the Oregon Board of Accountancy if the business organization: (b) Holds itself out to clients in this state or the public in this state as a business organization engaged in the practice of public accountancy.*

#### **OAR 801-010-0345 (2005)**

*A business organization organized for the practice of public accountancy shall register with the Board as a firm if the business organization engages in any of the following activities in this state:*

*(b) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy*

Neither Tax Problem Resolution Services, Inc. nor TPRS are a registered firm with the Board of Accountancy. Tax Problem Resolution Services Inc. advertisement page 2, describes the owner, Lawrence Levinson, as a CPA with 20 years experience.

#### **OAR 801-030-0015(1) Confidential client information**

##### **Prohibited disclosures (2005)**

*Except as provided in subsection (b) of this rule: (A) No licensee or any partner, officer, shareholder, member, manager, owner or employee of a licensee, shall voluntarily disclose information communicated to the licensee by a client relating to and in connection with services rendered to the client by the licensee.*

A page of Levinson's advertisement included the heading *Just a Few of The Many People I've Helped*. The page listed the names of previous clients of TPRS. Page four of Levinson's five page written Agreement states the following:

*As part of the consideration for services performed, client authorizes TPRS to include Client's name on TPRS's listings, which may be used in conjunction with the promotional activities of TPRS.*

Levinson's advertisement included a list of TPRS clients. Because the business of TPRS was providing professional services to clients who owed taxes to IRS, a reader of the advertisement would reasonably conclude that the client listed owed taxes or penalties to the IRS. A client's status with the IRS is confidential information. Levinson stated that "Client read

and willingly signed the written agreement” to allow TPRS to add Client to the list of clients for promotional purposes. OAR 801-030-0015(1) prohibits Levinson from voluntarily disclosing confidential client information. There is no exception in the rule to allow the licensee to disclose confidential client information with client's written permission.

**OAR 801-030-0015(2)(b) Requested Records (2005)**

*Licensees are required to furnish the following records to a client or former client, upon request, within a reasonable time after such request:*

*(A) In response to a client's request for client records, made within a reasonable time, that occurs prior to issuance of a tax return, financial statement, report or other document prepared by a licensee, the licensee shall furnish to the client or former client any accounting or other records belonging to or obtained from or on behalf of the client that the licensee received for the client's account or removed from the client's premises.*

Client requested that Levinson return Client's records. Levinson stated that he did not have any original Client records and that all original records were returned to Client.

**OAR 801-030-0020(1) Professional Misconduct (2005)**

*(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.*

*(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.*

Client states that she requested IRS documents and found that amount she owed never exceeded \$3,000. Levinson submitted a copy of the September 23, 2003 IRS tax lien against Client, disclosing that Client owed IRS \$6,282.45. Client stated that she was berated and belittled by Levinson's communication style. Levinson's communication style could be interpreted to be critical and personal. An example can be found in Levinson's February 4, 2005 letter to client. Levinson reiterated his services to Client and stated that Client "Went on about her business without batting an eye". Client could consider Levinson's statement to be disrespectful and could cause Client to think that Levinson's acts or conduct lack fairness or respect for the rights of others.

**OAR 801-030-0020(4) Public communications and advertising (2005)**

*A licensee shall not use or participate in the use of any form of public communication, including the use of internet domains, e-mail names, advertising or solicitation by direct personal communication, having reference to the licensee's professional services that contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim that:*

*(a) Includes a misrepresentation of fact;*

*(b) Is intended or likely to mislead or deceive because it fails to disclose relevant facts;*

*(c) Is intended or likely to create false or unjustified expectations of favorable results;*

*(d) Falsely states or implies educational or professional attainments or licensing recognition;*

*(e) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;*

*(f) Falsely represents that professional services can or will be competently performed for a stated fee, or misrepresents fees for professional services by failing to disclose all variables affecting the fees that will in fact be charged; or*

*(g) Contains other representations or implications of fact that would cause a reasonable person to misunderstand or be deceived.*

Levinson made the following claims:

- *“Helped thousands of people and they saved hundreds of thousands of dollars”*
- *“With a list of people that I’ve already helped, about a mile long”;*
- *“... You save the **most** money”*
- *“IRS will take all of your money and possessions”.*
- *“You could be left with nothing. You could be left with less than nothing”;*
- *“... You have a ticking time bomb in your lap and it is about to explode (if it hasn’t exploded already!)”*

Levinson submitted a list of more than 2000 individuals assisted by Levinson. The list measures 31½ feet. Levinson’s advertisement claimed that “you save the most money”, but did not provide a standard against which to measure the savings resulting from using TPRS services. Levinson’s use of phrases such as “*IRS will take all your money, you could be left with nothing or less than nothing, and you have a ticking time bomb in your lap and it is about to explode*” are likely to mislead. Levinson’s advertisement may cause a reasonable person to misunderstand or be deceived by misrepresenting facts or by failing to disclose relevant facts.

#### **INVESTIGATOR SUMMARY**

##### **ORS 673.160 Registration of business organizations**

###### **OAR 801-010-0345**

Did not register TPRS as a firm

##### **OAR 801-030-0015(1) Confidential client information**

###### **Prohibited disclosures**

Disclosed confidential client information

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

Returned original client records

##### **OAR 801-030-0020(1) Professional Misconduct**

Berated and belittled client

##### **OAR 801-030-0020(4) Public communications and advertising**

Advertisement included false, fraudulent, misleading, or receptive statement or claim Mr. Levinson arrived at the meeting at 10:30 a.m. and presented a two-page document (Attachment B). He stated that this complaint is a billing dispute. The client sent notes of appreciation for his work and then asked him to detail the billings for several years prior. He advised the client that in the future, he would detail the billing, but he would have to bill her for his time to develop past billing information.

Levinson stated that he bent over backwards to please this client. He stopped the IRS from taking additional action against the client and advised the client to get current with the IRS. When questioned about failure to register as a firm, Levinson stated that he called the Board office and was advised that he did not need to register because he was not a public accounting firm (defined public accounting as more than one person).

Levinson stated that he only works with IRS issues, specifically people that owe money to the state or to the IRS.

Committee Discussion: The committee requested a copy of Levinson's revised advertising and suggested that it would be helpful to have clarification regarding advertising issues.

COMMITTEE RECOMMENDATION: Moved by Aldrich and carried to recommend a \$5,000 civil penalty for violation of OAR 801-010-0345; failure to register a business organization.

COMMITTEE RECOMMENDATION: Moved by Brown and carried to recommend a \$5,000 civil penalty for violation of OAR 801-030-0015(1); disclosure of confidential client information.

COMMITTEE RECOMMENDATION: Moved by Brown and carried to recommend a \$5,000 civil penalty for violation of OAR 801-030-0020(4); advertisement included false, fraudulent or misleading statements.

Committee Discussion: Committee suggested that this recommendation be considered by the Board in conjunction with a revised advertisement to be provided by Mr. Levinson.

**Board Discussion:** *Levinson's advertisement appears to be misleading but may not be fraudulent. Levinson has not provided a revised advertisement as he agreed at the complaints committee meeting. Levinson does have written consent from the client for disclosure of information and he did not use a specific client name in his advertisements. Levinson's firm, Tax Problem Resolution Services, Inc., is not registered with the Board.*

**BOARD ACTION:** Moved by Bailey and carried to issue a civil penalty in the amount of \$5,000 for violation of OAR 801-030-0015(1) failure to register a business organization.

**VOTE:** Chair Klimowicz voted; 7 ayes

### 3. Robin Gintner

05-06-015

Robin Gintner provided accounting and tax services for Husband and Wife and for their fishing business (Corporation). When Husband and Wife filed for divorce, Gintner provided exhibits and expert testimony on behalf of Husband and Corporation. During the divorce testimony Gintner stated, "I'm a Certified Public Accountant" and "I have a Certified Public Accountant's license with the State of Oregon". Gintner did not state during testimony that her Certified Public Accountant (CPA) permit was inactive.

ALLEGED VIOLATION(S)

**ORS 673.170(2)(b) Disciplinary actions; grounds (2004)**

*Dishonesty, fraud or gross negligence in the practice of public accountancy;*

Gintner testified falsely during divorce proceedings in Oregon Circuit Court, Lincoln County.

**ORS 673.320(3) assume or use the title or designation "certified public accountant", or the abbreviation "CPA" (2004)**

*A person shall not assume or use the title or designation "certified public accountant", or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless the person holds a valid certificate of certified public accountant issued under ORS 673.040 and a permit issued pursuant to ORS 673.150.*

Gintner assumed or used the CPA designation on five separate occasions:

1. January 7, 2004 memo to Kurt Carstens, Attorney
2. February 4, 2004 memo to Husband and Wife
3. February 5, 2004 Oregon Circuit Court, Lincoln County
4. February 13, 2004 memo to Husband and Wife
5. February 20, 2004 memo to Wife

**ORAR 801-030-0005 (2) Integrity and objectivity (2004)**

- (a) *In the performance of any professional service, a licensee shall maintain objectivity and integrity and shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate the licensee's judgment to the judgment of others.*
- (b) *In tax practice, however, a licensee may resolve doubt in favor of the client as long as there is reasonable support for the client's position.*
- (c) *A licensee shall not accept employment adverse to a client or former client, relating to a matter with respect to which the licensee has obtained confidential information by reason of, or in the course of, the licensee's employment by, or relationship with such client or former client.*

On January 28, 2004 Firm delivered a letter to Wife stating that Firm would no longer represent Wife individually. Firm continued to provide Corporation with accounting and tax services, and prepared accounting information to be used by Husband in the divorce proceedings.

Gintner accepted employment adverse to a former client, (Wife) relating to contested divorce proceedings in which confidential financial information of Wife was known to Firm and to Gintner. Husband and Wife have opposing interests with reference to the financial information known by Firm and Gintner.

**ORAR 801-030-0020(1) Professional Misconduct (2004)**

- (a) *A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.*

*(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.*

Gintner testified falsely that she was a certified public accountant (CPA) and explained that 80 hours of continuing professional education were required to renew a CPA license. Gintner also stated that she has always fulfilled the continuing education requirements (CPE). During the questioning about her permit, Gintner never stated that she holds an inactive license or that inactive licensees are not required to complete any continuing education requirements.

Gintner's testimony could cause a reasonable person to believe that Gintner held an active CPA permit. Gintner stated in her response that in 2002 she renewed her permit as inactive to avoid the cost of obtaining 80 hours of CPE.

Gintner provided false testimony that reflects adversely on her fitness to practice public accountancy.

#### INVESTIGATOR SUMMARY

##### **ORS 673.320(3) (2004)**

Used the CPA designation while "inactive".

##### **801-030-0005 (2) Integrity and objectivity (2004)**

Advised Wife that Firm would not provide Wife with Individual services, but continued to provide services to Husband and to business owned by both Husband and Wife, even though Wife's interests may be adversely affected by the outcome.

##### **ORS 673.170(2)(b) Disciplinary actions; grounds (2004)**

Dishonesty, fraud or gross negligence in the practice of public accountancy;  
By providing false testimony in Oregon Circuit Court.

##### **OAR 801-030-0020(1) Professional Misconduct (2004)**

Presented false statements under oath in judicial proceedings stating that Gintner is a CPA and is subject to CPE requirements, and by omission when Gintner failed to clarify that Gintner's CPA license is held in inactive status, and is not subject to CPE requirements.

Rory Foley, CPA, Robin Gintner and Nathan McAvoy entered the room at 9:00 a.m. The committee discussed both Gintner and Foley complaints.

Foley noted that with respect to conflict of interest, the Judge in the divorce proceedings stated that as of January 1, 2004, Wife was no longer an owner in the Corporation.

Gintner stated that in late 2003, Gintner and Foley knew about the divorce. *"We participated in the trial in February 2004. We were subpoenaed by Wife's attorney, however both attorneys wanted historical information. We were*

*led to believe that it was a collective effort. The attorneys wanted 2003 tax returns for the Corporation, outstanding debt records and other historical information about the Corporation. The information we provided was for the Corporation and very little for the 2003 joint tax return.”*

Foley wrote Wife a letter advising her that he could no longer do her taxes. Foley stated that he would have done Husband a disservice if he had chosen to terminate both Husband and Wife as clients.

When asked about holding out as a CPA in court, Gintner stated that she was very nervous. Gintner stated that she does not have business cards and clients do not come into her office. She stated that her CPA certificate is hanging on her office wall with the inactive permit card stuck in the corner of the frame. Gintner stated that she is working to reactivate her CPA permit.

Committee Discussion: Foley continued to represent the Husband because Foley thought that ultimately Wife would not be involved in the Corporation. Ideally, Foley could have terminated both Husband and Wife and resumed client services with Husband after the divorce was final. The committee discussed Gintner and Foley’s services to the firm and whether such services were adverse to either Husband or Wife.

**COMMITTEE RECOMMENDATION:** Moved by Brown and carried to recommend a total civil penalty of \$6,000 (\$1,000 x 6) for violation of ORS 673.320(3); use of CPA designation while inactive without the words “inactive” or “retired” before or after the CPA designation.

Ms. Gintner joined the Board meeting at 10:40 a.m. Gintner indicated that she held an active license from 1992 – 2002, when she was no longer working in public practice and was unable to obtain her required CPE based on personal finances but knew that she did not want her CPA permit to lapse and this is why she has chosen to renew as inactive since 2002. Gintner wishes to reactivate her CPA permit but has now gone beyond the five-year mark and is required to obtain 160 CPE hours of education. Gintner stated that she would like to get into forensic accounting and may complete CPE in this area.

**Board Discussion:** *The Board questioned why the committee did not consider each memo a violation? Mr. Bailey stated that the committee chose to group all memos in one violation because they were related to the same client. Ms. Gintner was asked if she always used Mr. Foley’s letterhead and if Foley reviewed the memos before they were given to client. Gintner stated that all her work was reviewed by Mr. Foley. Gintner is currently an independent contractor working full time for Mr. Foley.*

**BOARD ACTION:** Moved by Bailey and carried to assess a civil penalty in the amount of \$2,000 (\$1,000 x 2) for violation of ORS 673.320(3) use of CPA designation while inactive without the words “inactive” or “retired” before or after the CPA designation. The penalty may have a payment plan of \$500 every six months with first payment due at the time a consent order is signed.

**VOTE:** Chair Klimowicz voted; 7 ayes

The Board instructed Ms. Kitterman to open an investigation against Rory Foley regarding supervision of a contracted employee.

**4. William Sleasman 06-12-047**

Employee A terminated employment with William Sleasman & Associates PC (Firm) on August 16, 2006. Subsequently, Employee A requested that Sleasman remove her name, picture and biography from Firm's website. Sleasman did not remove Employee's name from Firm's website.

Employee B terminated employment with Firm on or about August 15, 2006. Employee B repeatedly asked Sleasman to cease communicating with her by e-mail or other means. Sleasman responded to Employee B by e-mail, indicating that he did not intend to stop communicating with Employee B.

**ALLEGED VIOLATION(S)**

**ORS 673.170(2) Disciplinary action, grounds**

*The Board may take any of the actions described in subsection (1) of this section for any one or any combination of the following causes:*

*ORS 673.170(2)(a) Fraud or deceit in obtaining or applying for: (C) A registration under ORS 58.345 or 673.160.*

*ORS 673.170(2)(o) Failure to comply with any reporting or other requirement established by the board by rule.*

**OAR 801-030-0020(6)(c) Plural firm names**

On September 21, 2006 Sleasman provided the Board with the names of two CPAs stating that they were Firm employees when in fact they were not. Firm did not employ CPA #1 until October 16, 2006. CPA #2 is not employed by firm but instead is a subcontractor.

**801-030-0020 (4) Public communications and advertising (2006)**

*A licensee shall not use or participate in the use of any form of public communication, including advertising or solicitation by direct personal communication, having reference to the licensee's professional services which contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim which:*

*(a) Includes a misrepresentation of fact;*

*(b) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;*

*(c) Includes any testimonial or laudatory statement, or other statement or implication about the services that is not based on verifiable fact;*

*(d) Is intended or likely to create false or unjustified expectations of favorable results;*

*(e) Implies educational or professional attainments or licensing recognition not supported in fact;*

*(f) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;*

*(g) Falsely represents that professional services can or will be competently performed for a stated fee, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; or*

*(h) Contains other representations or implications that may cause a reasonable person to misunderstand or be deceived.*

Firm and Sleasman advertised professional services on a website that displayed false information and a misrepresentation of fact when Firm for at least four months displayed the names of individuals who were no longer employed by Firm.

Firm's name "William J. Sleasman & Associates" followed by the subtitle "Certified Public Accountants" displayed on letterhead and on Firm's website imply that more than one Certified Public Accountant is employed by Firm when in fact, Sleasman was the only Certified Public Accountant employed. From August 11, 2006 until October 31, 2006 and from April 16, 2007 through the date of this investigation Sleasman was the only CPA employed.

False information displayed on Firm's website contained representations that could cause a reasonable person to misunderstand or be deceived.

***OAR 801-030-0020(6) Firm Names (2006)***

*(A) Licensees shall not practice public accountancy under a firm name, which is misleading in any way as to the legal entity or organization of the firm, or as to the persons who are owners or employees of the firm who are licensed under ORS 673.150, or as to any matter restricted by section (4) of this rule.*

*(B) A firm name shall not include false or misleading language about the business organization of the firm, the nature of the services provided, the number of licensees associated with or working for the firm or the identity of individual members of the firm, and shall not include information about, or indicate an association with, individuals who are not members of the firm;*

***(c) Plural firm names***

*(A) The use by a firm of a plural title or designation, including words like "company", "and company", "associates" and "accountants", is not misleading if, in addition to the names of persons included in the firm name, the firm employs at least one staff person, who works a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, and whose permit is not revoked, suspended, lapsed or inactive.*

*(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:*

*(i) Cease using the plural name and so notify the Board in writing;*

*or*

*(ii) Notify the Board in writing within 30 days of non-compliance.*

*Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide*

*written notice to the Board when the firm has employed the required licensed staff person.*

*(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.*

On September 21, 2006 Sleasman notified the Board of a change of firm name from Sleasman & Rogers PC to William J. Sleasman & Associates PC. On September 21, 2006 Firm did not have any CPA employees who worked at least 20 hours per week other than Sleasman. Beginning October 16, 2006 through April 15, 2007 Firm employed one CPA who worked at least 20 hours per week.

**801-030-0020 (1) Professional misconduct (2006 and 2007)**

*(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.*

*(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.*

Sleasman sent and continues to send emails to former employees even though the former employees have requested that Sleasman cease sending such emails.

Sleasman did not remove Employee A's name from Firm's website after Sleasman received such a request from Employee A. Sleasman's conduct toward Employees A & B would cause a reasonable person to have substantial doubts about Sleasman's respect for the rights of others.

**INVESTIGATOR SUMMARY**

**ORS 673.170(2)(a) Disciplinary actions; grounds**

Fraud or deceit in obtaining or applying for Firm registration.

**ORS 673.170(2) Disciplinary actions; grounds**

Failure to comply with Firm reporting requirements.

**OAR 801-030-0020 (4) Public communications and advertising**

Advertised on a website that firm employed individuals who were no longer employed by firm.

**OAR 801-030-0020(6)(c) Plural Firm Name**

Use of "Associates" and "Certified Public Accountants" without employment of at least one CPA who works at least 20 hours per week.

**OAR 801-030-0020 (1) Professional Misconduct**

Refused to honor former employee's requests that Sleasman cease communicating with former employees by email or other means.

William Sleasman, CPA arrived at the meeting at 9:40 a.m. Sleasman stated that:

- there was no willful intent to harm;
- he did not remove Employee's picture from the website as he was in the process of forming another company named "Brass" and the idea was to build the two websites together;
- the employees who left had been with him his entire career and they all left his employment in August 2007;
- his staff built the website and he had to find someone else to remove the picture;
- he was not trying to deceive, he was trying to gather additional clients;
- at that time, he had higher priorities than to update his website.

Sleasman was not prepared to answer questions or discuss employee communication issues. Rives apologized for the lack of information that Sleasman received regarding the employee communication issues and offered to defer the case until the next committee meeting on November 16, 2007. Sleasman replied "no thank you – I will take the next step at the Board level. I have a business to run." The Board will send Sleasman a copy of the investigation report and supporting documents.

Sleasman made the following comments regarding the employee communication issues:

- he was unaware that the committee was privy to the communication issues with his past employees and he is not prepared to discuss the communication issues;
- he thought the web picture was the only issue for committee discussion;
- he stated that he has a lot of relationships to mend;
- there was an e-mail problem that he is not prepared to discuss

Committee Discussion: Even though all Sleasman's employees left his employment, he sent a letter to clients that implied he employed more personnel than he actually did. The committee considered whether Sleasman was attempting to deceive the public by advertising employees no longer with Sleasman's firm. The committee believes that Sleasman could have easily removed pictures from the website at the same time that he changed the firm name on the website.

When questioned why all employees left at the same time, Sleasman said there was an email problem. Sleasman failed to understand how continuing to contact previous employees even though the employees requested that he stop contacting them had anything to do with being a CPA. Sleasman believes that past employee reconciliations were non-employment issues and that his continued communication with them was a private issue. The committee explained the Code of Professional Conduct 801-030-0020(1)(b):

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and

respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

**COMMITTEE RECOMMENDATION:** Moved by Brown and carried to recommend assessing a total civil penalty of \$25,000 as follows:

- \$10,000 (\$5,000 x 2) for violation of ORS 673.170(2)(a); Fraud or deceit in obtaining or applying for Firm registration; listing two CPAs as employees when they were not employees.
- \$5,000 for violation of OAR 801-030-0020(4); Public communications and advertising; advertising individuals no longer employed by the firm
- \$5,000 for violation of OAR 801-030-0020(6)(c); Plural Firm Name; use of "associates and "Certified Public Accountants"
- \$5,000 for violation of OAR 801-030-0020 (1); Professional misconduct; refusing to remove names from website.

Mr. Sleasman joined the Board meeting at 11:25 a.m.

**Board Discussion:** *Sleasman did not remove the names of terminated employees from his website. Sleasman submitted an application for a plural firm name at a time that Sleasman did not employ at least one other licensed individual. Sleasman hired an independent contractor and a part time employee, neither of which met the requirements for a plural firm name. Sleasman indicated that he did not contact former employees after they requested he cease sending e-mails. The Board office received information that was contrary to Sleasman's statement. Sleasman also included former employees in his mailing list of an invitation to an open house at his office to introduce Sleasman's new employees.*

**BOARD ACTION:** Moved by Bailey to accept the Committee recommendation assessing a civil penalty of \$25,000 for violation of ORS 673.170(2)(a) Fraud or deceit in obtaining or applying for firm registration (\$5,000 x 2), OAR 801-030-0020(4) Public communications and advertising, OAR 801-030-0020(6)(c) Plural firm name and OAR 801-0230-0020(1) Professional misconduct.

**VOTE:** Chair Klimowicz voted, 7 nays  
Motion failed

**BOARD ACTION:** Moved by Andersen and carried to assess a civil penalty in the amount of \$15,000 for violations of OAR 801-030-0020(4) Public communications and advertising; OAR 801-030-0020(6)(c) Plural firm name and OAR 801-030-0020(1) Professional misconduct. One half of the civil penalty to be stayed so long as Sleasman has no further contact with former employees.

**VOTE:** Chair Klimowicz voted; 7 ayes

## 5. Anitian Enterprise Security

07-01-001

CPA reported that Anitian Enterprise (Anitian), an unlicensed consulting firm, advertised that they could perform attestation services. Anitian's website stated that they offer comprehensive SAS-70 audit and assessment services.

ALLEGED VIOLATION(S)

**ORS 673.160 Registration of business organizations. (2006)**

*(1) Business organizations of certified public accountants or of public accountants shall register with the Oregon Board of Accountancy if the business organization: (b) Holds itself out to clients in this state or the public in this state as a business organization engaged in the practice of public accountancy.*

**OAR 801-010-0345 Requirement to register a firm (2006)**

*A business organization organized for the practice of public accountancy shall register with the Board as a firm if the business organization engages in any of the following activities in this state:*

*(b) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy.*

On December 6, 2006, Anitian's website stated that Anitian offered comprehensive SAS-70 audit and assessment services. Anitian is not registered as a public accounting firm under ORS 673.010 to 673.457, and is not authorized to hold itself out to the public to practice public accountancy in Oregon.

**ORS 673.320(1) Permit or registration required to provide attestation or compilation services or issue report; exceptions; use of terms certified public accountant, public accountant, C.P.A. or P.A.; exceptions (2006)**

*(1) A person or business organization in this state shall not provide attestation or compilation services for or issue a report on financial statements of any other person, firm, organization or governmental unit unless the person or business organization holds a permit or registration issued under ORS 673.010 to 673.457.*

On December 6, 2006, Anitian's website stated that Anitian offered comprehensive SAS-70 audit and assessment services. SAS 70 is an attestation service. Anitian does not hold a permit or registration in Oregon to provide attestation services.

In response to the Board's complaint, Anitian denied that they provide attestation services in Oregon.

INVESTIGATOR SUMMARY

**ORS 673.160 Registration of business organizations (2006)**

**OAR 801-010-0345 Requirement to register a firm (2006)**

Anitian offered comprehensive SAS-70 audit and assessment services

**ORS 673.320(1) Permit or registration required to provide attestation or compilation services or issue report;**

Anitian did not provide attestation services or issue an audit report

Committee Discussion: Anitian's website states that they provide audit reports.

**COMMITTEE RECOMMENDATION:** Moved by Aldrich and carried to recommend a \$5,000 civil penalty for violation of ORS 673.160; Registration of business organizations (2006)

**Board Discussion:** *This company offered to perform SAS-70 audits in a web advertisement. Company is not a registered firm. Company did not perform any SAS-70 audit. The company changed the website to indicate that the company can provide preliminary services that will prepare a company for a SAS-70 audit.*

**BOARD ACTION:** Moved by Bailey and carried to accept the Committee recommendation assessing a civil penalty in the amount of \$5,000 for violation of ORS 673.160 Registration of business organization.

**VOTE:** Chair Klimowicz voted, 7 nays

Motion failed; Board directed staff to send a letter to the company thanking them for changing the advertisement in a timely manner.

**6. Dawna Vance**

**07-07-021**

Dawna Vance (Vance), owner of High-Tec Accounting Hispanic Solutions, displayed a sign with Vance's name followed by the CPA and the PA designation. Vance does not hold a permit to practice public accountancy.

**ALLEGED VIOLATION(S)**

**ORS 673.320(3) Permit or registration – Individual (2007)**

*A person shall not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the person is a certified public accountant, unless the person holds a valid certificate of certified public accountant issued under ORS 673.040 and a permit issued pursuant to ORS 673.150.*

Vance displayed "PA/CPA" after her name on a sign posted at Reter Fruit Company located at 3100 S Pacific Hwy, Medford Oregon.

**ORS 673.320(4) Permit or registration – Business organization (2007)**

*A business organization shall not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that the business organization is composed of certified public accountants, unless the business organization is registered under ORS 673.160.*

High-Tec Accounting Hispanic Solutions displayed "PA/CPA" on a sign posted at Reter Fruit Company located at 3100 S Pacific Hwy, Medford Oregon, which would cause a reasonable person to believe that High-Tec Accounting Hispanic Solutions was composed of public accountants, certified public accountants and registered as a public accounting firm.

**ORS 673.320(5) Permit or registration – Individual (2007)**

*A person shall not assume or use the title or designation "public accountant" or the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign,*

*card or device tending to indicate that the person is a public accountant, unless the person holds a valid certificate of certified public accountant issued under ORS 673.100 and a permit issued pursuant to ORS 673.150.*

Vance displayed "PA/CPA" after her name on a sign posted at Reter Fruit Company located at 3100 S Pacific Hwy, Medford Oregon, which would cause a reasonable person to believe that Vance held a PA permit in Oregon.

#### INVESTIGATOR SUMMARY

##### **ORS 673.320(3) and (5) Permit or registration – Individual**

Use of the CPA and PA designation without a permit.

##### **ORS 673.320(4) Permit or registration – A business**

Use of the CPA and PA designation without registration

Committee Discussion: Although she changed the wording on the sign, the sign was originally misleading. The committee considered that she may have known about the sign and elected to leave it up. The original sign was posted in June 2007.

COMMITTEE RECOMMENDATION: Moved by Aldrich and carried to recommend a \$4,000 civil penalty as follows:

- \$2,000 (\$1,000 x 2) for violation of ORS 673.320(3) and (5); Use of the CPA and PA designation without a permit
- \$2,000 (\$1,000 x 2) for violation of ORS 673.320(4); Use of the CPA and PA designation without registration

**Board Discussion:** *This individual does not hold either a CPA or PA permit and does not qualify to register a firm. Board requested that staff find out if the sign is still posted and if so to send a Cease and Desist Order.*

**BOARD ACTION:** Moved by Bailey and carried to accept the Committee recommendation assessing a civil penalty in the amount of \$4,000 for violation of ORS 673.320(3) and (4) Use of the CPA and PA designation without a permit.

**VOTE:** Chair Klimowicz voted; 7 ayes

#### **7. Timothy Steers**

**07-07-019**

In December 2006, Frank Weber, (Weber) President of Hansen & Gray, (Company) engaged Timothy L. Steers CPA LLC (Steers) to audit Company's financial statements for the years ending December 31, 2004, 2005 and 2006. Company provided records and paid Steers for such services. In March Company asked when such audits would be completed. Steers told Weber to expect a draft of the financial statements in about a week. Company did not receive a draft and in June, again asked when they could expect the audit to be completed. On June 22, 2007 Steers told Weber to expect the audit no later than June 29, 2007. Steers did not deliver the audit to Company at the end of June 2007.

Steers arrived at the meeting at 8:30 a.m. There is no investigation report for this complaint. Steers stated that he thought the Investigator would send him additional information about the complaint. However, he did not call the Board to inquire when he did not receive additional information and did not submit a written response to the

Board's letter of complaint. Steers stated that failure to respond to Board inquiry was an error.

Rives noted that Steers performs PCAOB audits and that he self-reported on his 2007-2009 CPA renewal application that he was under investigation by the PCAOB. Board staff sent a letter to the PCAOB requesting additional information. Steers cannot perform additional PCAOB audits until PCAOB completes its investigation.

Steers stated that he advised Client that he was no longer independent and that he would have to withdraw.

Steers said that:

- He was the successor firm and the previous accounting firm was in Atlanta.
- Client owed the Atlanta accounting Firm \$30,000
- The engagement letter clearly states that Client was to pay as the work was performed
- He was reviewed by PCAOB in 2002 and is being reviewed again this year
- The result of the reviews was that he had deficiencies

Steers stated that he spoke with the Atlanta Firm regarding their relationship with the Client and learned that Client threatened to file a lawsuit. The Atlanta Firm did not issue a report as a result of the threats. And for that reason, the Atlanta Firm did not consider themselves the predecessor auditors. A Salt Lake City firm completed Client's 2003 audit.

Steers stated that:

- Client was issued a cease and desist order causing them to stop operations
- Client sold the "shell" of the operation
- Client rebuilt the company under another name
- Client paid \$5,000 toward the audit owes an additional \$90,000.

Steers described three issues with Client: integrity of management; independence; non-payment of services rendered. Steers stated that he should have withdrawn from the audit and that he now plans to send Client a termination letter.

Committee Discussion: Steers did not respond to a Board communication. The Client threatened Steers with a lawsuit and informed Steers that payment of audit services is contingent on a successful offering. That would require that Steers issue a clean opinion. Steers had enough clues to withdraw. Steer's engagement letter references more than one person when Steers is the only CPA, i.e. "We will".

**COMMITTEE RECOMMENDATION:** Moved by Brown and carried to recommend 16 CPE hours in independence and client acceptance and assess a \$6,000 civil penalty as follows:

- \$1,000 for violation of OAR 801-030-0020(7)(A); failure to respond to Board communication
- \$5,000 for violation of OAR 801-030-0005(1); failure to withdraw from engagement at the time client threatened litigation; lack of independence

**BOARD ACTION:** Moved by Bailey and carried to accept the Committee recommendation assessing a civil penalty in the amount of \$6,000 for violation of OAR 801-030-0020(7)(A)

failure to respond to Board communication (\$1,000) and OAR 801-030-0005(1) lack of independence; failure to withdraw from an engagement when the client threatened litigation (\$5,000)

**VOTE:** Chair Klimowicz voted; 7 ayes

**D. Other**

1. The following licensees have accepted appointment to the Complaints committee beginning January 1, 2008

- a. Richard Perdue
- b. Karen Jacobson

2. Earl Doman 03-06-025

Earl Doman CPA (Doman) assisted Client with estate planning. Doman formed an LLC for Client and then instructed Client to transfer her assets into the newly formed LLC.

**ALLEGED VIOLATIONS:**

***Competence and Technical Standards***

***OAR 801-030-0010 (1) Competence***

*A licensee shall not undertake any engagement for the performance of professional services which the licensee cannot reasonably expect to complete with due professional competence, including compliance, when applicable, with sections (2) and (3) of this rule.*

Doman prepared Client's 2001 tax return based on information that he received from Client. Doman stated that Client did not give him a copy of at least one 1099 and when Client called Doman with the amount of income on the 1099, Client did not tell Doman that the 1099 also reported federal withholding.

Doman either made a mistake or did not know about the federal withholding reported on the 1099. Doman may not have asked enough questions to determine if federal withholding was reported on the 1099.

***OAR 801-030-0020 (1) Professional misconduct.***

*(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.*

*(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.*

Doman created an LLC for Client then instructed Client to sign the LLC document and transfer title of her property to the LLC. Client stated that she did not prepare the documents herself or hire an attorney to prepare the documents. Doman billed Client for formation of the LLC. When Doman prepared the LLC for Client, Doman engaged in the practice of law.

## INVESTIGATOR SUMMARY

### **Competence and Technical Standards**

#### ***OAR 801-030-0010 (1) Competence***

No Violation

#### ***OAR 801-030-0020 (1) Professional misconduct.***

Preparation of legal document for client

Committee Discussion: The Committee previously reviewed this case and deferred making a recommendation to the Board for two reasons: 1) there is another open complaint against Doman that is similar and the thought was to combine both complaints in the same action and 2) the committee requested that the complaint be submitted to the BAR to determine if Doman was providing legal services when he prepared LLC documents.

The committee discussed Doman's estate planning and tax planning services and Doman's bill of \$2,500 for developing the LLC document for his client.

**COMMITTEE RECOMMENDATION:** Moved by Piels and carried to recommend: \$5,000 civil penalty for violation of 801-030-0020(1)(b)&(c), Professional Misconduct.

**Board Discussion:** *This complaint was referred to the Oregon State BAR. OSB responded that they will not take action on the complaint. This licensee has a similar complaint that will be presented at a future Complaints Committee meeting.*

**BOARD ACTION:** Moved by Bailey and carried to accept the Committee recommendation assessing a civil penalty in the amount of \$5,000 for violation of OAR 801-030-0020(1)(b)&(c) Professional Misconduct.

**VOTE:** Chair Klimowicz voted; 7 ayes

3. Coos County Airport

4. City of Coos Bay

The Board received three complaints against two licensees located in Coos Bay. The Complaints Committee reviewed the complaints and recommended that an investigation be opened for one of the three complaints.

## **8. REPORT OF ADMINISTRATOR**

### **A. 2008 Meeting Calendar**

The members reviewed the proposed 2008 calendar of Board and committee meeting dates. Board staff will present the calendar to the standing committees and the 2008 calendar will be approved at the December 2007 Board meeting.

### **B. F/Y 2007 Accounts Receivable Report and Write Off Approval**

**BOARD ACTION:** Moved by Gaffney and carried to write off the uncollectible debts.

**VOTE:** Chair Klimowicz voted; 7 ayes

### **C. Lodging Costs That Exceed State Rate**

**BOARD ACTION:** Moved by Johnson and carried to ratify the additional lodging cost (\$20 per room) to allow Saturday night stay at the meeting site.

**VOTE:** Chair Klimowicz voted; 7 ayes

**D. Jim Pike Letter**

Each year Mr. Pike requests approval for a temporary office during tax season. Mr. Pike stated in his letter that he will not offer or facilitate Refund Anticipation Loans or Refund Anticipation Checks at the Oregon location during this coming tax season.

**BOARD ACTION:** Moved by Bailey and carried to approve temporary office location.

**VOTE:** Chair Klimowicz voted; 7 ayes

**E. Internal BOA Audit**

Moss Adams has offered to conduct a pro-bono audit of the Oregon Board of Accountancy.

**9. PUBLIC COMMENTS**

None

**10. REPORT OF OAIA**

Mr. Besemann did not have any comments.

**11. REPORT OF OSCPA**

The Society appreciated Board members participation at the recent Town Hall meetings. The Society received positive feed back from the members on the surveys. The Society looks forward to working with the Board on the two upcoming task forces. New Officers is complete and Janice Essenberg, CPA will be the Board liaison beginning April 2008.

**12. OLD BUSINESS**

None

**13. CONTINUING PROFESSIONAL EDUCATION**

**A. Report of CPE Committee**

**1. Acceptance of Minutes**

**a. August 21, 2007**

**BOARD ACTION:** Moved by Morris and carried to accept the Continuing Professional Education minutes dated August 21, 2007.

**VOTE:** Chair Klimowicz voted; 6 ayes, 1 excused (Andersen)

**B. Consent Agenda**

**1. Recommendations**

**\* a. Ethics development**

**2. Municipal Auditor Applications**

- a. Christa M Bosserman
- b. Shawn Cross
- c. Mary Jo Evers
- d. Daniel J Gerig
- e. Matthew Graves
- f. Ronna L Lindstrom
- g. Teresa Rawlins

- h. Andrea M Smasne
- j. Nancy L Young

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

**VOTE:** Chair Klimowicz voted; 7 ayes

### **C. Items Removed from Consent Agenda**

#### **1. 13.B.1.a. Ethics development**

##### **Committee Recommendation:**

##### **CPA and PA applicants**

The current requirement to complete *Professional Ethics: AICPA Comprehensive Course* will be maintained, with the additional requirement to complete the Oregon specific four-hour ethics program. The Oregon program includes information on the following topics:

- Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy
- Examples of issues or situations that require an understanding of statutes, rules and case law relevant to all licensees
- The Code of Professional Conduct adopted by the Board and set forth in OAR Chapter 801, Division 030
- Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession
- The Oregon specific program must be provided by a sponsor registered with the Board.

##### **CPA and PA renewal requirements**

- Expand the CPE requirement in Professional Conduct and Ethics to four hours of general ethics every two years.
- Eliminate requirement that Ethics CPE include specific components
- Eliminate requirement that Ethics CPE be provided by an Oregon registered sponsor.
- These modifications will allow current licensees to obtain ethics programs directly related to specific areas of practice in public accounting, government or industry, and also reduce impediments to mobility.

The requirement for a self-study ethics program to be NASBA QAS approved will remain in effect for both initial applications and renewals.

**BOARD ACTION:** Defer for rule drafting and approval at May 2008 work session

### **14. PEER REVIEW OVERSIGHT**

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

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

##### **a. July 24, 2007**

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

**VOTE:** 7 ayes, Chair Klimowicz voted.

### **15. QUALIFICATIONS COMMITTEE**

#### **A. Report of Qualifications Committee**

##### **1. No meeting held**

**B. Consent Agenda**

**BOARD ACTION:** Moved by Gaffney and carried to approve the applications presented.

**VOTE:** 7 ayes, Chair Klimowicz voted.

**1. Recommendations**

**2. Other**

**a. New Committee Members**

1. K. Stanley Martin
2. Mei Lee
3. Susan Wolcott

**16. CPA EXAM**

No items

**17. CODE OF PROFESSIONAL CONDUCT**

No meeting held

**18. NEW BUSINESS**

A. None

**19. PROCESS OBSERVER REPORT**

Mr. Andersen reported that all and all the Board did a good job getting through the agenda; however, still got bogged down on items that were discussed at the work session. In addition, Board members asked about the possibility of receiving Board packets earlier than the current timeline allows. As an alternative, it was suggested that it would be helpful if the complaints committee information could be provided before the Board agenda, since this material is lengthy and requires extensive review in preparation for the board meeting.

**20. NEXT MEETING**

Date: December 10, 2007  
Location: Board of Accountancy  
Upstairs Board Room  
3218 Pringle Rd SE #110  
Salem OR 97302

**21. ADJOURNED**

There being no further business, the meeting adjourned at 3:50 p.m.