

OREGON BOARD OF ACCOUNTANCY
Minutes, December 15, 2008

3218 Pringle Road SE #110

Salem, OR 97302

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

Board Members Present

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

Staff Members

Carol Rives, *Administrator*
L Patrick Hearn, *Executive Director*
Noela Kitterman, *Investigator*
Kimberly Bennett, *Committee Coordinator*
Joyce Everts, *Committee Coordinator*
Heather Shepherd, *Committee Coordinator*

Guests Attending

Jeffrey Dover, Asst. Attorney General
Joyce Funkhouser, OAIA
Janice Essenberg, CPA, OSCP
Cheryl Langley, OSCP
Jessie Bridgham, CPA
Gerald Burns, CPA, *Pre Issuance Review Taskforce*
Fred Erickson, CPA, *Pre Issuance Review Taskforce*
Harry Bose, CPA, *Pre Issuance Review Taskforce*
Doug Parham, CPA, *Pre Issuance Review Taskforce*
Gary Leavitt, CPA, *Sherman Young & Assoc*
Frank Lagesen, Esq.
Anita LaVassaur, CPA
Robert Loe, CPA – WA
Stuart Hayes, CPA
Gordon Hanna, Esq.
James Elliott, CPA
John Campbell, CPA

1. CALL TO ORDER

A quorum being present, Chair Bailey called the meeting to order at 8:20 a.m.

2. APPROVAL OF MINUTES

A. October 5, 2008 Work Session

BOARD ACTION: Moved by Morris and carried to approve the October 5, 2008 Board work session minutes.

VOTE: Chair Bailey did not vote; 6 ayes

B. October 6, 2008 Board Meeting

BOARD ACTION: Moved by Morris and carried to approve the October 6, 2008 Board minutes as revised.

VOTE: Chair Bailey did not vote; 6 ayes

C. October 10, 2008 Special Board Meeting

BOARD ACTION: Moved by Morris and carried to approve the October 10, 2008 Board minutes.

VOTE: Chair Bailey did not vote; 6 ayes

3. REPORT OF CHAIR

A. NASBA

1. Exposure Draft – Proposed Revisions to UAA Model Rules

The Board requested that a subcommittee review the Exposure Draft and report to the full Board at the May 2009 Work Session. Mr. Johnson volunteered to

chair the subcommittee. Mr. Lind volunteered to serve on the subcommittee. Mr. Johnson will ask Ms. Bridgham to volunteer on the committee.

2. Focus Questions

Rives asked the Board to comment on the answers she developed for the NASBA focus questions. No comments or suggestions were made.

3. Revised 120/150 White Paper

Defer to the May 2009 Work Session.

B. Pre-issuance Review Task Force Report

The Board expressed appreciation to the taskforce members for their careful and thoughtful review of the pre-issuance review process and thanked them for their well-reasoned recommendations to the Board.

The task force was organized in April 2008 to review the current procedures related to the Board requirement for a public accounting firm to undergo pre-issuance review of a designated number of audits or attest services performed by the firm (Board reviews).

Four taskforce members, Gerry Burns, CPA, Fred Erickson, CPA, Doug Parham, CPA and Harry Bose, CPA, joined the Board meeting by phone conference at 11:40 a.m.

Ray Johnson summarized the work of the pre-issuance review task force relating to the “process” as follows:

- The Board will request firms to hire an outside consultant to perform a pre-issuance peer review following the guidance in Paragraphs 85 through 99 of SQCS No. 7.
- BOA proposed consent orders clarify that the consultant will select the engagements to be reviewed from a population of audits and reviews that a firm expects to perform.
- The sample letter will describe the scope of the work that the peer reviewer will perform.
- The peer reviewer will submit a report to the Board as follows:
 1. issues that are resolved with the firm and corrected in the working papers, draft financial statements or draft auditor’s report **and**
 2. issues that the firm and the peer reviewer could not resolve and represent differences in professional opinion.
- At the Board’s discretion, the peer reviewer will either give the Board:
 1. one report encompassing all pre-issuance peer reviews segregating findings by engagement **or**
 2. one report after each pre-issuance peer review is completed.
- The peer reviewer will submit an overall conclusion to the Board stating their opinion as to whether or not the firm is ready to move forward with no further pre-issuance reviews.

The Board concurred that they will be working on process details for a long time to come, but it is now time to move forward. In an effort to determine if there

is a trend within a firm, the Board decided to receive the reports as they are generated. The Board agreed to move forward.

4. REPORT OF VICE CHAIR

A. CPA Services in non-CPA Firms

Board would like to add this to the spring work session for discussion.

5. REPORT OF TREASURER

A. October 2008

Eric Lind stated that revenue is ahead of projections by \$163,000 and net revenue is \$139,000. The Board may have a shortfall with the expense of on-line licensing and contract investigations. The out-of-state travel budget is on target.

6. LEGAL

A. Report of Legal Items

1. Proposed Consent Orders

a. Robert Sederstrom

Robert Sederstrom served as Chief Financial Officer (CFO) for PRM from May 2003 through July 28, 2006. Sederstrom provided consulting services to PRM until mid September 2006. PRM is a non-profit organization located in Portland, Oregon. PRM claims that Sederstrom used PRM assets for personal gain.

The Board assessed a total civil penalty of \$5,600 for the following violations:

- . (\$1,500) OAR 801-030-0005(2) Integrity and Objectivity, and AICPA Rule 102 Interpretation 102-2 Conflicts of Interest:
- . (\$1,500) OAR 801-030-0020(1) Professional misconduct:
- . (\$2,000) OAR 801-030-0020(1) Professional misconduct:
- . (\$500) OAR 801-030-0020(1) Professional misconduct:
- . (\$100) OAR 801-030-0020(9) Notification of change of address, employer or assumed business name

Board Discussion: *The Board reviewed a Consent Order offered by Sederstrom that incorporates Notice N-08-041.*

BOARD ACTION: Moved by Johnson and carried to approve the proposed Consent Order and the civil penalty in the amount of \$2,600.

VOTE: Chair Bailey did not vote: 6 ayes

7. COMPLAINTS

A. Report of Complaints Committee

1. Acceptance of Minutes

a. October 31, 2008

BOARD ACTION: Moved by Andersen and carried to accept the October 31, 2008 Complaints Committee minutes and to approve the Consent Agenda.

VOTE: Chair Bailey voted: 7 ayes

B. Consent Agenda

1. Complaint Investigations

*** Items removed from consent agenda**

- a. Kenneth Ward 08-04-008
- *b. James Elliott 08-04-009
- *c. Anita LaVassaur 08-04-010
- *d. John Campbell 08-04-011
- e. David Hinson 08-05-014
- *f. Brian Vaughan 08-05-015
- g. Ed Culp 08-06-019
- *h. Sherman Young & Assoc. 08-09-026

2. 2008 Annual Committee Report

The Board reviewed the annual Complaint Committee report.

C. Items Removed from Consent Agenda

Complaint Investigations

1.b. James Elliott 08-04-009

When James A. Elliott (Elliott) prepared Client's 2006 tax return, Elliott did not report Client's social security income. Client received a notice from Internal Revenue Service (IRS) stating that Client owed additional tax and interest. Elliott did not offer to reimburse Client for the interest due on the additional tax liability.

ALLEGED VIOLATION(S)

OAR 801-030-0010 (1) General Standards.

Licensees shall comply with the following general standards.

(a) Professional Competence. *Licensees shall undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.*

(b) Due Professional Care *Licensees shall exercise due professional care in the performance of professional services.*

and;

OAR 801-030-0010 (4) Tax Standards

Licensees shall not perform tax planning services, recommend tax return positions or prepare or sign tax returns (including amended returns, claims for refunds and information returns) filed with any taxing authority unless the licensee has complied with Statements on Standards for Tax Services issued by the Tax Executive Committee of the American Institute of Certified Public Accountants and with the United States Department of Treasury Circular No. 230.

Elliott did not record social security income on Client's 2006 tax return. The omission of social security income required Client to pay IRS additional taxes and interest.

Elliott admitted that he failed to report Client's social security income, stated that his failure to report the income was an error and that his office procedures when preparing the tax return meet the requirements for Due Professional Care and Tax Standards.

SUMMARY

OAR 801-030-0010 (1) General Standards.

- (a) Professional Competence
- (b) Due Professional Care

and
OAR 801-030-0010 (4) Tax Standards

Committee Discussion: The Client listed income, including the social security income, and expenses on a sheet of paper instead of using Elliott's tax organizer. In prior years the Client's deceased husband prepared the couple's tax returns. The Client was not the financial spouse and Elliott's failure to report the social security income was a serious oversight. Elliott should have considered prior to signing the Client's tax return that the Client who was of retirement age should report social security income. The Committee referenced 10.22 'Diligence as to accuracy' in the IRS Circular 230.

COMMITTEE RECOMMENDATION: Moved and carried to recommend no violation for OAR 801-030-0010 (1) General Standards: (a) Professional Competence and (b) Due Professional Care.

COMMITTEE RECOMMENDATION: Moved and carried to recommend a \$100 civil penalty for violation of OAR 801-030-0010 (4) Tax Standards.

Elliott arrived at the Board meeting at 1:25 p.m. and stated that the error was an honest mistake and he believes that the error does not rise to the level of professional misconduct. Mr. Elliott stated the following:

- The husband was the financial spouse
- Elliott did not make an agreement with Client to rectify the additional IRS taxes and interest
- The Client's complaint is that Elliott did not volunteer to pay the interest
- Elliott feels offended that the Board will publicize (in BOA's newsletter) that he violated a professional standard

Board Discussion: *The Board sympathized with Elliott's concern regarding publicizing a professional standard violation. The Board discussed the missing Social Security income and agreed that there was a violation of due professional care.*

BOARD ACTION: Moved by Andersen and carried to assess a \$100 civil penalty for violation of OAR 801-030-0010(1)(b), Due Professional Care.

VOTE: Chair Bailey voted: 7 ayes

1.c. Anita LaVassaur

08-04-010

Single audit of County School District for the period July 1, 2001 through June 30, 2002 was not conducted in accordance with AICPA Generally Accepted Auditing Standards, and *Government Auditing Standards* issued by the Controller General of the US or the applicable requirements pertaining to OMB Circular A-133, in some significant respects.

ALLEGED VIOLATION(S)

673.170 (Oregon statute) Disciplinary actions: grounds

(2) *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:*

(f) *Violation of any provision of the Code of Professional Conduct adopted by the Board under the authority granted by ORS 673.010 to 673.457 or rules adopted by the Board under ORS 670.280.*

OAR 801-030-0010 (Oregon Administrative Rules)

(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.*

(2) Auditing standards. *A licensee shall not permit the licensee's name to be associated with the financial statements in such a manner as to imply that the licensee is independent with respect to such financial statements unless the licensee has complied with generally accepted auditing standards. Statements on Auditing Standards issued by the AICPA and other pronouncements having similar generally recognized authority are considered to be interpretations of generally accepted auditing standards, and departures are not followed.*

(3) Accounting principles. *(This provision of the regulation is not relevant to this case.)*

SUMMARY

The OIG's report to the licensee on its quality control review of the single audit engagement was not very timely, nor was the OIG's acknowledgement of the licensee's response. However, the licensee violated professional standards on the single audit of the School District for the period July 1, 2001 through June 30, 2002. When the licensee was made aware of the departures by the OIG, she took the proper corrective action, and by that time, February 2006, had ceased doing work under the Single Audit Act, or the Yellow Book.

Anita LaVassaur arrived at 10:50 a.m. and stated that:

- In the upcoming year both Mr. Johnson and Mr. Montgomery plan to either semi-retire or substantially reduce their client responsibilities.
- Ms. LaVassaur has agreed to take over Mr. Johnson's tax practice if he should decide to retire.
- Ms. LaVassaur renewed her municipal license to assist Mr. Montgomery in the event of an emergency, however Mr. Montgomery does not intend to perform municipal audits after the coming audit year.
- Ms. LaVassaur does not have future plans to perform municipal audits other than to step in if an emergency should occur during the next audit year.

Robert Loe, Contract Investigator, joined the Complaints Committee meeting by phone conference at 11:00 a.m. and stated the following:

LaVassaur violated professional standards on the single audit of the School District for the period July 1, 2001 through June 30, 2002. When LaVassaur became aware of the departures by the Office of Inspector General (OIG), she took proper corrective action as requested. LaVassaur has since ceased performing audits that are subject to the Single Audit Act, or Yellow Book. Loe stated that if a government entity deems that work is unsatisfactory, that indicates a violation of professional standards.

Loe commented that OIG performed a review of LaVassaur's audit work three and a half (3-1/2) years after the audit was performed. He stated that although the OIG opinion is correct, it is not timely.

LaVassaur stated that in November 2003 the firm had a Peer Review that described compliance problems with documentation. Firm personnel attended additional CPE and made appropriate changes as indicated by the Peer Reviewer. The Firm updated their audit library. In 2006 the Firm's Peer Review was unqualified with no comments.

Committee Discussion: The Committee agreed that LaVassaur did not adequately perform according to requirements of the single audit. Recently, LaVassaur provided clients with some audit, review and fieldwork. The Committee noted that the Firm's subsequent Peer Review report was unqualified. They also noted that the Firm took corrective action before the review performed by OIG.

COMMITTEE RECOMMENDATION: Moved and carried to recommend that if LaVassaur performs any municipal audits, she be required to complete 16 hours of Continuing Professional Education (Yellow Book) prior to June 30, 2009 and to obtain a pre-issuance review of any municipal audits performed for the period June 30, 2009 and forward.

Anita LaVassaur and Robert Loe, Contract Investigator, joined the Board meeting by phone conference at 10:36 a.m. Mr. Loe noted that he spoke with the Office of Inspector General (OIG) who acknowledged that LaVassaur took the appropriate corrective action after February 2006 and ceased performing services under the Single Audit Act, or the Yellow Book.

LaVassaur commented that she renewed her municipal license only to assist Mr. Montgomery in the event of an emergency as Mr. Montgomery does not intend to perform municipal audits after the coming audit year. LaVassaur also noted that she does not have future plans to perform municipal audits.

Board Discussion: *The Board concurred that LaVassaur can contract out to a qualified CPA if the Firm requires help with municipal audits. The Board also noted that this is an old case and the Firm has improved their standard of care and audit procedures. The Firm corrected their internal control procedures.*

BOARD ACTION: Moved by Andersen and carried to request LaVassaur return her Municipal Certification to the Board office. Upon receipt of same the Board will assess no violation.

VOTE: Chair Bailey did not vote: 6 ayes

1.d. John Campbell

08-04-011

John H. Campbell (Campbell) provided tax services to Husband and Wife. Campbell agreed to prepare Husband and Wife's past due tax returns. Campbell prepared but did not deliver the past due tax returns to Husband and Wife.

Husband and Wife's son was appointed Power of Attorney (POA). In September 2007 POA made three requests to Campbell for Husband and Wife's tax records. On March 10, 2008 Campbell delivered the requested records to POA.

ALLEGED VIOLATION(S)

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

Licensees are required to furnish the following records to a client or a 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.

(B) In response to a client's request for client records, made within a reasonable time, that occurs after the issuance of a tax return, financial statement, report or other document prepared by the licensee, the licensee shall furnish to the client or former client:

(ii) Any accounting records belonging to or obtained from or on behalf of the client that the licensee removed from the client's premises or received for the client's account; and

(iii) A copy of the licensee's working papers to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

Campbell did not timely provide Husband and Wife's tax documents and records to the POA. In September 2007 the POA made three telephone calls to Campbell to request Husband and Wife's tax documents and records. Campbell delivered the tax documents and records to the POA on March 10, 2008.

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.

Campbell agreed to prepare past due tax returns for Husband and Wife. Husband and Wife relied upon Campbell's agreement to complete their past due tax returns. Campbell prepared but did not deliver tax returns for 1996, 1997 and 1998. Campbell did not notify Husband and Wife that he did not intend to deliver their tax returns.

SUMMARY

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

OAR 801-030-0020 (1) Professional Misconduct

Campbell arrived at the Complaints Committee meeting at 10:20 a.m. and made the following statements:

- Client's tax returns for 1996, 1997 and 1998 were in Campbell's client file and Campbell did not provide them to the client or IRS.
- Campbell did not provide the client's son with records that he requested. Client's son held Power of Attorney.
- In December 2008 Campbell plans to close his office and move his business to his home office.
- Campbell plans to continue to provide clients with payroll services and to give financial advice to a client that is a large corporation. Campbell plans to continue to prepare tax returns for approximately six of his current clients.

Committee Discussion: Campbell stated his concerns about the amount of a potential civil penalty and his ability to pay such a penalty. Campbell began providing tax services to this client during the 1990s. Campbell prepared but did not give the client three (3) years of tax returns, but instead kept them in his file. The client mistakenly believed that Campbell was looking out for their best interests. Campbell did not notify the client that he did not file their returns. Campbell did not promptly return client records to the client's son as requested.

COMMITTEE RECOMMENDATION: Moved and carried to recommend a \$1,500 civil penalty for violation of OAR 801-030-0015(2)(b) Requested Records
COMMITTEE RECOMMENDATION: Moved and carried to recommend 16 hours of Continuing Professional Education in Tax preparation: eight (8) hours in S Corp and eight (8) hours in individual tax for violation of OAR 801-030-0020(1) Professional Misconduct.

Mr. Campbell joined the Board meeting by phone conference at 2:00 p.m. The Board reviewed a proposal from Mr. Campbell in which Campbell requested the \$1,500 civil penalty be reduced to \$500. Mr. Campbell stated that he will be semi-retired the end of 2008. Campbell stated that he is suffering from the effects of the economic downturn and the \$1,500 civil penalty is a financial burden with his upcoming plans to semi-retire.

BOARD ACTION: Moved by Andersen and carried to assess a \$500 civil penalty for violation of OAR 801-030-0015(2)(b) Requested Records

VOTE: Chair Bailey voted: 7 ayes

BOARD ACTION: Moved by Andersen and carried to assess 16 hours of Continuing Professional Education in Tax preparation: eight (8) hours in S Corp and eight (8) hours in individual tax for violation of OAR 801-030-0020(1) Professional Misconduct.

VOTE: Chair Bailey voted: 7 ayes

1.f. Brian Vaughan

08-05-015

Brian Vaughan (Vaughan) prepared 2006 and 2007 tax returns for Husband and Wife. When Vaughan prepared Husband and Wife's 2007 tax return, he did

not report estimated tax payments paid to Oregon Department of Revenue (State). After Husband and Wife picked up their 2007 tax return, they found another client's confidential information in with the documents returned to them by Hanson Vaughan LLC (Firm).

ALLEGED VIOLATION(S)

OAR 801-030-0010 (1) General Standards.

Licensees shall comply with the following general standards.

(a) Professional Competence. Licensees shall undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.

(b) Due Professional Care Licensees shall exercise due professional care in the performance of professional services.

and;

OAR 801-030-0010 (4) Tax Standards

Licensees shall not perform tax planning services, recommend tax return positions or prepare or sign tax returns (including amended returns, claims for refunds and information returns) filed with any taxing authority unless the licensee has complied with Statements on Standards for Tax Services issued by the Tax Executive Committee of the American Institute of Certified Public Accountants and with the United States Department of Treasury Circular No. 230.

Vaughan did not report Husband and Wife's 2007 State estimated tax payments. The omission of estimated tax payments caused Husband and Wife to overpay State tax.

Vaughan did not amend Husband and Wife's 2007 tax return, Schedule A, to deduct the State estimated taxes.

Vaughan overstated depreciation expense on Husband's Business when Vaughan listed 2006 assets as assets purchased during 2007, and then expensed the assets under section 179 on the 2007 tax return.

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

A member in public practice shall not disclose any confidential client information without the specific written consent of the client.

(a) Prohibited disclosures. 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 or obtained by the licensee from a client or on behalf of a client if such information relates to services that the licensee rendered for the client.

Firm disclosed Client B's confidential Client information to Husband and Wife. The information disclosed included Client B's net income and social security numbers.

SUMMARY

OAR 801-030-0010 (1) General Standards.

(a) Professional Competence

(b) Due Professional Care

and;

OAR 801-030-0010 (4) Tax Standards

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

Committee Discussion: Vaughan did not report the client's 2007 estimated tax payments paid to Oregon Department of Revenue, and did not deduct the payments as taxes paid on the client's Schedule A. Vaughan's tax organizer did not provide a space to list State estimated payments. The Committee discussed their concerns about Vaughan's mistake of disclosing Client B's tax records to Husband and Wife.

COMMITTEE RECOMMENDATION: Moved and carried to recommend a \$500 civil penalty for violation of OAR 801-030-0015(1), Confidential Client Information and to require that Vaughan provide the Board with a written report that describes safeguards implemented by the Firm to prevent another occurrence of this nature.

COMMITTEE RECOMMENDATION: Moved and carried to recommend a \$1,000 civil penalty for violation of OAR 801-030-0010(b), General Tax Standards and OAR 801-030-0010(4), Tax Standards.

Board Discussion: *The Board reviewed a letter (mailed to the Board from the Client) from Vaughan addressed to Husband and Wife in which Vaughan states that he overstated client's deductions on their 2007 tax returns which resulted in an amount due to both IRS and the Oregon Department of Revenue. Vaughan returned the fee that Husband and Wife paid him to prepare their tax returns and indicated his willingness to pay for additional fines and penalties. The Board concurred that Vaughan had all the necessary information and should have caught the error.*

BOARD ACTION: Moved by Andersen and carried to assess a \$500 civil penalty for violation of OAR 801-030-0015(1), Confidential Client Information and to require that Vaughan provide the Board with a written report that describes safeguards implemented by the Firm to prevent another occurrence of this nature.

VOTE: Chair Bailey did not vote: 6 ayes

BOARD ACTION: Moved by Andersen and carried to assess a \$1,000 civil penalty for violation of OAR 801-030-0010(b), General Tax Standards and OAR 801-030-0010(4), Tax Standards.

VOTE: Chair Bailey did not vote: 6 ayes

1.h. Sherman Young & Assoc. 08-09-026

Sherman Young & Associates PC (Firm) entered into a Settlement Agreement and Release of All Claims (Settlement Agreement) with Client. The Settlement Agreement states that Client "shall not disclose to any person or entity the terms or amount of this agreement".

ALLEGED VIOLATION(S)

OAR 801-030-0020(13) Non-Disclosure Agreement

“Non-disclosure agreement” means any written or oral agreement that inhibits any party to the agreement from reporting an alleged violation of ORS chapter 673 or OAR chapter 801 to the Board, or that inhibits any party from cooperating with an investigation by the Board, an agency of any state, or an agency of the Federal Government.

The Firm’s Settlement Agreement states that Client shall not disclose the terms of the agreement to any person or entity.

SUMMARY

OAR 801-030-0020(13) Non-Disclosure Agreement

Committee Discussion: Firm entered into a non-disclosure settlement agreement with the Client. The Committee questioned the wording in the agreement and suggested that staff request that the Board’s attorney provide a legal opinion to determine if the wording in the agreement is, in the view of the Board’s attorney, a violation of OAR 801-030-0020(13).

COMMITTEE RECOMMENDATION: Moved by Brown and carried to recommend a \$1,000 civil penalty for violation of OAR 801-030-0020(13), Non-Disclosure Agreement; and request that the AAG provide the Board with a legal opinion as to this recommendation.

Gary Leavitt CPA, Frank Lagesen, Esq., and Shari Lane (Lagesen’s office) joined the Board meeting by phone conference at 10:05 a.m.

Jeff Dover, AAG, presented a legal opinion with respect to the Complaints Committee recommendation (*Attachment A*).

Mr. Lagesen commented that OAR 801-030-0020(13) is a new rule as of January 1, 2008 and Leavitt’s insurer was not aware of the rule at the time the agreement was reached. He also noted that Leavitt had nothing to do with the language in the agreement and that the document did not impede the investigation. Lagesen questioned the promulgation of the rule and was advised that the rule was discussed at OSCP Town Hall Meetings across the State and the proposed rule was also on the Board’s website.

Lagesen stated that there was no intent to violate the rule and requested that no sanction be imposed and no violation be found.

Board Discussion: *The Board reviewed the opinion and considered if the document impeded the investigation.*

BOARD ACTION: Moved by Gaffney and carried to approve the \$1,000 civil penalty for violation of OAR 801-030-0020(13) and OAR 801-030-0020(13)(a) Non-Disclosure Agreement, with the exception that a no violation will be found if Leavitt provides the Clients with a waiver as cited in 801-030-0020(13)(b). Failure to provide the Client with the waiver will impose the \$1,000 civil penalty and violation of OAR 801-030-0020(13) and OAR 801-030-0020(13)(a) Non-Disclosure Agreement.

VOTE: Chair Bailey did not vote: 6 ayes

D. Old Business

1. Timothy Steers

07-11-033

At the October 31, 2008 Complaints Committee meeting, contract investigator Cheryl Guiddy, CPA and Edward Savre CPA (with Ronald D. Harris & Co.) and Caroline Harris-Crowne, Attorney for Timothy Steers attended the meeting by phone conference. Edward Savre presented an executive summary of findings and made the following statements:

- Savre agrees with the PCAOB findings
- Steers' PCAOB sanction ends November 2009; Steers has completed one year of the PCAOB sanction

Caroline Harris-Crowne made the following statements:

- Steers is making an effort to follow the Complaint Committee's suggestions from a prior meeting
- Steers enrolled in Peer Review with the OSCP
- Steers completed 40 hours of CPE in tax and audit
- Steers is currently providing client services in tax, financial statements, and performs an audit for three (3) non-public companies
- Tim Huff of Mack Roberts & Co LLC performed pre-issuance reviews of all three audits.

Committee Discussion: In January 2008, the Board received a proposal from Steers, in which Steers agreed to: an additional 36 hours of CPE; pre-issuance reviews on 30% of attest engagements completed within 12 months of the date of an order; five (5) year stayed suspension so long as Steers is not found in violation of OARs or ORSs; enroll in a peer review program; and pay a \$5,000 civil penalty. This proposal was intended to encompass both the PCAOB matter and a prior complaint that resulted in a Notice of Proposed Civil Penalty and Continuing Professional Education (CPE).

The Notice issued on the prior complaint proposed a \$6,000 civil penalty and 16 additional hours of CPE. The Board delayed action related to the prior Notice until a decision was found on the PCAOB complaint (07-11-033).

The Committee discussed the steps taken by Steer's to follow the January 2008 proposal. The Committee considered requesting copies of Steers' pre-issuance reviews and possibly recommending another year of pre-issuance reviews.

COMMITTEE RECOMMENDATION: Moved and carried to recommend one additional year of pre-issuance reviews to be completed within 12 months from the date an Order is signed; and to ratify the Committee's prior recommendation with the following two (2) changes; 20 hours of additional CPE due on or before June 30, 2009; \$5,000 civil penalty in addition to the \$6,000 proposed in the Notice for a total civil penalty of \$11,000.

Andersen stated that Steers is no longer represented by counsel. The Complaints Committee previously made a recommendation of pre-issuance reviews and Continuing Professional Education. Caroline Harris-Crowne, Attorney for Timothy Steers (resigned as attorney on November 25, 2008) stated that in an effort to show good faith, Steers is enrolled in Peer Review with the OSCP, Steers has completed 40 hours of CPE in tax and audit, Steers is currently providing client services in tax, financial statements and audits of three (3) non-public companies. Harris-Crowne stated that Tim Huff of Mack Roberts & Co LLC performed pre-issuance reviews of all three audits.

Board investigator inquired and discovered that Steers is not enrolled in Peer Review with the OSCP and Mack Roberts & Co LLC did not perform any pre-issuance reviews for Steers.

Board Discussion: *The Board concurs to expedite the case. The Committee was led to believe that to show good faith, Steers completed the Committee's recommendations. Counsel advised that given the nature of the allegations, an investigative interview is likely the best course of action. Counsel requested the need for a technical expert and one Board member to assist in developing the deposition questions. Ray Johnson and contract investigators Cheryl Guiddy, CPA and Edward Savre CPA will assist Dover.*

2. Fischer Hayes & Associates

07-05-018

Richard Perdue abstained from the discussion and from voting. At the August 22, 2008 Complaints Committee meeting the Committee considered the investigation report that described "The Method" a tax strategy offered by Fischer Hayes & Associates PC. In August 2008, the Committee deferred making a recommendation related to the complaint until additional information could be obtained.

Information from the August 22, 2008 Meeting: Stewart L. Hayes (Hayes) of Fischer Hayes & Associates PC (Firm) developed "The Method". "The Method" is a tax strategy that has some similarities to the "Son of Boss" tax shelter. In 2000, Internal Revenue Service (IRS) issued Notice 2000-44 to advise the public that "Son of Boss" was an abusive tax shelter. In 2002, Jerome Tonk Fischer (Fischer) and Hayes advised Client to use "The Method" to shelter capital gains resulting from the sale of a commercial property.

After the August 22, 2008 Complaint Committee meeting, Committee member Armstrong reviewed documents and prepared a list of questions and observations for discussion. Armstrong noted the following:

- It is not clear if there was a transfer to a new partnership or a distribution to the partners.
- The 2002 Form 1065 indicates "Final Return", but a 2003 tax return was filed for the LLC.
- Who holds the qualified non-recourse financing reported on the member's K-1?
- Why is the original transaction not reported as a "listed transaction" per IRS Notice 2000-44?
- It appears that Fischer signed the LLC's 2002 Form 1065 tax return and that Hayes signed the LLC's 2003 Form 1065 and Client's 2003 amended tax return, Form 1040X.
- The basis of "real property and intangible assets" reported on Federal Schedule L is substantially more than the basis of the same assets on a supplemental schedule filed with the Oregon tax return.

Stewart Hayes, CPA, Jerome Fischer, CPA, Gordon Hanna Esq, (Attorney/Fischer Hayes) arrived at the Complaints Committee meeting at 8:50 a.m. and provided answers to the Committee's questions:

Q. Did the LLC transfer the assets to a new partnership or distribute the assets to the partners?

A. The partnership's interest in the assets was transferred; the assets were not transferred.

Q. Describe why the LLC's 2002 Form 1065 indicates "Final Return" but the LLC subsequently filed a 2003 tax return?

A. "Final Return" was marked as a technical termination to trigger the Section 708 termination (The response to the Board states that the Section 708 termination was disclosed on the partnership tax return). July 27 is the start date of the new business as reported on the LLC's 2003 Form 1065 (Armstrong's Exhibit 10)

Q. Who holds the debt?

A. The debt was held by the partnership, then passed through to the new partnership. The LLC was the holder of the debt, and the qualified non-recourse debt is held by a bank.

Q. Why was the original transaction not listed as a transaction per IRS notice 2000-44?

A. Mr. Hanna referred to his August 21 email to the Board, which states, "we dispute that either Notice 1999-59 or 2000-44 are directly applicable to this transaction. 99-59, by its terms, discusses transactions marketed to taxpayers 'for the purposes of generating tax losses.' The entire analysis in the notice deals with losses and when they are deductible. Notice 2000-44 specifically indicates that it is directed to 'transactions that purport to generate tax losses for taxpayers'. Throughout Notice 2000-44 the service references the generation of deductible tax losses. The transaction utilized by the [Client] was not designed to, and did not, generate a tax loss". This transaction created a stepped-up basis rather than a loss or tax deduction. Mr. Hanna also referenced his August 21 email which states, "When the amended returns were filed, the use of the transaction as a 'listed transaction' was disclosed, Form 8886 was filed with the Amended Return and a copy of form 8886 was provided to the Office of Tax Shelter Analysis".

Q. Who signed the tax returns? Fischer's preparer identification number is listed on the LLC's 2002 tax return.

A. Hayes stated that the preparer identification number reported on the LLC's 2002 tax return is incorrect. Hayes signed the 2002 tax return and the 2003 amended tax return, not Fischer. Hayes provided the Committee with a copy of the Firm's "Return Docket" that indicates Hayes signed the tax return in question.

Q. Please describe the differences in the values of the 'real estate and equipment' and the 'intangible assets' reported on the 2002 Form 1065 (Armstrong's Exhibit 2) and the amounts reported on the LLC's 2002 Federal Supplemental Information – Oregon Question 3B (Armstrong's Exhibit 3).

A. Hayes stated that the 2002 Form 1065 (Armstrong's Exhibit 2) reflects the stepped-up basis of the real estate and equipment.

Hayes concluded his remarks to the Committee by stating that his research supported "The Method". In Hayes' opinion, "The Method" did not fall within the authority of IRS Notice 2000-44. Hayes is of the opinion that the IRS decision to disallow this type of tax strategy is not a binding decision because of Supreme

Court decision *Deputy v du pont* [308 US 488, 60 S.Ct. 363, 84 L. Ed. 416 (1940)].

COMMITTEE RECOMMENDATION: Moved and carried to recommend no violation of ORS 673.170(2)(c)(A) Incompetence in the practice of public accountancy.

COMMITTEE RECOMMENDATION: Moved and carried to recommend no violation of OAR 801-030-0010(1), Competence.

Stewart Hayes, CPA, and Gordon Hanna Esq, (Attorney/Fischer Hayes) arrived at the Board meeting at 11:04 a.m. The Board questioned Hayes regarding fees charged to Fischer Hayes clients.

Board Discussion: *The Board considered the Complaints Committee recommendation and information provided by Fischer Hayes related to fee arrangements.*

BOARD ACTION: Moved by Gaffney and carried to refer back to the Complaints Committee requesting the Committee to review Firm's fee arrangements with clients.

VOTE: Chair Bailey voted: 7 ayes

8. REPORT OF ADMINISTRATOR

A. Approve Administrator reimbursed expenses

Rives explained that the food reimbursement expenses increased due to weekend meetings that were held in Salem and could not be catered.

BOARD ACTION: Moved by Morris and carried to approve Ms. Rives reimbursed expenses for the 2008 calendar year.

VOTE: Chair Bailey did not vote; 6 ayes

B. Secretary of State – Audits Division Audit Report Review letters and responses

1. David F. Lindley, CPA
2. Bruce Nichols, CPA and Stan Miller, CPA
3. Robert M. Armstrong, CPA
4. J. Robert Wall, CPA
5. Thomas C. Romig, CPA

The Board requested that the CPE committee review the letter from Secretary of State – Audits Division along with the Firm's response to determine if a complaint should be opened.

If the CPE committee determines that there is a possible violation, the committee will refer the information to the Board investigator to begin the complaint process.

The current letters are to be added to the CPE Committee agenda January 27, 2009.

C. Committee Membership

1. Complaints

BOARD ACTION: Moved by Johnson and carried to approve appointment of Robert Nichols and Fred Peterson to Complaints Committee. The term of service will be January 1, 2009 through December 31, 2010.

VOTE: Chair Bailey did not vote; 6 ayes

2. Peer Review Oversight

BOARD ACTION: Moved by Johnson and carried to approve appointment of Roy Rogers and Michael Gavaza to Peer Review Oversight Committee. The term of service will be January 1, 2009 through December 31, 2010.

VOTE: Chair Bailey did not vote; 6 ayes

3. Continuing Professional Education

BOARD ACTION: Moved by Johnson and carried to approve appointment of Mark Baker to CPE Committee. The term of service will be January 1, 2009 through December 31, 2010.

VOTE: Chair Bailey did not vote; 6 ayes

4. Qualifications

BOARD ACTION: Moved by Johnson and carried to approve appointment of Brigitte Gentner or Michael Halbirt to Qualifications Committee. The term of service will be January 1, 2009 through December 31, 2010.

VOTE: Chair Bailey did not vote; 6 ayes

D. Administrative Rules

1. Administrative Rule Hearing Report

The Board held an administrative rule hearing on December 1, 2008. Comments were received in writing and orally. All comments received were reviewed by the Board and considered.

2. Division 001

BOARD ACTION: Moved by Morris and carried to approve the proposed rule amendments to Division 001.

VOTE: 7 ayes

3. Division 010

BOARD ACTION: Moved by Morris and carried to approve the proposed rule amendments to Division 010.

VOTE: 7 ayes

4. Division 030

BOARD ACTION: Moved by Morris and carried to approve the proposed rule amendments to Division 030.

VOTE: 7 ayes

5. Division 040

BOARD ACTION: Moved by Morris and carried to approve the proposed rule amendments to Division 040.

VOTE: 7 ayes

E. CPA/PA Certificate issued by biennia

The members were presented with a spreadsheet that shows the number of CPA/PA certificates that have been issued over the current and previous biennia. The trend shows that the number of reciprocal licenses issued has decreased. The number of reciprocal licenses could continue to decrease depending on mobility legislation.

F. Major Case Investigations (Washington)

This item is informational only. This was received from the Washington Board of Accountancy.

G. Request for transcript accreditation

Johnson reviewed the information that was submitted by *ACREVS* which is not a member of NACES but would like to offer evaluations for Oregon Board of Accountancy candidates. Johnson does not feel that the Board should reject the organization. Bennett informed the Board that the requirement for a foreign evaluator to be part of NACES is in the OAR and would require a rule change. Johnson mentioned that if the Board maintains the current rule, it is easy for staff to determine if the Oregon Board will accept an evaluator.

BOARD ACTION: Moved by Johnson and carried to continue with the current procedures which requires an evaluator to be a member of NACES.

VOTE: Chair Bailey did not vote; 6 ayes

9. PUBLIC COMMENTS

None

10. REPORT OF OAIA

Mr. Morris reported that the OAIA has contracted with a new CPE provider, Jennings and Associates. Mr. Jennings was formerly associated with Gear-Up. The OAIA would welcome anyone in the public accounting field to attend CPE seminars.

11. REPORT OF OSCPA

Ms. Essenberg thanked the Board members for attending the Town Hall stops and speaking on current Board topics. The OSCPA will be sharing information received from their attorney on mobility. The OSCPA has started working with a few of the accounting departments in the local colleges.

12. OLD BUSINESS

A. Bob Baldwin

The Board granted an extension to December 15, 2008 for Mr. Baldwin to provide any additional details that would support his application for certification. Mr. Baldwin's attorney sent a letter to the Board indicating that they had no additional experience to report that would support the issuance of a CPA Certificate.

BOARD ACTION: Moved by Gaffney and carried to deny the application for certification submitted by Bob Baldwin.

VOTE: 7 ayes.

B. Muni Audit Review Procedures

Secretary of State – Audits Division is currently sharing two types of letter with the Board, Desk reviews and Work paper reviews. The Board only receives the Desk review letter if the firm was asked to reissue the report. The Board receives all Work Paper reviews. The Board would like the investigator to send a letter to the firm and request a response to the findings from the Audits Division. Once the response is received; the letter from Audits Division along with the firms' response will be forwarded to the CPE Committee for review. If the CPE Committee determines that there is a possible violation of Oregon statutes or rules, the matter will be referred to the Complaint Committee.

The Board directed staff to review the committee by-laws and draft a change to the CPE committee charge if needed. The Board will review the proposal at the February 9, 2009 meeting.

13. CONTINUING PROFESSIONAL EDUCATION

A. Report of CPE Committee

1. Acceptance of Minutes

a. November 18, 2008

BOARD ACTION: Moved by Morris and carried to accept the Continuing Professional Education minutes dated November 18, 2008.

VOTE: Chair Bailey did not vote; 6 ayes

2. Consent Agenda

a. 2008 Annual Committee Report

b. Municipal Auditor Applications

1. Konrad Capeker
2. Miriam E. Koza
3. Lori M. Tasker

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

VOTE: Chair Bailey did not vote; 6 ayes

14. PEER REVIEW OVERSIGHT

A. Peer Review Oversight Committee

1. No meeting held

15. QUALIFICATIONS COMMITTEE

A. Report of Qualifications Committee

1. Acceptance of Minutes

a. November 13, 2008

BOARD ACTION: Moved by Newhouse and carried to approve the minutes of November 13, 2008 as written.

VOTE: 7 ayes.

B. Consent Agenda

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

VOTE: 7 ayes

1. Recommendations
 - a. Yunjing Zubkow

2. Other
 - a. 2008 Annual Report
 - *b. Katy Molloy
3. Approval of Applications
 - a. CPA Certificates/Permits
 - b. PA Licenses/Permits
 - c. Firm Registrations
 - d. Substantial Equivalency Approval

*** Items removed from consent agenda**

C. Items Removed from Consent Agenda

1. Katy Molloy

This file was first considered at the April 21, 2008 committee meeting. Ms. Molloy passed the CPA examination May 21, 2007 and gained her experience with the following employers:

ProSeeds	31 mos.	All competencies
Moore & Colley, CPAs	7 mos	NoCompetencies

At the time Ms. Molloy submitted her CPA application (November 30, 2007) Molloy's most recent employer was Moore & Colley, CPAs. The accounting firm did not return the forms to the Board in time for committee review at the April committee meeting.

Molloy's previous employer (ProSeeds) submitted an experience certification. The committee deferred consideration of the file until the accounting firm provided an experience form. The committee also requested additional documentation from ProSeeds. Staff will send experience forms to the CPA firm again and request documentation from ProSeeds that includes specific descriptions of qualifying work performed by Molloy.

COMMITTEE RECOMMENDATION (April 21, 2008): Committee will defer this file.

Vote: 7 ayes; 1 absent (Selid)

The committee reviewed additional information at the July 22, 2008 meeting. The accounting firm stated that Molloy was employed by the accounting firm seven months, during which time she did not achieve the competencies, with no further explanation.

ProSeeds provided additional information, including examples of work Molloy performed. The additional information received from ProSeeds does not sufficiently support a conclusion that the applicant has met the competencies.

The committee questions why the most current employer (CPA firm) cannot certify to any competencies, while the prior employer (ProSeeds) states that Molloy achieved all competencies during her term of employment. Staff will request clarification from Moore & Colley and include copies of example experience write-ups, and the administrative rule that describes the responsibility of the supervisor licensee.

The reviewer agreed to contact the supervisor licensee at ProSeeds for more information and remind her that all information sent to the board becomes public information. Examples of work performed by applicants should not be submitted as a demonstration of the competencies.

COMMITTEE RECOMMENDATION (July 22, 2008): Defer.

Vote: 8 ayes.

The Board received additional information from the applicant regarding her employment with ProSeeds and Moore & Colley.

The reviewer called Evelyn Molloy, the supervisor licensee at ProSeeds, to discuss how Katy achieved the competencies. After the conversation the reviewer still did not feel that the applicant was strong in her research practices or her ability to complete a task without assistance.

Mr. Rawls believes that the competencies have been met according to board rules and that unless the committee can come up with specific problems the application should be approved. Mr. Emery responded that the committee has a responsibility to investigate all aspects of an application for certification and if there is doubt on behalf of the reviewer, those concerns need to be addressed. The specific concern in this file is regarding competency "F", *Decision making, problem solving and critical thinking in the context of analysis*. It is not clear that the applicant has met this competency.

The following roll call votes were taken:

DENY the application for Katy Molloy:

Emery – No

Rawls – No

Santiago – Yes

Lee – No

Martin – No

Wolcott – No

Selid – Absent

Forehand – Absent

REQUEST FOR MORE INFORMATION:

Emery – No

Rawls – Yes

Santiago – No

Lee – No

Martin – Yes

Wolcott – No

Selid – Absent

Forehand – Absent

DENY FOR FAILURE TO MEET COMPETENCY "F":

Emery – Yes

Rawls – No

Santiago – Yes

Lee – No

Martin – No

Wolcott – Yes

Selid – Absent

Forehand – Absent

COMMITTEE RECOMMENDATION (November 13, 2008): The committee had a tie vote. They would like the Board to review and make a determination on this file.

Board Discussion: *The Board reviewed all documentation provided and noted the inconsistencies between the employers regarding the competencies met. It was determined that the applicant is not sufficiently competent in competencies B and F.*

BOARD ACTION: Moved by Newhouse and carried to deny the application submitted by Ms. Molloy for CPA Certification.

VOTE: 7 ayes, Chair Bailey voted.

16. CPA EXAM

A. Candidate Care Report 7/1/08-8/31/08

This was for Board information only.

B. Passing Rates National vs. Oregon

Passing rates for Oregon candidates were compared to the national rates.

Oregon candidates have a slightly higher pass rate. This was for informational purposes only.

C. CBT Quarterly Summary Report

This was for Board information only. The CBT Steering group indicated that there is a decrease in software and technical issues and therefore a higher candidate satisfaction rate.

D. Exam Site Visits

The Board may at any time, with prior authorization, visit a testing location and observe its practices. If any Board member is interested in a site visit, they were encouraged to contact Kimberly at the Board office for instruction.

E. Prometric Testing Center Complaint

An exam candidate sent the Board an email regarding problems she encountered at a Prometric testing center. Her email was forwarded to NASBA for response.

F. New Testing Center – Medford

A new testing center has opened in Medford. Since our new Board member Jessie Bridgham is from the Medford area, we will ask if she can perform a site visit.

BOARD ACTION: Moved by Gaffney and carried to ask Ms. Bridgham to perform a site review of the Medford testing center. This was for Board information only.

VOTE: Chair Bailey voted; 7 ayes

17. CODE OF PROFESSIONAL CONDUCT

A. Report of Code of Professional Conduct Committee

1. Acceptance of Minutes

a. November 5, 2008

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

VOTE: Chair Bailey voted; 7 ayes

B. Consent Agenda

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

VOTE: Chair Bailey voted; 7 ayes

1. Recommendations - none

2. 2008 Annual Report

18. NEW BUSINESS

A. Election of 2009 Officers and appointment of Committee Liaisons

Board officers:

James Gaffney, Chair

Ray Johnson, Vice-chair

Roberta Newhouse, Treasurer

Committee Liaisons:

Ray Johnson, Complaints Committee

Jessie Bridgham, Peer Review

Roberta Newhouse, Qualifications

Kent Bailey, Continuing Professional Education

Ray Johnson, Code of Professional Conduct

BOARD ACTION: Moved by Morris and carried to approve the nominations of officers for 2009.

VOTE: Chair Bailey voted; 7 ayes

B. Confirm 2009 Meeting Calendar

The following dates are confirmed for 2009:

February 9, May 17 (*Work Session*), May 18, August 17,

October 4 (*Work Session*), October 5 and December 7

19. PROCESS OBSERVER REPORT

Due to inclement weather, five Board members attended the meeting via phone conference. It was a long meeting, partially due to phone conferencing with Board members and Board guests. Jens Andersen and Stewart Morris were applauded for their excellent work as members of the Board of Accountancy.

20. NEXT MEETING

February 9, 2009

Board of Accountancy

3218 Pringle Rd. SE #110

Salem, OR 97302

8:00 a.m.

21. ADJOURN

There being no further business, the meeting adjourned at 5:30 p.m.

Dial-in number: 1-877-326-2337

Conference ID: 5559510