

OREGON BOARD OF ACCOUNTANCY
BOARD MINUTES
February 6, 2012

2nd Floor Conference Room

3218 Pringle Rd SE

Salem OR

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

BOARD MEMBERS:

Roberta Newhouse, CPA, *Chair*
Jessie Bridgham, CPA, *Vice Chair*
Ann Ferguson, CPA, *Treasurer*
Dr. Roger Graham, *Public Member*
Al Crackenberg, PA
Scott Wright, CPA
Larry Brown, CPA – by phone until noon

BOARD STAFF:

Pat Hearn, Executive Director
Kimberly Sisk, Exec. Assistant
Noela Kitterman, Investigator
Susan Bischoff, AAG

GUESTS:

Sherri McPherson, OSCP Representative
Michelle Henney, CPA, OSCP Representative
Stuart Morris, PA, OAIA Representative
Don Crabtree, *Contract Investigator*
John Draneas, Atty./Michael Garcher
Christopher Accarregui/Frank Lagesen
Brian Bishop

Items appear in the same order as they were handled by the Board during the meeting.

1. CALL TO ORDER

Chair Newhouse called the meeting to order at 8:30 a.m., welcomed guests and announced the meeting was being recorded.

2. REPORT OF CHAIR

A. NASBA Nominations

The Board considered letters supporting Carlos Johnson, CPA from Oklahoma and Walter Davenport, CPA from North Carolina. The Executive Director and some Board members have worked directly with Mr. Johnson on NASBA business in the past and agree that he would serve NASBA well as the Vice-Chair.

Dr. Raymond Johnson, former member of the Oregon Board is seeking nomination for NASBA Director-at-Large. He currently serves as the NASBA Pacific Regional Director.

BOARD ACTION: Moved by Bridgham and carried to support Mr. Carlos Johnson, CPA for NASBA Vice-Chair and to nominate Dr. Raymond Johnson for Director-at-Large.

VOTE: 7 ayes

3. REPORT OF VICE-CHAIR

A. Semi Independence Task Force

Mr. Hearn advised the Board members that there is a bill being introduced in the 2012 Legislative session that will require agencies with 75 or less employees to contract with DAS to do the accounting. If the Board achieves semi-independent status, it would not be required to contract with DAS. The Board would be able to create job descriptions and would be able to hire during a hiring freeze. The task force is set to meet again on April 26.

The Board asked Mr. Hearn to invite Senator Telfer to an upcoming Board meeting.

4. REPORT OF TREASURER

A. The Board currently has one vacant staff position and two employees on ½ time work schedules due to medical reasons. Mr. Hearn attended an agency head meeting recently and the discussion centered on the fiscal health of the state. The state has implemented a state-wide hiring freeze, expenditure curtailment and will not approve any new programs. Other Fund agencies, such as the Board, are still being discussed as to how they will be impacted. There was also discussion of cutting middle manager positions. The Board is still open for the legislature to sweep funds, although there has been no indication that they will do so.

Mr. Brown questioned the amount of money in the Board's reserve. He suggested implementing a fee reduction to licensees. Chair Newhouse acknowledged his concern and that a fee reduction had been previously discussed; however, the fees are currently in statute and we do not have authority to reduce them at this time.

Discussion on guests:

Ms. Bischoff reminded the Board that when guests attend the Board meeting, it is not appropriate to have a back and forth question and answer discussion. The Board meeting is not part of the official "record" of the case. The Complaints Committee meeting is their opportunity to discuss the case.

6.B.1. Christopher Acarregui

10-130CNK

Mr. Acarregui began providing tax services in 1997 to a client. In 2005, he assisted her in completing an IRS Code Section 1031 like kind exchange on the sale of property she owned in Seattle. When he prepared her 2005 tax return, Mr. Acarregui did not report the 1031 on Form 8824.

Mr. Acarregui was aware that the client had received a substantial amount of cash from the Seattle sale. During a discussion in 2005, Mr. Acarregui told the client of an investment opportunity that he was working on to purchase 41 acres on Maple Road in Redmond, Oregon. The client invested \$200,000 and, in return, received a 4% interest in "WA Three LLC" of which Mr. Acarregui was the management member. The investment failed and the client lost her \$200,000 investment in the property.

During the investigation, it was found that Mr. Acarregui did not notify the Board that his firm, CPA Associates, was named in a lawsuit as required by OAR 801-010-0345(5)(d).

Mr. Acarregui collected capital contributions from members of WA Three and assigned a percent of ownership interest. The interest assigned was disproportional to the amount of capital contributions.

Mr. Acarregui sent numerous correspondences to investors and potential investors stating that there was "almost certain profit" and "profit with minimal risk", this appears to be a false or deceptive statement or claim and violates OAR 801-030-0020(4), public communications.

Minutes from a WA-1 member meeting, held in December 2008, state that money was borrowed from two other of Acarregui's clients. In January, \$126,000 was borrowed from one client to buy out another investment under the terms of a promissory note. Another \$225,000 was borrowed from another client to complete a subdivision. Loans in 2008 from Acarregui's clients totaled \$351,000. He did not provide either of the clients a written disclosure of differing interests nor did he obtain the clients' written consent to the transactions.

Mr. Acarregui used information he obtained from clients to solicit investments in his business transactions. He sold investment interest, in his various LLC's, totaling a minimum of \$750,000, to at least eight clients, and borrowed at least \$351,000 from two of his clients. He did not provide any of the clients with a written disclosure of his differing interests in the business transactions nor did he obtain a written consent from the clients.

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-010-0345(5)(d), failure to provide the Board with written notice, within 45 days of the filing of a lawsuit, settlement or arbitration relating to the professional services of the business organization if an essential element of the lawsuit involves fraud, dishonesty or misrepresentation.

VOTE: 7 ayes

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is sufficient evidence to make a preliminary finding of 14 violations of OAR 801-030-0005(2)(a), Integrity and objectivity, conflict of interest and/or misrepresentation of facts.

Ms. Kitterman noted that there were additional investments found on the K-1. Acarregui also provided a client list and there is one additional investor that was not known at the time of the Complaints Committee meeting.

Ms. Bridgham amended her motion to include the one additional client, bringing the total violations to 15.

Discussion: Mr. Graham noted that OAR 801-030-0005(2)(a), Integrity and objectivity, has many different pieces to it, including misrepresentation of facts, being free of conflicts of interest, and subordinating to the judgment of others.

If you are giving yourself greater interest in something than a client that has invested more money, it will ultimately affect your objectivity. Integrity came into play when, as his role of accountant, he put his clients in this situation.

VOTE: 6 ayes, 1 opposed (Wright)

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0010(1)(b), due to professional care, when preparing the client's 2005 tax return without including, and/or reporting a 1031 exchange on Form 8824.

VOTE: 7 ayes

BOARD ACTION: Moved by Bridgham and carried to amend the committee recommendation and find that there is sufficient evidence to make a preliminary finding of one or more violations of OAR 801-030-0020(1), Professional misconduct.

VOTE: 7 ayes

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is sufficient evidence to make a preliminary finding two violations of OAR 801-030-0020(4), Public communications and advertising while using "CPA Associates LLC".

VOTE: 7 ayes.

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is sufficient evidence to make a preliminary finding of one or more violations of OAR

801-030-0020(6)(c), Plural firm names, for use of the firm name CPA Associates LLC without employing a staff person licensed to practice public accounting that worked a minimum of 20 hours per week.

VOTE: 7 ayes

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is sufficient evidence to make a preliminary finding of one of more violations of OAR 801-030-0020(8), Business transactions with clients.

VOTE: 7 ayes.

Discussion: Ms. Bridgham indicated that the Complaints Committee believed the actions of Mr. Acarregui warranted revocation of his license and the majority of Board members agree. Mr. Hearn indicated that Mr. Lagesen, Mr. Acarregui's attorney, has contacted him about settling the case.

6.B.2. Brian Bishop

11-006CDC

Mr. Don Crabtree gave the summary of the investigation. Mr. Bishop was an independent contractor and provided services as the Business Manager of counseling and consulting business, owned by the complainant, for approximately eight years. When he stopped performing these services, the complainant believed that information in the company's financial records indicated that Mr. Bishop failed to exercise due professional care in providing professional services and that he may have engaged in professional misconduct. The issues presented in the complaint involved management of company finances, such as bank accounts, accounts receivable, payroll taxes and telephone and data line services. Other issues related to Mr. Bishop not submitting invoices and increasing his hourly rate without authorization as well as signing his own checks for payment.

The Complaints Committee noted that Mr. Bishop signed an Independent Contractor Agreement in 2005, with the complainant that stated his hourly rate and incorporated language that it could be amended by mutual agreement in writing. He signed a contractor's scope agreement on 1/31/2008 that listed his hourly rate of \$40/hour. He then submitted invoices with an hourly rate of \$42.50/hour on December 1, 2007. Many oral agreements are claimed by Mr. Bishop, which were not confirmed.

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0010(1)(b), Due professional care.

Discussion: Mr. Wright questioned if it was the recording of information or the delay in submitting invoices that was the driving force in this case.

VOTE: 6 ayes, 1 opposed (Wright)

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0020, Professional misconduct. This was brought about when the hourly rate was increased.

Discussion: Mr. Wright disagrees with this finding. He noted that Mr. Bishop signed the document relating to his wages and didn't follow it. The Board agrees, but didn't feel it was a professional misconduct level.

VOTE: 7 ayes

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0020(1)(b), Professional misconduct for not returning the owner's laptop.

Discussion: Ms. Bridgham stated that she did not agree with this recommendation. He did not return the laptop, just took the money off an invoice. As an independent contractor, you should provide your own equipment.

VOTE: 3 ayes, 4 nays (Newhouse, Crackenberg, Ferguson, Bridgham)

Motion Failed

Discussion: Chronology of laptop: The client wanted the laptop returned. Mr. Bishop left employment in January and did not submit an invoice until November. In that invoice, he reduced monies due to him from the client by the cost of the laptop. The complainant and the licensee agree that it was asked that the laptop be returned and the offer to purchase was also discussed.

BOARD ACTION: Moved by Bridgham and carried to accept the committee recommendation that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0020(1)(b) Professional misconduct for not returning the owner's laptop.

VOTE: 4 ayes, 3 nays (Brown, Graham and Wright)

6.B.3. John Garcher

11-029CNK

Mr. Garchar and his attorney John Draneas were present at the meeting. Mr. Garcher prepared tax returns for domestic partner clients with two children. In 1993, the clients entered

into a Stipulated Judgment of Dissolution of their Domestic Partnership and Paternity. The agreement included monthly child support and monthly spousal support. Mr. Garchar continued to prepare tax returns for both parties after the dissolution. In 2010, one client realized that Mr. Garchar had not included the spousal support payment on his tax return. When the client questioned Garchar about it, he was told that the spousal support payments had never been reported as income on the other client's tax returns. When the client asked Garchar to amend his 2009 and 2010 returns, Mr. Garchar refused to do so unless the other client agreed to amend her return to report alimony. The client did not agree to amend her return, and the matter remains unsettled.

Mr. Draneas indicated that they believe there were several incorrect items in the investigation report. They indicate that there is no documentation of payments for spousal support since they were never married. Mr. Draneas also noted that they do not believe that Mr. Garchar had a conflict of interest while serving both clients.

BOARD ACTION: Moved by Ms. Bridgham and carried to find that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0005(2), Integrity and Objectivity and OAR 801-030-0010(1)(b), Due Professional Care.

Discussion: Ms. Ferguson agrees that a practitioner can serve two clients who have had a former relationship; however her issue in regards to conflict of interest is when Mr. Garcher made the statement that he would not consider the spousal payments without the consent of his other client. There was discussion amongst Board members as to how Mr. Garcher could have handled the situation, and it was agreed it was not handled properly.

Vote: Sufficient evidence for OAR 801-030-0005(2), Integrity and Objectivity. 5 ayes, 2 nays (Newhouse and Graham)

Sufficient evidence for OAR 801-030-0010(1)(b), Due Professional Care; 5 ayes, 2 nays (Wright, Crackenberg)

7. PROPOSED CASE SETTLEMENTS

A. Christopher Shirashi

Mr. Hearn explained the history of the case. Mr. Shriashi has agreed to the violation, signed the order and submitted payment of the civil penalty.

BOARD ACTION: Moved by Dr. Graham and carried to accept the Proposed Stipulation and Order prepared for Mr. Shirashi.

VOTE: 6 ayes, 1 absent (Brown)

B. Mark Neuman (Interim)

Mr. Neuman was indicted by a federal grand jury on charges of conspiring to defraud customers of Summit 1031 Exchange and/or Summit Accommodators Inc., and conspiring to commit money laundering violations with the proceeds for the fraud scheme.

Mr. Neuman still has a pending case and has not entered into anything admitted any guilt. He agreed to a suspension of his license beginning April 16, 2012. The Interim Order states that he must correspond with the Board every 90 days.

BOARD ACTION: Moved by Mr. Wright and carried to accept the Proposed Interim Stipulation and Order.

VOTE: 6 ayes, 1 absent (Brown)

8. EXECUTIVE DIRECTOR REPORT

A. Online licensing project update

Mr. Hearn reported that the online license project is getting tense. GL Solutions, the vendor, has been late in the delivery of website pages for review, although the Board is assured that it will not have an impact on the "go-live" date.

B. Documents Signed under Delegated Authority

Mr. Hearn reported that he signed one Cease and Desist order, case 12-003NK and one subpoena for records for case number 10-130CNK since the December 5, 2011 Board meeting.

C. Potential Properties for Relocation of Board Office

Mr. Hearn and Mrs. Sisk looked at several properties. There are several commercial properties available. Mr. Hearn estimates a savings of \$800-\$1000 per month in rent alone.

D. Retired Status Application

The Board staff has drafted an application form for retired status.

E. Posting disciplinary Action on Website vs Publication in Newsletter

Mr. Hearn reported that the Board's newsletter was published quarterly in the past. A newsletter hasn't been published since 2011. The board staff would like to keep the public aware of disciplinary actions, so it is proposed that the disciplinary actions be listed on the website and posted to a list serve.

Board members agree to this change in procedure.

F. Ethics Requirement

Mr. Hearn presented a memo from Investigator Kitterman requesting a waiver of the ethics CPE requirement for Oregon CPA licenses renewal. Ms. Kitterman explained that the ethics course is not valuable as she works with the Oregon laws and rules on a daily basis.

Mr. Wright does not believe a waiver of the requirement for a Board staff would be the right thing to do. The Board concurred.

18. NEW BUSINESS

A. Gustafson – Case No. 09-116CNK Motion *to stay execution of sanctions on remand from Court of Appeals.*

The Board called Ms. Rhodes and Mr. Paternoster, attorneys representing Mr. Gustafson. The item to be considered is whether or not to stay the execution of the suspension.

BOARD ACTION: Moved by Ms. Ferguson and carried to deny the motion to stay on remand from the Court of Appeals in the Gustafson matter, Case No. 09-116CNK, effective immediately based upon the following findings:

1. Respondent has failed to show a colorable claim of error in the underlying case for the reasons set forth in the Board's response to the stay request filed in the court of appeals.
2. The financial harm Respondent claims will result from the Board's final order does not amount to irreparable harm as set forth in the Board's response to the stay request filed in the court of appeals.
3. The stay is not in the interest of the public and substantial harm could result if a stay were granted.

Ms. Ferguson further moves to direct legal counsel to prepare a written order and authorize the executive director to execute the order on behalf of the board.

Discussion: Clarification on effective date. February 6, 2012 is the effective date. Ms. Rhoades, attorney for Gustafson stated that she objected to the timing of notice for this meeting.

VOTE: 5 ayes, 1 abstention (Wright), 1 absent (Brown)

9. PUBLIC COMMENTS

None

10. OAIA Report

Mr. Morris reported that the OAIA had not met since early December. Mr. Hearn attended their January Update meeting and gave a very informative presentation.

11. OSCP A Report

Ms. McPherson reported that the Society's fiscal year begins April. Ms. Debbie Hollingsworth is the new chair and Jason Orn, from TKW, will be the new OSCP A Representative. The society completed a strategic planning session last week and is working on implementing new rules. Ms. McPherson also thanked both Pat Hearn and Ray Johnson for presenting at the Professional Update in December.

12. OLD BUSINESS

None

13. CONTINUING PROFESSIONAL EDUCATION

A. Minutes to January 10, 2012 – Information Only

B. Municipal Auditors Applications

1. John R. Russell – Approve

COMMITTEE RECOMMENDATION: Approve the applicant. Mr. Russell completed the CPE requirements for the municipal audit roster as required.

BOARD ACTION: Moved by Mr. Crackenberg and carried to accept the committee recommendation.

VOTE: 6 ayes, 1 absent (Brown)

14. PEER REVIEW OVERSIGHT COMMITTEE

- A. Minutes of January 12, 2012 - Information Only

15. QUALIFICATIONS COMMITTEE

- A. Minutes of January 18, 2012 - Information Only

- B. Consent Agenda

1. Yilam Ginn Ma (Teixeira)

Ms. Ma and her supervisor licensees at Intel, Tonya Stevens and Sean May, joined the meeting for the presentation of this application.

Ms. Ma passed the CPA Examination on August 17, 2010 as an Oregon candidate. She gained her experience with the following employer:

Intel Corp	48 months	All competencies
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Ms. Teixeira reviewed the application and supporting documents on behalf of the applicant.

Committee Discussion: Mr. Steiger questioned that the applicant had two mentors but only one individual signed the Certificate of Experience form. Mr. Halbirt explained the Intel has a formal program which has been approved by the Board. Mr. May indicated that Intel had been requested to complete the documentation in the manner presented by prior Qualification Committee members.

Mr. Steiger requested a copy of the current Intel program be sent to him via email.

COMMITTEE RECOMMENDATION: Moved by Teixeira and carried to recommend that the Board approve the application for certification for Yilam Ginn Ma.

VOTE: 7 ayes, 1 absent (Landers)

2. Lesya Mykhailivna Townsend (Landers)

Ms. Townsend passed the CPA Examination on May 31, 2010 as an Oregon candidate. She gained her experience with the following employer:

The Regence Group	31.5 months	All competencies
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Mr. Brown declared a conflict of interest and abstained from discussion and vote. He and the applicant are both employed by The Regence Group (now Cambia Health).

Mr. Landers reviewed the application and supporting documents on behalf of the applicant.

Committee Discussion: Mr. Landers spoke with the supervisor licensee who was very familiar with the formal program that Regence is presenting for Board approval. The supervisor licensee also understood the Oregon requirements for initial licensing.

COMMITTEE RECOMMENDATION: Moved by Landers and carried to recommend that the Board approve the application for certification for Lesya Mykhailivna.

VOTE: 7 ayes, 1 abstain (Brown)

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

VOTE: 6 ayes, 1 absent (Brown)

C. Cambia Health (formerly Regence)

Patrick Brown disclosed a conflict of interest as he is employed by Cambia.

Mr. Brown presented the revisions that Cambia implemented based on the comments from the Qualifications Committee meeting of November 9, 2011.

Mr. Hearn asked Mr. Brown to explain why Cambia was interested in having an approved program from the Oregon Board of Accountancy. Mr. Brown explained that it was a tool for Cambia to use for recruiting new employees.

The committee offered a few minor suggestions to the Memorandum of Understanding. Mr. Brown will present the suggestions to Cambia. Appendix B, number 15 indicates that appropriate documentation will be stored for participants submitting application up to 2 years after submission. The Oregon Administrative Rule, OAR 801-010-0073 requires the documentation to be kept for a period of three years after certification of the applicant.

COMMITTEE ACTION: Moved by Mr. Steiger and carried to recommend that the program be approved with the suggested changes.

VOTE: 7 ayes, 1 abstain (Brown)

BOARD ACTION: Moved by Dr. Graham and carried to approve the Cambia Memorandum of Understanding

VOTE: 6 ayes, 1 absent (Brown)

D. Certificate of Experience Form Revision

Ms. Ferguson revised the forms in accordance to committee and staff discussion.

Items from Executive Session:

A. Case #11-059NK

BOARD ACTION: Moved by Ms. Bridgham and carried, to find that there is insufficient evidence to find a violation of OAR 801-010-0345, Failure to Register a Firm.

VOTE: 6 ayes, 1 absent (Brown)

BOARD ACTION: Moved by Bridgham and carried to find that there is sufficient evidence to find a violation of ORS 673.320(4) holding out.

VOTE: 4 ayes, 2 nays (Bridgham, Graham)

Meeting adjourned at 2:55 p.m.

NEXT MEETING

Date: May 20-21, 2012, 2012
Location: Eugene Hilton
Time: 8:30 a.m.