



Oregon Board of Tax Practitioners

Public Board Meeting Minutes

May 14, 2015

Mission: The Board of Tax Practitioners protects consumers by ensuring that Oregon tax professionals are competent and ethical in their professional activities.

Board Members:

Joe Lovato, LTC, Chair
Nutan Arora, LTC, Vice-Chair
Michael Addington, LTC
Susan Gallagher-Smith, LTC
Dorothy Hudson, LTC
Janis Salisbury, LTC

Board Staff:

Kelly Gabliks, Interim Executive Director
Heather Shepherd, Compliance Specialist
Jane Billings, Exam & Education Coordinator
Shari Barrett, Licensing Specialist

Guests: Linda Thomas, John Ames, Randy Shimek, Charlene VanCleet

1. Call to Order

Chair Lovato called the public session to order at 9:08 a.m. Roll call was completed.

2. Executive Session

Chair Lovato closed the public session at 9:09 a.m. to convene in Executive Session pursuant to ORS 192.660(2)(f). The Executive Session is closed to members of the public.

Chair Lovato called the public session meeting back to order after conclusion of the Executive Session at 11:13 a.m.

3. Public Session

Approval of Board Minutes

January 8, 2015 Minutes

Ms. Billings indicated that the January exam and education report was not included and requested it be added to the minutes.

BOARD ACTION: Minutes were adopted as revised to include the exam and education report.

February 5, 2015 Minutes

BOARD ACTION: Minutes were approved as printed.

April 20, 2015 Minutes

BOARD ACTION: Minutes were approved as printed.

4. Amendments to Proposed Agenda

Added administrative report and approval of Exam and Education Coordinator position description.

5. Administrative Report

Budget Update

Ms. Gabliks provided details on the FY15-17 budget presentation to Ways and Means Committee, and publicly thanked Joe Lovato and Janis Salisbury for attending the committee meeting. Ms. Gabliks indicated the committee was impressed that the current Chair and the immediate past Chair attended.

Ms. Gabliks pointed out that the Board's current-year revenue and expenses are lower than budgeted. Revenues were impacted by the recent \$10 reduction in licensing fees. Mr. Addington proposed requesting an office audit with the departure of Bill McMillen as Executive Director to allow Howard Moyes, the newly appointed Executive Director, to begin with a clean slate.

Office Update

Ms. Gabliks shared the following information with the Board:

- Mr. Moyes will begin June 1st as Executive Director.
- The Exam and Education Coordinator position would be posted soon.
- Suggested a possible rule revision to remove the license renewal 'grace period' and move the business registration deadline to coincide with practitioner license renewals.
- Practitioner applications containing an affirmative response to a compliance question must be brought to the full board.
- A proposal to delegate authority to the Executive Director to approve proposed settlements at less than 50 percent of face value was not approved.
- The Board may wish to consider holding conference calls between pre-scheduled meetings to address time-sensitive issues.
- Board staff participated in a telephone conference with the IRS and representatives from states that have some type of licensing for tax preparers (California, Maryland and New York). Connecticut, Illinois, Massachusetts and New Jersey are considering regulation of tax preparers. This group will continue to teleconference quarterly.
- 1,133,688 PTINs have been issued and more than 696,000 are currently active.
- Sue Gaston, IRS representative, informed staff that, beginning in 2016, preparers must be registered with the Annual Filing Season Program (AFSP) to represent clients before IRS. Attorneys and CPAs are exempt from this requirement.

Licensing Statistics

Between January 2014 and January 2015, the number of Licensed Tax Consultants in Oregon dropped by 30. The number of Licensed Tax Preparers fell by three during the same period.

Other Information

- The Board received the Chief Financial Officer's Gold Star Certificate for fiscal year 2014.
- The Governor's office reviewed and accepted the Board's Affirmative Action Plan.

6. Compliance Report

Case #505 Moved by Dorothy Hudson that the Board dismiss Case #505.
Motion passed 6 out of 6

Case #509 Moved by Dorothy Hudson that the Board withdraw the decision made on November 6, 2014 to issue a Notice of Intent to Revoke the preparer's license and Notice to Impose Discipline and Right to Hearing.
Motion passed 6 out of 6

Case #516 Moved by Dorothy Hudson that the Board withdraw the decision made on January 8, 2015 to issue a Notice of Intent to Impose Discipline.
Motion passed 6 out of 6

Moved by Dorothy Hudson that the Board issue a Notice of Intent to Impose Discipline for:

- 1 violation of ORS 673.643 (Unlicensed Business) at \$1000.
- 1 violation of ORS 673.615(2) (Lack of Supervision) at \$1000.
- 81 violations of 673.643 and OAR 800-025-0040(1) (Designated Consultant) at \$250 per violation.
- 81 violations of ORS 673.643 and OAR 800-025-0060 (Consultant in Residence) at \$250 per violation.
- 2 Violations of ORS 673.700(7) and OAR 800-010-0050 (Advertising and Solicitation) at \$50 per advertisement.

Motion passed 6 out of 6

Marisela Rodelo – Boardman, Oregon

Moved by Dorothy Hudson and carried that the Board enter into a Settlement Agreement and Stipulated Final Order with Marisela Rodelo of Boardman, Oregon to assess civil penalties in the amount of \$3,600, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

Thirty-five (35) violations of ORS 673.615(1) for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and

One (1) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business.

Motion passed 6 out of 6

Rachell Bui – Portland, Oregon

Moved by Dorothy Hudson and carried that the Board enter into a Settlement Agreement and Stipulated Final Order with Rachell Bui of Portland, Oregon to assess civil penalties in the amount of \$3,000, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

Three (3) violations of ORS 673.643(1) and OAR 800-030-0025, for failing to register a tax preparation business; and

The Board's costs of this action (\$ 731.97)

Motion passed 5 out of 6 (Nay – Salisbury)

Nathanael Blome – Dayton, Oregon

Moved by Dorothy Hudson and carried that the Board enter into a Settlement Agreement and Stipulated Final Order with Nathanael Blome of Dayton, Oregon to assess civil penalties in the amount of \$100, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

One (1) violation of ORS 673.655, OAR 800-015-0010(1) and OAR 800-015-0015(6), for failing to complete the required number of continuing education hours by the renewal deadline.

Motion passed 6 out of 6

Susan Colleen Clever Francisco – Medford, Oregon

Moved by Dorothy Hudson and carried that the Board enter into a Settlement Agreement and Stipulated Final Order with Susan Colleen Clever Francisco of Medford, Oregon to assess civil penalties in the amount of \$100, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

One (1) violation of ORS 673.655, OAR 800-015-0010(1) and OAR 800-015-0015(6), for failing to complete the required number of continuing education hours by the renewal deadline, and

Licensee surrendered her tax preparer license, License No. 35043-P.

Motion passed 6 out of 6

Andrew Clark Lardinois – Eugene, Oregon

Moved by Dorothy Hudson and carried that the Board enter into a Settlement Agreement and Stipulated Final Order with Andrew Clark Lardinois of Eugene, Oregon to assess civil penalties in the amount of \$100, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

One (1) violation of ORS 673.655, OAR 800-015-0010(1) and OAR 800-015-0015(6), for failing to complete the required number of continuing education hours by the renewal deadline.

Motion passed 6 out of 6

Maria Luna – Portland, Oregon

Moved by Dorothy Hudson and carried that the Board enter into a Settlement Agreement and Stipulated Final Order with Maria Luna of Portland, Oregon to assess civil penalties in the amount of \$2,000, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

One (1) violation of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and

One (1) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business.

Motion passed 6 out of 6

Candi Rowley – Portland, Oregon

Moved by Dorothy Hudson and carried that the Board issue a Final Order by Default against Candi Rowley of Portland, Oregon to assess a civil penalty in the amount of \$100, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

One (1) violation of ORS 673.643(1), for failing to register a tax preparation business.

Motion passed 6 out of 6

Evelina Davidson – Bend, Oregon

Moved by Dorothy Hudson and carried that the Board issue a Final Order adopting the Administrative Law Judge's ruling in favor of the Board's Motion for Summary Determination against Evelina Davidson of Bend, Oregon to assess civil penalties in the amount of \$15,000, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

Three (3) violations of ORS 673.615(1) for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure;

Three (3) violations of ORS 673.643(1), for failing to register a tax preparation business; and

Assessed the Board's costs of the disciplinary proceeding, including attorney fees, of \$7,578.30 pursuant to ORS 673.730(8).

Motion passed 6 out of 6

Victor Cruz-Olvera – Keizer, Oregon

Moved by Dorothy Hudson and carried that the Board issue a Final Order by Default against Victor Cruz-Olvera of Keizer, Oregon to assess civil penalties in the amount of \$8,300, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

Eighty (80) violations of ORS 673.615(1), preparing, advising or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure;

Two (2) violation of ORS 673.643(1), for failing to register a tax preparation business;

Two (2) violations of ORS 673.705(6), engage in dishonesty, fraud or deception relating to the preparation of personal income tax returns; and Assessed the Board's costs associated with this action, including attorney's fee, in the amount of \$747.30.

Motion passed 6 out of 6

Janet Morton – Salem, Oregon

Moved by Dorothy Hudson and carried that the Board issue a Final Order by Default, after the Board rejected the late hearing request as without good cause, against Janet Morton of Salem, Oregon to assess civil penalties in the amount of \$14,000, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

Seven (7) violations of ORS 673.700(3), negligence or incompetence in tax consultant or tax preparer practice or when acting in the capacity of a tax preparer or tax consultant in another state, or under an exempt status or in preparation of the personal income tax return for another state or the federal government;

Seven (7) violations of ORS 673.700(7) and OAR 800-010-0045, a licensee shall not prepare tax returns or give advice that is outside the field of the licensee's experience and competence without the assistance of a person who is competent in the area of concern; and

Assessed the Board's costs associated with this action, including attorney fees, in the amount of \$667.80.

Motion passed 6 out of 6

Kemble Minh Doan – Medford, Oregon

Moved by Dorothy Hudson and carried that the Board issue a Final Order by Default Revoking License, after the Board rejected the late hearing request as without good cause, against Kemble Minh Doan of Medford, Oregon to assess civil penalties in the amount of \$3,000, pursuant to ORS 673.700(1)(7) and 673.735(1) for:

Revoke Tax Consultant license, License No. 28195-C pursuant to ORS 673.700(1),(6) & (7) and OAR 800-015-0015(6); misrepresentation of continuing education, or failing to meet the continuing education requirements or documentation;

Three (3) violations of ORS 673.6755(1), ...upon annual renewal of a tax preparer's or tax consultant's license, each person licensed as a tax consultant or tax preparer shall submit evidence satisfactory to the State Board of Tax Practitioners that the person has completed at least 30 hours of instruction or seminar in subjects related to income tax preparation since the preceding license renewal date...; and

Assessed the Board's costs associated with this action, including attorney fees, in the amount of \$397.50.

Motion passed 6 out of 6

Case # 530 Moved by Dorothy Hudson that the Board issue a Notice of Intent to Impose Discipline for:

- Revocation for violation of ORS 673.655 (Continuing Education requirement).
- 2 violations of OAR 800-15-0015 (Continuing Education Audits, Required Documentation and Sanctions) at \$1000 per violation
- 1 violation of OAR 800-010-0042(1) (Communications) at \$500 per violation.

Motion passed 5 out of 6 (Nay - Salisbury)

Case# 531 Moved by Dorothy Hudson that the Board issue a Notice of Intent to Impose Discipline for:

- Revocation for violation of ORS 673.655 (Continuing Education requirement).
- 2 violations of OAR 800-015-0015 (Continuing Education Audits, Required Documentation and Sanctions) at \$1,000 per violation.
- 1 violation of OAR 800-010-0042(1) (Communications) at \$500 per violation.

Motion failed 3 out of 3

Ayes: Arora, Hudson, Lovato

Nays: Addington, Gallagher-Smith, Salisbury

Moved by Janis Salisbury that the Board issue Discipline for:

- Violation of ORS 673.655 (Continuing Education requirement), declaring the license inactive until the next renewal period.
- 2 violations of OAR 800-015-0015 (Continuing Education Audits, Required Documentation and Sanctions) at \$1000 per violation.
- 1 violation of OAR 800-010-0042(1) (Communications) at \$500 per violation.

Discipline to be in effect during inactive status, and all outstanding continuing education hours must be completed before license is renewed.

Motion passed 4 out of 6

Ayes: Salisbury, Gallagher-Smith, Arora, Addington

Nays: Lovato, Hudson

Case #539 Moved by Dorothy Hudson that the Board issue a Notice of Intent to Impose Discipline for:

- 1 violation of OAR 800-015-0015 (Continuing Education Audits, Required Documentation and Sanctions) at \$100 per violation.

Motion passed 6 out of 6

Case #522 Moved by Dorothy Hudson that the Board issue a Notice of Intent to Impose Discipline for:

- 3 violations of ORS 673.615 (unlicensed activity) at \$5,000 per year.
- 3 violations of ORS 673.643 (unregistered tax business) at \$5,000 per year.

Motion passed 6 out of 6

Case #524 Moved by Janis Salisbury that the Board issue a Notice of Intent to Impose Discipline regarding for:

- 2 violations of OAR 800-010-0050(3) (Advertising and Solicitation) at \$100 per violation.

Motion passed 5 out of 6

Recused: Hudson

- Case # 525** Moved by Dorothy Hudson that the Board issue a Notice of Intent to Impose Discipline for:
- 1 violation of ORS 673.643 (Unregistered Tax Business) at \$500 per violation.
 - 1 violation of OAR 800-010-0050 (Advertising and Solicitation) at \$500 per violation.
- Motion passed 6 out of 6**
- Case # 526** Moved by Dorothy Hudson that the Board issue a Notice of Intent to Impose Discipline for:
- 1 violation of OAR 800-010-0050 (advertising and solicitation) at \$100 per violation.
- Motion passed 6 out of 6**
- Case #532** Moved by Dorothy Hudson that the Board dismiss.
Motion passed 6 out of 6
- Case #533** Moved by Dorothy Hudson that the Board dismiss.
Motion passed 6 out of 6
- Case # 537** Moved by Dorothy Hudson that the Board dismiss.
Motion passed 6 out of 6
- Case # 538** Moved by Dorothy Hudson that the Board issue a Notice of Intent to Impose Discipline for:
- 2 violations of ORS 673.615 (Unlicensed Activity) at \$5,000 per violation.
 - 2 violations of ORS 673.643 (Unregistered Tax Business) at \$5,000 per violation.
- Motion passed 6 out of 6**
- Case # 529** Moved by Dorothy Hudson that the Board dismiss.
Motion passed 5 out of 6 (Nay - Gallagher-Smith)
- Case #540** Moved by Dorothy Hudson that the Board issue a Cease and Desist Order.
Motion passed 6 out of 6

7. Election for Board Chair

Dorothy Hudson nominated Nutan Arora as Board Chair. There were no other nominations. Motion passed 6 out of 6.

Joe Lovato, now former Board Chair, was presented a plaque commemorating his time on the Board: "In appreciation to Joe Lovato for his service to the people of Oregon as

Board member and Board Chair the Oregon Board of Tax Practitioners, June 1, 2012 to May 31, 2015.”

“I can’t tell you how much I have appreciated [serving on the Board} and how much I have learned,” stated Lovato. “[This] is a very special place.”

8. Compliance Site Visits

Ms. Shepherd summarized the 24 compliance site visits she conducted in March. Ms. Shepherd stated some licensees were surprised to see the Board once again conducting compliance site visits. No significant compliance issues were found, although several minor issues were brought to licensees’ attention.

In April, Ms. Shepherd visited offices in Albany, Tigard, Brooks, Keizer, Beaverton, Hillsboro, Forest Grove, McMinnville, Salem, and Monmouth.

One licensee was angry that Board staff had come to his office to verify compliance.

9. Interim Executive Director’s Report

Ms. Gabliks reminded the Board that site visits are very important because they help to educate licensees and promote voluntary compliance. Gabliks strongly recommended the continuation of site visits throughout the year.

The Board had a brief discussion regarding the requirements for business and practitioner advertising and the need for outdoor signs to have an OBTP license number visible. The Board indicated that the requirement may be waived if the business owner was unable to change existing signage due to existing lease restrictions or other factors outside of the business owner’s control.

Ms. Gabliks recommended that the Board use iPads or tablets at future Board meetings to eliminate the need for paper copies. This would significantly reduce office supply costs and staff time, while improving the security and confidentiality of Board materials.

10. Public Comment

Janis Salisbury introduced John Ames. Mr. Ames provided an update on the IRS and state tax programs, including IRS’s RTP and AFSP. Mr. Ames also discussed different testing requirements currently used by the few states that oversee tax preparers.

Randy Shimek commented on tax preparation advertising and recent compliance efforts by the Board. Mr. Shimek stated that a rule was passed by the Board approximately three years ago that ‘grandfathered’ existing signage that did not contain a business number. He also noted that a newsletter from the Board and at least 2 FAQs on the Board’s website contained conflicting information regarding this rule. Mr. Shimek asked the Board to take this into consideration in future compliance actions regarding existing signage.

11. Exam and Education Report

Jane Billings provided a summary of exam results for the January 2015 to March 2015 period.

- Pass rate on the preparer exam was 37%
- Pass rate on the consultant exam was 11%
- Pass rate on the consultant state only exam was 71%.

Ms. Billings also summarized calendar year 2014 exam statistics.

- 648 students took the preparer exam. The pass rate was 50%.
- 102 students took the consultant exam. The pass rate was 18%.

Instructor pass rates were discussed.

The Board discussed potential changes to the items exam participants may bring to the exam, and limits to the number of times an individual can take an exam in a given year. The Board took no action other than to encourage future public comment on these issues.

Ms. Billings stated that annual contract renewals with proctor sites had been sent.

Ms. Billings also commented that the Board had not yet received an update from the Higher Education Coordinating Council (HECC) regarding proposed changes to course sponsor requirements. At this time, Ms. Billings suggested, course sponsors and instructors should complete the HECC application as well as the Board's application.

Ms. Billings reminded the Board that the Instructor Workshop will be held August 14, 2015 at Clackamas Community College – Wilsonville Campus. GwenEllyn Anderson will be the featured speaker.

Ms. Billings reported on the results from the recent Item Writing Committee that reviewed the Board's tax consultant's exam. The committee reviewed proposed changes to existing questions and recommended 30 of those changes be approved by the Board. The Board, during its Executive Session, reviewed the recommendations of the committee and wrote an additional 28 questions.

Susan Gallagher-Smith made a motion to accept the committee's recommended changes and Board additions to the consultant's exam, and to include these changes and additions to the consultant's exam beginning September 1, 2015.

Motion passed 5-6, Lovato excused.

Ms. Billings concluded her briefing by thanking the Board for their support and saying she will miss working with them.

12. Waiver requests

Helping you tax and accounting. The application was received March 4, 2015 and requested a waiver for March through May of the Designated Consultant (DC) requirement due to the DC's pending Resignation. The waiver applicant has been a licensed preparer since 2000. This was tabled for further review and possible action at a future meeting if necessary.

LaRaut Woodward Accounting Inc. The application was received May 4, 2015 and requested a waiver to allow Beulah Gibbens to serve as Registered Consultant and Designated Consultant until one of firm's preparers could pass the consultant exam. There has been no DC onsite since December 2014. Ms. Gabliks indicated that LaRaut was not preparing tax returns or filing extensions while the waiver request was pending. Mr. Addington made a motion to grant the waiver request from May 14 through July 1, 2015.

Motion passed 4 out of 6.

Ayes: Addington, Arora, Gallagher-Smith, Salisbury

Nays: Hudson

Excused: Lovato

13. Other Business

A practitioner contacted the agency after his PTIN was stolen and he was unable to renew it. The practitioner said when he notified the IRS, they suspended his PTIN number until their investigation was complete. However, when it came time for the practitioner to submit his Oregon Licensed Tax Consultant renewal, he was obligated to answer yes to compliance question #1 (Since your last renewal date, has a license in any other occupation or professional capacity issued in your name by any governmental entity ever been refused, suspended, revoked, or restricted OR have you ever voluntarily relinquished a license?) The Board indicated the practitioner's Tax Consultant license would be renewed.

There was a brief discussion as to what constitutes advertising. The discussion trended toward advertising being a solicitation to the general public and not something directed toward a current client.

Ms. Gallagher-Smith suggested staff draft language for Board review as to what may or may not be considered advertising. Ms. Gabliks suggested three options. The first was to draft language for Board review. The second was to refer the issue to the Rules Advisory Committee and ask the committee to bring a recommendation to the Board, including a draft of FAQs on the topic. The third option was to keep the rule current rule as is, but produce a list of FAQs to help practitioner's be in compliance.

Linda Thomas, a member of the public, respectively disagreed with keeping the current rule. She noted that the Board's membership changes from year to year and a future

Board may interpret the current rule differently than the current Board. "As practitioners we want to follow the rules," Ms. Thomas stated.

The Board referred this issue to the Rules Advisory Committee and asked that a recommendation be brought to the Board at a future meeting.

14. Election for Vice Chair

Janis Salisbury nominated Susan Gallagher-Smith as Vice Chair; there were no other nominations.

Passed 5 out of 6 (Lovato excused).

15. Board Newsletter Assignments

The Board agreed on the following assignments for the July Newsletter

- Nutan Arora: Hello and Introduction
- Susan Gallagher-Smith: Advertising
- Dorothy Hudson: Recruit of New Members and Goodbye
- Michael Addington: Continuing Education Audits
- Janis Salisbury: Continuing Education Ethics and Professional Responsibility
- Joe Lovato: Goodbye
- New Executive Director: Hello and Introduction
- Jane Billings: Instructor Workshop
- Heather Shepherd: Compliance Update

16. Location and Date for September 2015 Outreach Meeting

The Board recommended the Eugene area and asked staff to coordinate the meeting, if possible, with association meetings or training courses being held nearby.

17. Thank You for Kelly Gabliks

The Board thanked Ms. Gabliks and presented her with flowers for agreeing to postpone her retirement and serve as the Board's Interim Executive Director. "It has been my honor and pleasure to work with you guys," said Gabliks. "I would not have done this unless I really liked the staff and I really liked the Board... Howard (the incoming Executive Director) is going to be a great addition and I am more than happy to continue to be a resource."

The meeting was adjourned at 4:30 pm