

Oregon State Board of Tax Practitioners Complaint Committee Meeting Minutes

Meeting Date: September 3, 2008

Time: 2:30 p.m.— 4:00 p.m.

Location: Morrow Crane Building, Salem, Oregon

Attendees: Merry VanAtta (Committee Chair)
Jess Gutierrez
Marilyn Johnston

Guests: Judith Wilkins, OATC
Susan Parks, OAIA

Staff: Ron A. Wagner, Executive Director
Monica J. Walker, Senior Comp Specialist/Investigator

ITEM	ACTION / DISCUSSION
VanAtta called the meeting to order at 2:30 p.m.	
Roll called.	Board members present: Gutierrez, Johnston, VanAtta.
	VanAtta reminded Committee of the meeting protocol.
Complaint Process Review	
<p>Roundtable Discussion of Review of Complaint Committee Process</p>	<p>VanAtta is concerned that the Penalty Matrix indicates that it is mandatory that a monetary civil penalty be assessed if there has been a violation of rule or statute. She is interested in having the Board help licensees come into compliance through education and minor fines, rather than penalizing at the full amount allowed by rule. She feels right now there is every incentive not to cooperate with the Board, and she would like to have the Board be able to make the fines more reasonable rather than have to go through a settlement agreement. The Committee needs to come up with better guidelines and a better system. The record history of how things have been handled doesn't look consistent.</p> <p>VanAtta gave examples of how large fines assessed were reduced. She suggested at times it might be more appropriate for the Board to take action, such as issue a letter of reprimand, rather than assess the maximum fine. A letter would be filed in our records with disciplinary action, and would become part of the licensee's permanent file.</p> <p>The rules also provide for a civil penalty adjustment, where the fine can be lowered to an appropriate amount when it's determined that the penalties are grossly disproportionate.</p> <p>Johnston feels the Board needs to be better educated about what it is authorized to do, but that it should be consistent. Ability to pay should be looked at. She suggested that the rule read "may" rather</p>

Oregon State Board of Tax Practitioners

Complaint Committee Meeting Minutes

	<p>than “shall.” She was bothered by the inequity of how the two cases VanAtta shared were handled. Failure to register a business is the violation she would like to see a letter of reprimand for. Would like to decide which violations down the list deserve a reprimand.</p> <p>Gutierrez asked whether the goal with regards to the fines is to punish or bring into compliance. He is also concerned about balance and fairness and having different penalties for the same violation. He likes the concept to bring the violator into compliance.</p> <p>Walker provided examples from the Health Licensing Office of how they handle violations—first, second and third offense, which are listed within the Oregon Administrative Rules. The concept could be used to adapt to our Penalty Matrix. The rule, 800-030-0025(3), reads “the Board may impose civil penalties of not more than \$5,000...” The Committee should bring these recommendations to the Board, and if approved to move forward, then come up with what the proper penalty is for each offense.</p> <p>Wagner shared how Department of Revenue handled failure to file taxes. A percentage of the penalty could be reduced based on the violator’s cooperation. He questioned whether a letter of reprimand was actually a civil penalty. He suggested getting advice from our legal counsel.</p> <p>The Committee discussed which violations merited a penalty vs. reprimand, and whether the policy should be changed or the rule. Wagner recommended that “at the discretion of the Board, and/or letter of reprimand” be run by the AG before approaching the Advisory Rules Committee.</p>
<p>Comments on Penalty Caps</p>	
	<p>Credit should be given for cooperation. It is important to describe to the licensees the steps they need to take.</p> <p>If a licensee has been asked to stop, but continues, what action can the Board take? The Board can issue a “cease and desist” order.</p> <p>VanAtta would like to have the next Complaint Committee meeting November 4, 2008, at 7:00 p.m. before the next Board meeting in Hood River. Update: At the Board meeting on September 4, 2008 the full board voted that a meeting on November 4, 2008 is not needed.</p>
<p>Adjournment</p>	
<p>VanAtta adjourned the Complaint Committee meeting at 4:00 p.m.</p>	