

**OREGON BOARD OF ACCOUNTANCY**

**COMPLAINTS COMMITTEE**

Public Session Meeting Minutes

September 23, 2013

8:30 a.m.

3218 Pringle Rd. SE #110

Salem, OR 97302

1<sup>st</sup> Floor Conference Room

503-378-4181

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

**Committee Members Present**

Patrick Richardson, CPA (Chair)

Karen Jacobson, CPA

Richard D. Perdue, CPA

Joshua Dunlap, CPA

Fred Peterson, CPA

William Holmes, CPA

Kent Bailey, CPA

Robert Nicklos, CPA (Vice-chair) *by phone*

**Staff**

Martin Pittioni, Executive Director

Noela Kitterman, Investigator

Bethany Reeves, Compliance Assistant

Theresa Gahagan, Investigator

**Board Liaison**

Larry Brown, CPA

**Board Counsel**

Susan Bischoff, AAG

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1. **CALL TO ORDER:** Chair Pat Richardson called the meeting to order at 8:35 a.m.
  2. **APPROVE DRAFT AGENDA:** No changes made to draft agenda.
  3. **APPROVAL OF MINUTES:**
    - a. Mr. Bailey moved and carried to approve the June 24, 2013 BOACC meeting minutes as presented. Votes: 7 Aye, 0 No, 1 Abstain. Mr. Perdue abstained as he was not present at the June 24<sup>th</sup> meeting.
    - b. Mr. Perdue moved and carried to approve the July 15, 2013 BOACC meeting minutes as presented. Votes: 6 Aye, 0 No, 2 Abstain. Mr. Bailey and Mr. Nicklos abstained as they were not present at the July 15<sup>th</sup> meeting.
  4. **REVIEW OF BOARD ACTION:** The Board held a work session on August 11, 2013 and a regular Board Meeting on August 12, 2013. Mr. Brown discussed several items including:
    - A. Review of complaints which came before the Board on August 12, 2013. Mr. Brown said that with very few exceptions, the Board voted along the BOACC recommendations, and generally agreed with the suggested penalties.

**4.A.1 Case #12-016CI – Terri Blodgett,  
CPA Case #12-017CI – Moss Adams LLP**

The BOACC recommended that there is insufficient evidence to make a finding of violation in either case, and the Board agreed, voting unanimously that there is INSUFFICIENT evidence to find violations of OAR 801-030-0010(1)(b), Due Professional Care.

**4.A.2 Case #12-060CI – Tracy Stelling, CPA**

The BOACC recommended that there is insufficient evidence to make a finding of violation of four statutes and/or rules, and sufficient evidence to find make a finding of violation in three others. The Board agreed with the BOACC recommendations and voted as follows:

Voted unanimously that there is INSUFFICIENT evidence to make a preliminary finding of violation for:

    OAR 801-030-0005(2), Integrity and Objectivity  
    OAR 801-030-0010(1), General Standards  
    OAR 801-030-0010(3), Accounting Principles  
    OAR 801-030-0020(1), Professional Misconduct

Voted unanimously that there is SUFFICIENT evidence to make a finding of violation of OAR 801-030-0010(5), Other professional standards by failing to comply with SSARS.

Voted with 6 Ayes and 1 No that there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-050-0020(1), Failure to enroll in peer review.

Voted with 6 Ayes and 1 No that there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-010-0345(2), Failure to register a firm.

**4.A.3 Case #12-070NK – James Peters, CPA**

The BOACC recommended that there is insufficient evidence to make a finding of violation, and the Board agreed, voting unanimously to find INSUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b), Due Professional Care.

**4.A.4 Case #13-014 – Patricia Harry, CPA**

The Respondent used her Oregon license number, which was lapsed, on two tax returns she prepared for Oregon clients. She was actively licensed in another state and prepared the client's tax returns in another state. The BOACC recommended that there is insufficient evidence to make a finding of violation, and the Board agreed, voting 6 to 1 to find INSUFFICIENT evidence to make a preliminary finding of violation of ORS 673.320(3), Use of the CPA designation without an active license.

**4.A.5 Case #12-050NK – Boldt Carlisle & Smith CPA LLC**

The BOACC recommended that there is insufficient evidence to make a finding of violation, and the Board agreed, voting unanimously to find INSUFFICIENT evidence to make a preliminary finding of violation of:

    OAR 801-030-0010(1), General Standards  
    OAR 801-030-0010(2), Auditing Standards  
    OAR 801-030-0010(3), Accounting Principles

**4.A.6 Case #12-030NK – Diana Flanigan, CPA**

Mr. Brown outlined how Ms. Flanigan prepared a tax return for a couple without including all of their income. Ms. Flanigan offered to amend their tax return and pay their IRS penalty since she didn't know if she had overlooked the income from a W-2 or if they had failed to provide her with the information. However, the client could not say whether or not they had ever given her the W-2, and they asked her pay ½ of the IRS fine. Ms. Flanigan timely mailed the client a check for the ½ of the IRS penalty as they requested. Ms. Flanigan did not respond to a request for information from the Board within 21 days, but this was because of a health issue. The BOACC recommended that there is insufficient evidence to make a finding of a violation, and the Board agreed, voting unanimously to find INSUFFICIENT evidence to make a preliminary finding of violation of:

    OAR 801-030-0010(1)(b), Due Professional Care

    OAR 801-030-0020(7)(b), Failure to provide a written response to the Board within 21 days.

#### **4.A.7 Case #12-062NK – John Paul Kenote, CPA**

Mr. Brown outlined how Mr. Kenote had a client who paid into a tax shelter that was ultimately disallowed by the IRS as a deduction. The client was audited by the IRS and required to pay large penalties. As part of his services, Mr. Kenote referred the client to an insurance salesman who sold the plan to the client. Mr. Kenote received a referral fee of more than \$9,000, but he did not disclose to the client that he had received the referral fee. The BOACC recommended that there is sufficient evidence to make a finding of violation of Due Professional Care and Prohibited Commissions and Referral fees, but insufficient evidence to make a finding of violation of the Tax Standards or Professional Misconduct. The Board voted to find SUFFICIENT evidence to make a preliminary finding of violation of for both items recommended by the BOACC, as well as Tax Standards and Integrity and Objectivity as follows:

Voted with 5 Aye and 2 No that there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b), Due Professional Care.

Voted unanimously that there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0005(3), Commissions and Referral Fees.

Voted unanimously that there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0005(2), Integrity and Objectivity.

Voted unanimously that there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0010(4), Tax Standards.

Voted unanimously that there is INSUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(a), Professional Competence and OAR 801-030-0020(1), Professional Misconduct.

**4.A.8 Case #12-063NK – Cherina Hart, CPA**

The BOACC recommended that there is sufficient evidence to make a finding of violation of Integrity and Objectivity, Due Professional Care, and Tax Standards, and insufficient evidence of Requested Records and Professional Misconduct. The Board agreed unanimously with the recommendations of insufficient evidence, but agreed with the recommendation of sufficient evidence for only one of the three allegations as follows:

Voted unanimously to find there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0005(2), Integrity and Objectivity.

A motion to find there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(b), Due Professional Care FAILED with a vote of 2 Aye and 5 No.

A motion to find there is SUFFICIENT evidence to make a preliminary finding of violation of OAR 801-030-0010(4), Tax Standards FAILED unanimously with 7 No votes.

Voted unanimously to find there is INSUFFICIENT evidence to make a preliminary finding of violation of:

OAR 801-030-0015(2)(b), Requested Records  
OAR 801-030-0020(1), Professional Misconduct

**5. BOACC Business**

- A. There was a discussion of the future BOACC meeting dates. Mr. Nicklos and Mr. Bailey would prefer to switch the meetings to Fridays instead of Mondays. No one in the group indicated that they preferred Mondays over Fridays.
- B. Director Pittioni discussed how there are many cases currently being investigated by both contract investigators and staff investigators. This may mean future meetings could be several hours longer than they have been, including the meeting on November 18, 2013. Mr. Brown said he is not able to stay later than 5:00 pm on that night because he has an obligation later in the evening. The option of starting at 8:00 am instead of 8:30 am was discussed. At least one member noted that it would be hard to arrive that early, but it would be worth it when there is a full day of agenda items. Director Pittioni said staff would evaluate the agenda in early November, and would let the BOACC members know by November 5, 2013 if the meeting needed to start earlier to accommodate all of the cases. Unless they members are told otherwise, the meeting will remain at the current 8:30 am starting time.
- C. Director Pittioni announced that a training for contract investigators would be held just before the next BOACC meeting in November, so he was hopeful that the investigation reports presented to the BOACC in the future would be more consistent with the reports prepared by staff investigators.

- D. Mr. Brown discussed the need for replacement members since several members of the BOACC are near the end of their service, and all of the outgoing members have experience in taxes. A list of licensed CPA who have indicated that they might willing to volunteer with the Board in some capacity was distributed to each member. Also, it would be good to have members from different areas of the state. Mr. Perdue noted that he is outgoing and the only member of the BOACC that is a Municipal Auditor, so they need to find someone with that skill as well. He suggested Wes Price might be a good candidate, as he has experience in municipal audits. Mr. Brown invited any other suggestions to be sent to his personal email of [larrybrown1031@comcast.net](mailto:larrybrown1031@comcast.net).
- E. Director Pittioni discussed the Rule and Laws Taskforce. The Board is contemplating advocating significant changes to statute and the rules. A taskforce consisting of 4 board members, 2 representatives from the OSCPA, a representative from the OAIA, and possible several other people will thoroughly review both the rules and the laws to see where they need to be updated or clarified. This will be a large change with the goal of aligning the many small changes that have happened in the past.

## 6. COMMITTEE RECOMMENDATIONS

### A. Case #12-019NK

**COMMITTEE RECOMMENDATION:** Moved by Mr. Perdue and carried to recommend to the Board that there is insufficient evidence to make a preliminary finding of a violation of:

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

    OAR 801-030-0020(3), Acting through others

**Vote:** 8 ayes, 0 nays

**Comments:** None

### B. Case #12-012NK

**COMMITTEE RECOMMENDATION:** Moved by Mr. Peterson and carried to recommend to the Board that there is insufficient evidence to make a preliminary finding of a violation of:

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

**Vote:** 8 ayes, 0 nays

**Comments:** None

### C. Case #13-009

**COMMITTEE RECOMMENDATION:** Moved by Mr. Perdue and carried to recommend to the Board that there is sufficient evidence to make a preliminary finding of a violation of:  
OAR 801-030-0010(1)(b), Due professional care

**Vote:** 8 ayes, 0 nays

**Comments:** The BOACC recommends a mid-level civil penalty and CPE on quality control in a tax practice.

**D. Case #13-015**

**COMMITTEE RECOMMENDATION:** Moved by Mr. Perdue and carried to recommend to the Board that there is sufficient evidence to make a preliminary finding of violations of:  
ORS 673.320(3), Use of the CPA designation while lapsed  
OAR 801-030-0020(1), Professional misconduct  
OAR 801-030-0005(2), Integrity and objectivity

**Vote:** 8 ayes, 0 nays

**Comments:** The BOACC views the conduct of the Respondent as very egregious and recommends the Board revoke the license.

**E. Case #13-019**

**COMMITTEE RECOMMENDATION:** Moved by Ms. Jacobson and carried to recommend to the Board that there is insufficient evidence to make a preliminary finding of a violation of:  
OAR 801-030-0010(1)(b), Due professional care  
OAR 801-030-0010(5), Other professional standards

**Vote:** 8 ayes, 0 nays

**Comments:** None

**F. Case #13-025**

**COMMITTEE RECOMMENDATION:** Moved by Mr. Dunlap and carried to recommend to the Board that there is insufficient evidence to make a preliminary finding of a violation of:  
OAR 801-030-0015(1), Confidential client information

**Vote:** 8 ayes, 0 nays

**Comments:** None

**G. Cases #12-062NK and #13-017 (linked cases)**

**COMMITTEE RECOMMENDATION:** Moved by Mr. Perdue and carried to recommend to the Board that there is sufficient evidence to make a preliminary finding of multiple violations,

the number of which will be determined based on information which may be received after the BOACC meeting, with respect to the following Board laws and rules:

ORS 673.320(3), Use of the CPA designation while lapsed

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

OAR 801-030-0005(2), Integrity and objectivity

OAR 801-030-0010(4), Tax standards

**Vote:** 8 ayes, 0 nays

**Comments:** None

The next meeting will be held on November 18, 2013.

**Meeting adjourned at 1:42 p.m.**