OREGON BOARD OF ACCOUNTANCY
COMPLAINTS COMMITTEE
Public Session Meeting Minutes
November 18, 2013
8:30 a.m.

3218 Pringle Rd. SE #110
Salem, OR 97302 1st Floor Conference Room 503-378-4181

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) (left at 11:13 am)
Karen Jacobson, CPA
Richard D. Perdue, CPA
Joshua Dunlap, CPA
Fred Peterson, CPA
William Holmes, CPA
Kent Bailey, CPA
Robert Nicklos, CPA (Vice-chair)

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

1. CALL TO ORDER: Chair Pat Richardson called the meeting to order at 8:44 a.m.

2. APPROVE DRAFT AGENDA: No changes made to draft agenda.

3. APPROVAL OF MINUTES – BOACC Public Session Minutes from September 23, 2013

Committee Action: Mr. Bailey moved and carried to approve the September 23, 2013 public session minutes as presented, with the exception of one case number being corrected in Agenda Item 6.G.
Votes: 8 Ayes, 0 Nayes

4. Review of Board Action – Board Meeting of October 20 and 21, 2013
Board Liaison Larry Brown updated the BOACC on the actions the Board took at their most recent meeting. In the case of David T. Sheets, he mentioned that because the Board was unable to obtain any evidence that the Respondent had received payment for preparing tax returns, the Board did not make a preliminary finding of violation for the Tax Standards [OAR 801-030-0010(4)]. He noted that the Board not make a preliminary finding of violation in the Case #13-009 [Tom Dragicevic]. Although the BOACC had recommended a finding of violation, the Board did not conclude that the errors on the tax return or the failure to recommend that the client correct the prior year's tax return rose to the level of a violation of Due Professional Care [OAR 801-030-0010(1)]. However, the Board did direct Board staff to write a letter strongly encouraging the Respondent to improve the internal controls at firm and also take additional CPE on estates and taxes. These letters of recommended actions are a new process for the Board.

The members of the BOACC asked many questions about why the Board arrived a different conclusion than they had in the case #13-009. Mr. Brown replied that the Respondent was very humble when he came to before the Board and consistently gave the same answers to the Board as he did to the BOACC. After his presentation, the Board concluded that the attorney and the CPA who were advising the client were aware that the 2009 tax returns were inaccurate, so they felt it was unnecessary for the Respondent to notify client of that fact in those circumstances. While they had concerns about the situation and recognized that there were inaccuracies in the 2010 tax return prepared by the Respondent, they did not feel his conduct rose to the level of a violation.

5. OLD BUSINESS – Investigator Training

Director Pittioni reported on the Oregon Board of Accountancy Investigator Training session which was presented on November 15, 2013. The two-hour class was conducted via webinar. A dozen Board staff, contract investigators, and staff from the offices of the contract investigators participated. Staff Investigator Noela Kitterman reviewed the format for the investigation reports. Mr. Pittioni discussed the role of the Board of Accountancy, and attorney Susan Bischoff offered advice. The importance of presenting the facts in a neutral manner was mentioned several times.

6. NEW BUSINESS – 2014 Meeting Schedule

Director Pittioni reviewed the proposed 2014 BOACC meeting schedule. Members were asked to confirm their availability for the proposed dates or suggest alternatives if they had a scheduling conflict. One member noted a conflict with July 11, 2014, so that meeting was changed to July 18, 2014. Mr. Pittioni noted that the goal is to increase the number of completed cases in 2014 now that the Board has two investigators. Although this will mean more cases will come before the BOACC in 2014, it is hoped this will reduce the backlog of open cases and decrease the time it takes for complaints to be concluded.

7. CONVENE EXECUTIVE SESSION

The public session was closed at 9:09 am when the BOACC convened in executive session pursuant to ORS 192.660(2)(f). After the executive session concluded, the public session was resumed at 2:07 pm. Chair Richardson left around 11:15 am, so the meeting was chaired by Vice-Chair Rob Nichols when it resumed.

8. COMMITTEE RECOMMENDATIONS

A. MOTIONS

1. Case #11-050NK

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 801-010-0345(5), Notification to Board

That there is sufficient evidence to make a preliminary finding of a violation of:
OAR 801-030-0020(1), Professional misconduct

OAR 801-030-0020(8), Business Transactions with Clients

Vote: 6 ayes, 0 nays, 1 abstain (Josh Dunlap), 1 excused absence (Pat Richardson)

COMMITTEE RECOMMENDATION: Moved by Mr. Bailey and carried to recommend to the Board:

That there is sufficient evidence to make a preliminary finding of a violation of:

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

Vote: 6 ayes, 0 nays, 1 abstain (Josh Dunlap), 1 excused absence (Pat Richardson)

Comments: It was noted that the conduct was very egregious, and a recommendation was made to refer the information over to the Division of Finance and Corporate Securities at the Department of Consumer and Business Services for possible investigation.

2. Case #12-029NK

COMMITTEE RECOMMENDATION: Moved by Mr. Bailey and carried to recommend to the Board:

That there is sufficient evidence to make a preliminary finding of a violation of:

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

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

Vote: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)

Comments: It was noted that a mid-to-upper range penalty would be appropriate because the Respondent had prior violations.

3. Case #12-064NK

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: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)

Comments: none

4. Case #12-059NK

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

Vote: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)

Comments: None

5. Case #12-065NK

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

1. OAR 801-030-0020(1), Professional Misconduct, creating accounting records and tax returns
2. OAR 801-030-0020(1), Professional Misconduct, manipulation of income
3. OAR 801-030-0020(1), Professional Misconduct, facilitating false charitable contributions (9 instances)
4. OAR 801-030-0020(7)(b)(B), Compliance with Board request (2 instances)
5. OAR 801-030-0020(7)(b)(B), Truthfulness (Multiple)
6. OAR 801-030-0020(7)(c), Hinder or obstruct a Board investigation (10 instances)
7. OAR 801-030-0020(8), Business transactions with clients. (48 instances)

Vote: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)
Comments: The BOACC described the conduct as extremely egregious, and recommend that the Board find the number of violations at least in the numbers listed on the voting matrix, and more if appropriate. A recommendation was made to refer the information to the Internal Revenue Service, the Oregon Department of Revenue, and the Charitable Activities at the Department of Justice for investigation. The BOACC would like the Respondent's license to be revoked before he does any more tax returns.

6. Case #13-003

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:

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

Vote: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)
Comments: None

7. Cases #12-072NK, #13-005, and #13-006

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:

1. ORS 673.320(3), Use of the CPA designation while lapsed (6 instances)
2. OAR 801-030-0010(1), Due Professional Care (3 instances)
3. OAR 801-030-0015(2), Requested Records (2 instances)
4. OAR 801-030-0020(1), Professional Misconduct (6 instances)
5. OAR 801-030-0020(7), Board communications (3 instances)
6. OAR 801-030-0020(9), Notice of change of address (2 instances)

Vote: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)
Comments: The BOACC recommend that the Board find the number of violations at least in the numbers listed in the voting matrix, and more if appropriate.

8. Case #13-023

COMMITTEE RECOMMENDATION: Moved by Mr. Holmes 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), General and Technical Standards
OAR 801-030-0010(2), Auditing Standards

Vote: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)
Comments: None

9. Case #13-024

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), General and Technical Standards
OAR 801-030-0010(2), Auditing Standards

Vote: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)
Comments: None

10. Case #13-035

COMMITTEE RECOMMENDATION: Moved by Ms. Jacobson and carried to recommend to the Board that there is sufficient evidence to make a preliminary finding of a violation of:

1. ORS 673.320(3), Use of the CPA designation while lapsed (306 instances)
2. ORS 673.320(4), Use of the CPA designation by a business organization (1 instance)
3. OAR 801-030-0010(1)(b), Due Professional Care (1 instance)
4. OAR 801-030-0020(1), Professional Misconduct (300 instances)
5. OAR 801-030-0020(7), Board communications (1 instance)

Vote: 7 ayes, 0 nays, 1 excused absence (Pat Richardson)
Comments: None

9. ANNOUNCEMENTS AND ADJOURNMENT

It was announced that the BOACC still needs replacement members, and suggestions for possible replacements could be made to either Larry Brown or Director Pittioni.

Meeting adjourned at 2:28 p.m.

The next meeting will be held on January 24, 2014.