

OREGON BOARD OF ACCOUNTANCY

Minutes, December 12, 2005

3218 Pringle Road SE #110

Salem OR 97302

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

Board Members Present

Stuart Morris, PA, *Chair*
Lynn Klimowicz, CPA, *Vice-Chair*
Kent Bailey, CPA, *Secretary-Treasurer*
James Gaffney, CPA
Ray Johnson, CPA
Anastasia Meisner, *Public Member*, by phone at 9:25 a.m.

Staff Members

Carol Rives, *Administrator*
Noela Kitterman, *Investigator*
Kimberly Bennett, *Committee Coordinator*
Joyce Everts, *Committee Coordinator*
Heather Shepherd, *Committee Coordinator*

Excused

Jens Andersen, CPA

Guests Attending

Christine Chute, Asst. Attorney General
Jim Aldrich, OAIA Representative
Cheryl Langley, OSCP
J. Brooks Peacock, 1:10 p.m. – 1:15 p.m.
Randall P Sutton, Attorney, 1:10 p.m. – 1:15 p.m.
Mark Brown, CPA, 10:10 a.m. – 10:45 a.m.

1. CALL TO ORDER

Chair Morris called the meeting to order at 8:30 a.m.

A. Appoint Process Observer

Kent Bailey was appointed process observer.

2. APPROVAL OF MINUTES

A. October 16, 2005, Work Session

BOARD ACTION: Moved by Klimowicz and carried to approve the minutes as corrected to indicate that Mr. Bailey physically attended the meeting.

VOTE: Chair Morris did not vote; 4 ayes, 2 excused (Andersen, Meisner)

B. October 17, 2005, Board Meeting

The October 17, 2005 minutes were corrected to state that the Board asked for further information from Ms. Clemmer regarding her request to reduce the civil penalty from \$1,000 to \$100.

BOARD ACTION: Moved by Gaffney and carried to approve the minutes.

VOTE: Chair Morris did not vote; 4 ayes, 2 excused (Andersen, Meisner)

C. November 3, 2005, Board Meeting, Phone Conference

BOARD ACTION: Moved by Gaffney and carried to approve the minutes.

VOTE: Chair Morris did not vote; 4 ayes, 1 abstain (Johnson), 1 excused (Andersen)

3. REPORT OF CHAIR

A. NASBA

1. Annual Meeting, October 30 through November 2, 2005

Mr. Morris and Ms. Klimowicz attended the NASBA annual meeting in Tucson, Arizona.

Mr. Morris brought the annual report and notebook for other members to review if they were interested. Ms. Klimowicz reported that NASBA has determined that two CPE hours per year of principles-based professional conduct and ethics will be included in the best practice guidelines. There is confusion regarding Oregon's substantial equivalency rule. This item should be added to the May 2006 work session. California now requires any individual who is filing anything other than an individual tax return to be licensed in the state, whether or not the licensee physically enters the state. NASBA is working on a new proposal for the 150 hour education rule for the CPA examination. States reported a concern with CPE compliance. A few states reported that they had started using a check box at renewal and a report only upon selection for the CPE audit.

2 NASBA Executive Director and Legal Conference

The administrator requested that two staff be authorized to attend the NASBA conference February 13-16, 2006.

BOARD ACTION: Moved by Klimowicz and carried to approve travel for the administrator and one staff member.

VOTE: Chair Morris did not vote; 4 ayes, 1 excused (Andersen)

B. February Board Meeting Date

The meeting will be by phone conference February 6, 2006.

C. 2006 Calendar

The updated 2006 calendar includes changed committee meeting dates. Bailey stated that the NASBA Regional conference is very informative and suggests that all Board members attend.

D. Regional Director's Focus Questions

Rives asked the Board to comment on the answers she developed for the NASBA focus questions. The Board would like to add:

1. Many states have substantial equivalency, so why is incidental practice such a concern?
2. It would be nice to have a Guide for best practices for Boards. The information could include Peer Review, Code of Professional Conduct and Ethics requirements, Complaint and complaint resolution and effective communication between states.
3. A discussion panel identifying problems within the profession.
4. Invite Ms. MaryAnn Jennings as a speaker on professional ethics.

4. REPORT OF VICE CHAIR

No report

5. REPORT OF SECRETARY-TREASURER

A. Financial Reports

Bailey reviewed the 2005 Month 25 and September 2006 financial reports. At the end of the biennium revenues were \$43,000 under projection. During the first quarter of the 2005-2007 biennium revenue of \$179,444 is close to projection while personal service expenses are under projection and services and supplies are slightly over projection.

BOARD ACTION: Moved by Bailey and carried to approve the budget reports.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

6. REPORT OF ADMINISTRATOR

A. NCCPAP

The National Conference of CPA Practitioners submitted a request for approval their peer review program. The Board office is responsible for oversight of an approved program which can be costly. NCCPAP currently has one Oregon member. The Peer Review committee approved the program in May 2005 until the end of 2005. The Board would like the Peer Review committee to review the program and bring a recommendation to the Board.

B. Strategic Business Plan

Ms. Rives reviewed the business plans for 2003-05 and 2005-07. The Board needs to start thinking of any legislative concepts they want to bring forward in the 2007 legislative session. Legislative concepts are due in February or March of 2006.

C. NASBA and QAS Response Letter Dated 11/22/2005

The Board sent a letter to NASBA November 7, 2005 regarding QAS approved CPE courses. Not all courses offered by an approved QAS sponsor are QAS approved courses. Licensees do not know that the course itself is not QAS approved and therefore does not count toward their requirement. NASBA responded asking for documentation such as certificates of completion, promotional materials etc and also the name of licensees who were denied under these circumstances. NASBA will do some research and make the necessary adjustments.

D. Legal Fees 2003-05 Enforcement Program

Information regarding the cost of the enforcement program was presented to the Board for review.

E. Licensee Inquiries

Examples of inquiry letters from licensees were presented to the Board along with the response from the Administrator. The Board is frequently asked to answer technical questions and give advice. The Board does not want to pre-approve licensee services or operation plans.

F. Sole Proprietor Use of LLC

Ms. Rives questioned the Board regarding limited liability companies owned by a single person. The name itself, LLC, includes the word "company". The Board rules require registration of LLCs, but the statute authorizing formation of an LLC allows membership by a single member. If the individual is not performing attest and does not hold out as having more than one CPA in the firm, it is not necessary to register as a firm in Oregon. The designation "LLC" does not, by itself, indicate more than one licensed individual.

G. Letter of Appeal – Saiprasad Sathiamoorthy

The Board denied the CPA application submitted by Mr. Sathiamoorthy. The applicant sent a request for reconsideration. Mr. Sathiamoorthy's supervisor licensee, Mr. Wang is not an employee of the company but rather a financial consultant. The

application was denied due to the lack of authority of the supervisor to hire and fire the applicant.

The Board is not persuaded by Mr. Sathiamoorthy's letter that there is a clear connection between the applicant and supervisor licensee. It is the burden of the applicant to prove that there is a clear connection. If there were a written agreement describing such authority entered prior to supervision, that would be considered, but there is no such document.

BOARD ACTION: Moved by Bailey and carried to confirm the previous decision to deny the application submitted by Mr. Sathiamoorthy.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

H. Qualifications Committee Member

Harold Ashford, CPA expressed interest in serving on the Qualifications Committee. Mr. Ashford is a practitioner in Bend and has previously served on the CPE Committee.

BOARD ACTION: Moved by Johnson and carried to approve Mr. Ashford to serve on the Qualifications Committee.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

I. Sidney Engebretson Application

Christine Chute received a fax this morning regarding the CPA application of Mr. Engebretson. The application was denied because his employer did not sign off on all competencies. Mr. Engebretson requested a hearing. During the preparation for the hearing, Ms. Chute and members of the Qualifications committee talked to the supervisor licensee and advised him that Mr. Engebretson may be deemed to meet competencies, if he meets them in tax only, particularly because most of the supervisor licensees practice was tax practice. Furthermore, the Board notes that it doesn't expect the applicant to have the knowledge of a "veteran" CPA, but entry level CPA competency. After the clarification, the supervisor licensee agreed that applicant met the competencies.

BOARD ACTION: Moved by Gaffney and carried to withdraw the notice of denial for Sidney Engebretson.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

7. REPORT OF OAIA

Aldrich reported that the OAIA Board meeting convened December 10, 2005. OAIA noted a decrease in attendance at education seminars during the last year. The association requests the Board's support to have Oregon Public Accountants viewed the same as an Oregon Certified Public Accountant under IRS Circular 230.

8. REPORT OF OSCPA

Langley reported the association is revising the strategic plan with emphasis on member recruitment and retention. The annual leadership conference will focus on generational diversity and challenges for the future.

9. CONTINUING PROFESSIONAL EDUCATION

A. Report of CPE Committee

1. Acceptance of Minutes

a. November 29, 2005

BOARD ACTION: Moved by Johnson and carried to accept the Continuing Professional Education minutes dated November 29, 2005.

VOTE: Chair Morris did not vote; 4 ayes, 2 excused (Gaffney and Andersen)

B. Consent Agenda

1. Municipal Auditor Applications

a. Tonya Moffitt

COMMITTEE RECOMMENDATION: Accept; the applicant completed the requirements for the municipal audit roster, as required by OAR 801-020-0690.

b. Julie Fahey

COMMITTEE RECOMMENDATION: Accept; the applicant completed the requirements for the municipal audit roster, as required by OAR 801-020-0690.

c. Kevin Mullerleile

COMMITTEE RECOMMENDATION: Accept; the applicant completed the requirements for the municipal audit roster, as required by OAR 801-020-0690.

2. Recommendations

- *a. 6.A.1. Municipal audit
- *b. 6.A.2. Grace period for CPE audit
- *c. 6.A.3. CPE reporting requirements
- *d. 6.A.4. Proof of CPE completions
- *e. 6.C. Annual Report
- *f. 6.D. Ethics focus group

**Items removed from consent agenda*

BOARD ACTION: Moved by Bailey and carried to accept the Consent Agenda.

VOTE: Chair Morris did not vote; 4 ayes, 1 abstain (Gaffney) 1 excused (Andersen)

C. Items Removed from Consent Agenda

1. Municipal audit

Committee Discussion: *The committee feels it is important to maintain a separate CPE audit for municipal auditors to assure public protection. The statistical sample would not provide reliable information regarding compliance by municipal auditors. If municipal CPE is not specifically audited, the only safeguard would be through Peer Review.*

COMMITTEE RECOMMENDATION: Continue to conduct a separate audit of municipal auditors CPE.

Board Discussion: *The Board agreed with the committee recommendation.*

2. Grace Period for CPE Audit

Committee Discussion: *Current statistics demonstrate that upon submission of requested CPE audit information, approximately 80% of licensees meet CPE requirements. Committee members are concerned that licensees who know they have a grace period may be less attentive when completing CPE for the next renewal period.*

COMMITTEE RECOMMENDATION: A grace period for licensees who successfully complete the CPE audit is not advisable.

Board Discussion: *The Board agreed with the committee recommendation.*

3. CPE Reporting Requirement

Committee Discussion: *The committee agrees that including both the CPE report and the check box on the renewal form is confusing. The committee believes that the approximately 20% non-compliance on the CPE audit may increase if licensees are not required to list CPE programs each reporting period.*

COMMITTEE RECOMMENDATION: Continue to require licensees to report all CPE on the renewal application and remove the check box.

Board Discussion: *The Board agreed with the committee recommendation.*

4. Proof of CPE Completions

Board staff provided samples of proofs of completion that cause problems during the CPE audit. The Committee feels that it is the licensee's responsibility to obtain the proper proof of completion when they attend a CPE program. The Board does not regulate CPE sponsors and it would be impractical to contact all the CPE vendors about Oregon requirements for proofs of completion. (OAR 801-040-0020) The committee believes that if the Board denies programs because the proof of completion is not complete, sponsors will respond by revising the proof of completion because it could have a revenue impact for the organizations.

COMMITTEE RECOMMENDATION: When a licensee submits an incomplete proof of completion for audit, the licensee must provide a copy of the attendance roster and the agenda to receive credit for the program.

Board Discussion: *The Board agreed with the committee recommendation.*

5. Annual Report

The committee approved the annual report for presentation at the December 2005 meeting.

BOARD ACTION: Moved by Gaffney and carried to accept the 2005 CPE Annual Report.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

6. Ethics Focus Group

The Board requested the Code of Professional Conduct Committee and the Continuing Professional Education Committee to consider ways to make the Oregon Ethics requirement more meaningful to Oregon licensees.

Committee Discussion: *Mr. Jones reported that most modern accounting text books have ethics cases embedded in the text, often as questions at the end of a chapter. Mr. Jones cannot estimate whether instructors include the information as part of the curriculum. Mr. Lanzarotta said that he understood that some local colleges were forming an ethics department which could become a greater part of degree programs.*

COMMITTEE RECOMMENDATION: Conduct a joint meeting of the Code of Professional Conduct and Continuing Professional Education committees to define the task of the focus group.

Board Discussion: *The Board agreed with the committee recommendation.*

10. OLD BUSINESS

A. CPE Renewal Procedures

At the Board's request, staff prepared a memo describing violations that occur during a renewal period, with an accompanying flowchart indicating the current penalty and recommended penalty for violations of CPE administrative rules.

BOARD ACTION: Moved by Klimowicz and carried to accept the staff recommendations (Attachment B) for violation of CPE administrative rules.

VOTE: 5 ayes, 1 abstain (Meisner), 1 excused (Andersen)

11. PEER REVIEW OVERSIGHT

A. Report of Peer Review Oversight Committee

1. Acceptance of Minutes

a. December 6, 2005

BOARD ACTION: Moved by Gaffney and carried to accept the Peer Review Committee minutes dated December 6, 2005.

VOTE: Chair Morris did not vote; 4 ayes, 1 excused (Andersen), 1 abstained (Meisner)

B. Consent Agenda

1. Recommendations

a. none

C. Items Removed from Consent Agenda

1. 2005 Peer Review Annual Report

BOARD ACTION: Moved by Gaffney and carried to accept the 2005 Peer Review Annual Report.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

12. COMPLAINTS COMMITTEE

A. Report of Complaints Committee

1. Acceptance of Minutes

a. November 10, 2005

Board Discussion: The date on the November 10, 2005 Complaints Committee meeting minutes will be corrected to show the correct date of the meeting. With respect to the complaint process, Klimowicz noted that the Complaints Committee will either schedule an additional meeting in 2006 or conduct an extended meeting.

BOARD ACTION: Moved by Klimowicz and carried to accept the minutes of the November 10, 2005 Complaints Committee meeting, as corrected.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

B. Consent Agenda

1. Complaint Investigations

- | | | | |
|-----|----------------------------|-----------|------------|
| *a. | Rostad & English | 04-05-057 | |
| b. | John Dougall | 04-07-060 | (deferred) |
| *c. | Russell Cramer | 04-12-091 | |
| d. | General Business Solutions | 05-01-030 | (deferred) |
| e. | Richard Ray | 05-08-022 | (deferred) |
| f. | Schatz & Co | 05-09-024 | (deferred) |
| g. | Cleary & Gill LLC | 05-09-025 | (deferred) |

Consent Agenda (continued)

*h.	Lloyd A. Fillis	05-09-026	
i.	Susan J Payne	05-09-027	(deferred)
*j.	Jessica C. Love	05-09-028	

C. Items Removed from Consent Agenda

1. B.1.a. Rostad & English 04-05-057

David Rostad CPA (Rostad) and Michael English CPA (English) owners of Rostad & English CPAs PC (Firm) purchased Harry N. Kylo CPA LLC when Harry Kylo (Kyllo) was revoked. When Rostad and English purchased Kyllo's firm they retained him to assist in the transition of clients. While under the supervision of Rostad and English, Kyllo embezzled funds from clients.

ALLEGED VIOLATIONS:

ORS 673.170(2)(c) Incompetence in the practice of public accountancy

A holder of a license under ORS 673.100, certificate, permit or registration is incompetent in the practice of public accountancy if the holder:

(A) engages or has engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed to a client or the general public; and

801-030-0020(1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

Rostad, English and Firm engaged in conduct that evidenced a lack of fitness when they did not supervise Kyllo's activities and meetings with clients, and did not monitor Kyllo's use of Firm software and e-mails. When Rostad and English purchased the business and agreed to retain and lease space to Kyllo, Rostad and English knew that Kyllo was revoked by the Board. Rostad requested and received a copy of the consent order entered into between Kyllo and the Board. Rostad and English signed a purchase agreement that stated they understood the action taken against Kyllo by the Board of Accountancy. Rostad and English did not safeguard client records from potential harm.

Rostad, English and Firm did not discharge the duty owed to a client and the general public. Rostad, English and Firm's conduct would cause a reasonable person to have substantial doubts about their honesty, fairness and respect for the rights of others.

INVESTIGATOR SUMMARY: (Maximum applicable penalties \$5,000 each)
ORS 673.170(2)(c) Incompetence in the practice of public accountancy

(A) engages or has engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed to a client or the general public; and 801-030-0020 (1) Professional misconduct.

Civil penalty for each of four clients who were harmed by Kylo's actions (4 clients at \$5,000 each)

Committee Discussion: When Rostad & English did not restrict Kylo's use of office space, they violated a responsibility to their clients with respect to allowing Kylo to utilize the firm's software and gave Kylo the opportunity to access client files and new client information.

COMMITTEE RECOMMENDATION: Moved and carried to recommend a civil penalty of \$15,000 (\$5,000 x 3) for failure to protect confidential client information in violation of OAR 801-030-0015(1).

BOARD ACTION: See Legal 13.B.1.

2. B.1.c. Russell Cramer 04-12-091

Russell Cramer (Cramer) accepted a position as "Director of Assurance and Attestation Services" with a California CPA Firm. Cramer represented to the California Firm that he held an Oregon CPA permit. During the investigation of this complaint, misrepresentations to the Board were found on Cramer's Application for Issuance of CPA Certificate and Permit to Practice Public Accounting.

ALLEGED VIOLATIONS:

ORS 673.170(2)(a)(A) Fraud or deceit in obtaining or applying for a certificate under ORS 673.040 to 673.075

Cramer submitted an "Application for Issuance of CPA Certificate and Permit to Practice Public Accounting" on June 29, 2004, stating that he was employed by an Oregon CPA Firm. Cramer was not employed by an Oregon CPA Firm at that time and did not disclose to the Board that his current employer was a California CPA Firm.

Cramer did not fully disclose the facts related to the "Aggravated Theft" and "Motion to Dismiss and Order as to Indictment" filed against Cramer in the Circuit Court of the State of Oregon for the County of Jackson. Because Cramer did not disclose his current employer on the application form, the Board did not know to request that the California Firm verify Cramer's employment or experience.

673.170(4) Dishonesty, fraud or misrepresentation not in the practice of public accountancy.

In addition to the causes in subsection (2) of this section, the Board may take any of the actions described in subsection (1) of this section for dishonesty, fraud or misrepresentation not in the practice of public accountancy.

Cramer told his mother-in-law that he would invest and manage the \$30,000 inheritance for her. However Cramer used the money to pay his personal debt and misled his mother-in-law by telling her that he invested her money. Cramer continued to mislead his mother-in-law by giving her verbal assurance that the investment was growing on each occasion that she asked about her

investment. Cramer was untruthful when he told the police during their investigation that his mother-in-law gave the \$30,000 to Cramer and his wife as a gift.

ORS 673.320(3) assume or use the title or designation “certified public accountant”, or the abbreviation “CPA”.

A person shall not assume or use the title or designation “certified public accountant”, or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant, unless the person holds a valid certificate of certified public accountant issued under ORS 673.040 and a permit issued pursuant to ORS 673.150.

Cramer assumed or used the CPA designation on the Firm’s business card order form and also on his personal biography information that was included with an audit proposal described in paragraph 27.

Cramer continued to mislead the California Firm that he was a certified public accountant when he accepted the title of Director of Assurance and Attestation, a position that requires a licensed CPA and when he discussed potential ownership in the California Firm with partners and discussed CPA licensing requirement in California.

OAR 801-030-0020(1) Professional Misconduct

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

Cramer withheld information from the Firm that he was yet licensed in Oregon. He accepted a position with the Firm that required the Senior Auditor (a licensed CPA) to report to Cramer. He ordered business cards with the CPA designation and prepared his biographical information using the CPA designation.

Cramer misled the Board on his “Application for Issuance of CPA Certificate and Permit to Practice Public Accounting”, by reporting the Oregon CPA Firm as his current employer after the date of termination. The Board did not request employment confirmation from the California Firm and did not request that the California Firm submit a “Certificate of Experience for Issuance of Certified Public Accountant License” describing Cramer’s work experience.

INVESTIGATOR SUMMARY (Maximum applicable penalties)

ORS 673.170(2)(a)(A) Fraud or deceit in obtaining or
applying for a certificate under ORS 673.040 to 673.075 Revocation
Did not disclose current employer

ORS 673.320(3) assume or use the title or designation
“certified public accountant”, or the abbreviation “CPA” \$5,000 each
Used title or designation on business cards,
and on biography

OAR 801-030-0020(1) Professional misconduct \$5,000 each
Misuse of mother-in-law’s money
The investigator suggested that the committee disregard misuse of the
mother-in-law’s money as that activity occurred prior to the date Cramer was
licensed.

Committee Discussion: Cramer was holding out when he ordered business
cards and when he did not disclose to his employer that he was not a CPA.
Cramer was dishonest to the Board when he applied for a CPA permit without
disclosing his current employer.

COMMITTEE RECOMMENDATION: Moved and carried to recommend
revocation of Cramer’s CPA license and a \$5,000 civil penalty for holding out.

BOARD ACTION: Klimowicz moved and it carried to issue Notice of Proposed Revocation of
Cramer’s CPA permit for violation of ORS 673.170(2)(a)(A) Fraud or deceit in obtaining or
applying for a certificate and \$5,000 civil penalty for holding out.

VOTE: Chair Morris did not vote; 4 ayes, 1 excused (Andersen), 1 abstained (Gaffney)

3. B.1.h. Lloyd A. Fillis 05-09-026

Client met with Lloyd Fillis (Fillis) in February. Client gave Fillis his original tax
documents and requested that Fillis complete an amended tax return. Fillis did
not complete the amended tax return and did not respond to Client’s telephone
calls and e-mails or clients request to return the original tax documents.

ALLEGED VIOLATIONS:

Responsibilities to Clients

801-030-0015(2) Client records and working papers.

(b) Requested records. Licensees are required to furnish the following
records to a client or former client, upon request, within a reasonable time after
such request:

(A) In response to a client's request for client records, made within a
reasonable time, that occurs prior to issuance of a tax return, financial statement,
report or other document prepared by a licensee, the licensee shall furnish to the
client or former client any accounting or other records belonging to or obtained
from or on behalf of the client that the licensee received for the client's account or
removed from the client's premises.

When Fillis did not respond to Client’s telephone calls and e-mails
requesting that Fillis return Client’s documents, Client filed a complaint. When
Fillis was notified of the complaint Fillis returned the documents.

Other Responsibilities and Practices

801-030-0020 (1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that
reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

Fillis did not amend Client's tax return and did not respond to Client's telephone calls and e-mails requesting documents. Without the amended tax return or the tax documents, Client could not respond to a request for information from USDA-RHS. Fillis' conduct would cause a reasonable person to have substantial doubts about Fillis' respect for the rights of others or for the laws of the state and the Nation.

INVESTIGATOR SUMMARY (Maximum applicable penalties)

801-030-0015(2) (b) Requested records \$ 5,000
Did not return client records when requested

801-030-0020 (1) Professional misconduct \$ 5,000 each
Did not reply to Client's e-mails and telephone calls
Did not complete the amended tax return

COMMITTEE RECOMMENDATION: Moved and carried to recommend a civil penalty of \$500 for violation of OAR 801-030-0020 (1) Professional Misconduct and a \$500 civil penalty for violation of OAR 801-030-0015(2) (b) Requested records.

BOARD ACTION: Klimowicz moved and carried to issue Notice of Proposed \$500 civil penalty for violation of OAR 801-030-0020 (1) Professional Misconduct and a \$500 civil penalty for violation of OAR 801-030-0015(2) (b) Requested records.

VOTE: Chair Morris did not vote; 4 ayes, 2 excused (Andersen, Bailey)

4. B.1.j. Jessica C. Love 05-09-028

Jessica Love holds an inactive permit. She sent a solicitation letter to the Board Investigator that described a job opportunity available with a company. Love used the title CPA, without indication of inactive status in the signature line of the letter

ALLEGED VIOLATIONS:

ORS 673.320(7) Permit or registration required

A person or business organization shall not assume or use any title or designation likely to be confused with the titles "certified public accountant" or "public accountant" or any abbreviation likely to be confused with the abbreviation "CPA" or "PA" unless the person or business organization holds a valid permit or registration issued under ORS 673.010 to 673.457.

OAR 801-010-0120 Inactive Status

(3) Use of CPA or PA designation. A licensee who is granted inactive status may display the Certified Public Accountant certificate or Public Accountant license and may use the CPA or PA designation if the licensee:

- (a) Includes the words "inactive" or "retired" either before or after the CPA or PA designation; and
- (b) Does not otherwise violate the provisions of OAR 801-030-0005(5).
- (c) Except as provided in this rule, a licensee who is granted inactive status shall not hold out as a CPA or PA and the licensee shall be subject to disciplinary action under ORS chapter 673 for violations of this provision.

Love signed the letter above the printed line that displayed her name followed by "CPA". Love used the CPA designation without including the words "inactive" or "retired" either before or after the CPA designation.

INVESTIGATOR SUMMARY(S) (Maximum applicable penalties)
ORS 673.320(7) Permit or registration required \$5,000
OAR 801-010-0120 Inactive Status
Civil penalty for using the CPA designation while inactive

COMMITTEE RECOMMENDATION: Moved and carried to recommend a civil penalty of \$1,000 for violation of ORS 673.320(7) Permit or registration required and OAR 801-010-0120 Inactive Status.

BOARD ACTION: Klimowicz moved and carried to issue Notice of Proposed \$1,000 civil penalty for violation of ORS 673.320(7) and OAR 801-010-0120.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

5. Annual Report

BOARD ACTION: Klimowicz moved and it carried to approve the 2005 Complaints Committee Annual Report.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

D. Old Business

1. Mark Brown 02-06-045

Brown told three (3) of his clients about a tax shelter known as FDO. The original complaint against Brown was for inviting eight (8) of his clients to attend a meeting where Rencher explained investments in unregistered securities.

Committee Discussion: Rencher gave Brown an ATM card that Brown used to withdraw approximately \$6,000. Brown reported the \$6,000 as income on his tax return. Brown invited 8 clients to a meeting with Rencher where they purchased unregistered securities. Brown recommended three (3) clients to invest in the FDO tax shelter.

COMMITTEE RECOMMENDATION: Moved and carried to recommend revocation to be stayed for seven (7) years with the condition that Brown does not violate Board statutes and rules, plus a one (1) year suspension served concurrently with the revocation, 12 hours of CPE in investments and tax matters, four (4) hours of Ethics CPE and a civil penalty of \$40,000 (8 violations at \$5,000 each) for violation of OAR 801-030-0010 (1) Competence and OAR 801-030-0020(1) Professional Misconduct.

Board Discussion: *It was suggested to approve the committee recommendation with additional violations under objectivity and integrity.*

BOARD ACTION: Klimowicz moved and carried to issue Notice of Proposed revocation for violation of ORS 673.170(2)(c)(B), such revocation to be stayed for seven (7) years so long as Brown does not violate Board statutes and rules. The Notice should also include the following:

- (a) one (1) year suspension served concurrently with revocation;
- (b) civil penalty of \$40,000 for assisting in the promotion or sale of unregistered securities to eight clients (\$5,000 each client), in violation of OAR 801-030-0005(2), *Integrity and Objectivity*;
- (c) 32 hours of CPE for violation of OAR 801-030-0010(1) *Competence*
 - 16 hours of CPE in Code of Professional Conduct in Oregon Ethics,
 - 8 (eight) hours of CPE in Circular 230 and
 - 8 (eight) hours of CPE in tax and tax shelters.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen).

13. LEGAL

A. Report of Legal Items

1. Proposed orders after hearing:

a. Kevin Sundberg

In August, 2005, Rigos, attorney for Sundberg proposed that the Board censure Sundberg, assess a civil penalty of \$22,000, impose a two year probation period, and require additional CPE in ethics and other subjects that the Board deems appropriate. The Board rejected the proposal.

BOARD ACTION: Gaffney moved and it was carried to approve the final order prepared by counsel, adopting the ALJ Proposed Order imposing a twelve-month suspension, however reducing the civil penalty to \$19,000 for violation of ORS 673.170(2) and OAR 801-030-0020(1)(a) and (b) or alternatively ORS 673.170(4).

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen).

2. Proposed Consent Orders

a. Christine Clemmer

Ms. Clemmer provided information about medical problems and financial difficulties as the basis for her request to reduce the proposed civil penalty from \$1,000 to \$100.

Board Discussion: *The Board noted that Ms. Clemmer was licensed in March 2002 and was required to reinstate her permit for late renewal in June 2002. She also renewed as inactive in 2004. She is not mindful of the licensing requirements. The Board discussed a reduction of the civil penalty so long as she remains in compliance with the rules.*

BOARD ACTION: Moved by Johnson and carried to assess \$1,000 civil penalty, \$900 stayed so long as Ms. Clemmer does not violate any statute or administrative rule regarding public accounting. Ms. Clemmer is required to pay the \$100 civil payment in one installment.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen).

b. Peter Heitkemper

In August 2005, the Board voted to issued Notice of revocation to be stayed so long as Heitkemper does not perform attest and compilation services directly or through others for Oregon clients and to assess civil penalties of

\$23,000. Heitkemper requested a hearing and submitted a proposed Consent Agreement and Order.

Board Discussion: *The Board agreed to accept the Consent Agreement and Order with the exception of changing the amount of the civil penalty on line nine (9) page two (2) from \$5,000 to \$13,000..*

BOARD ACTION: It was moved and carried to approve a Consent Agreement and Order wherein Heitkemper and Firm are permanently prohibited from performing audit, attest or compilation work in Oregon and requiring Heitkemper to pay a civil penalty of \$13,000.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen).

c. Seydel Lewis Poe Moeller & Gunderson LLC

At the October, 2005 Board meeting the Board moved to assess \$15,000 in total civil penalties for the following violations: \$5,000 for violation of 801-030-0010 (2) Auditing Standards, failure to timely restate PERS Bond as a deferred asset; \$5,000 for violation of 801-030-0010 (2) Auditing Standards for failure to document testing of Average Daily Membership (ADM) in audit workpapers; \$5,000 for violation of 801-030-0010 (1) Competence: Firm failed to give timely advice to ESD regarding the correct reporting of PERS bonds, and 16 additional hours of audit related CPE for all Firm audit members. A Notice was not issued by the Board.

Board Discussion: *December 9, 2005, the Board received a settlement offer from Blackman, Attorney for Seydel Lewis Poe Moeller & Gunderson LLC stating that: the firm will agree to discipline based upon violation of OAR 801-030-0010(4), failure to conform to professional standards; that the firm will agree to failure to document testing of Average Daily Membership (ADM) in 2002 and 2003 Union-Baker ESD as a factual basis for the violation described above; that CPAs in the firm who perform audits will each take 16 additional hours of CPE; and the firm will obtain pre-issuance review of "an appropriate percentage" of its audits of entities subject to GSS by a firm acceptable to the Board. The proposal suggested one audit in five as an appropriate number for review.*

BOARD ACTION: Gaffney moved and it was carried to reject the above described settlement offer and provided instruction to counsel regarding terms that would be considered for approval by the Board.

VOTE: Chair Morris did not vote; 4 ayes, 1 abstained (Bailey), 1 excused (Andersen).

d. Paula Hickey

January 18, 2005, the Board issued a Notice of Proposed License Revocation and Civil Penalty. Hickey requested a hearing.

Board Discussion: *December 22, 2005, the Board received a signed Proposed Consent Order agreeing to revocation of Hickey's CPA certificate and permit and imposing a \$5,000 civil penalty.*

BOARD ACTION: Gaffney moved and it was carried to approve the Consent Order.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen).

e. Lance Brant (deferred)

3. Request for Reconsideration of facts

a. J. Brooks Peacock

The October 2005 newsletter stated that an application for CPA Certificate submitted by J. Brooks Peacock was denied based on a third degree felony conviction, by entry of Plea in Abeyance, in the Fourth Judicial District Court of Utah. Peacock submitted a request to revise the Final Order that was issued by Default to remove the word conviction and state that the Order to Deny Application of CPA Certificate was based on a plea in abeyance agreement between Mr. Peacock and the State of Utah dated April 28, 2004.

***Board Discussion:** The Board reviewed the proposed Revised Final Order submitted by Randall Sutton, Attorney for Peacock requesting that the Final Order be amended to read that "a Plea in Abeyance Agreement was entered into between Respondent and the State of Utah on April 28, 2004. No judgment of conviction has been entered against Respondent. The plea can be dismissed on April 28, 2006." Peacock also requested that a retraction be published in the newsletter.*

BOARD ACTION: Klimowicz moved and it was carried to amend the Final Order omitting the use of the term "conviction".

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen).

B. Other

1. Rostad & English

See 12.C.1. for case history

BOARD ACTION: Gaffney moved and it was carried to issue Notice of Proposed civil penalty of \$15,000 (\$5,000 x 3) for failure to protect confidential client information in violation of OAR 801-030-0015(1).

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen).

14. QUALIFICATIONS COMMITTEE

A. Report of Qualifications Committee

1. 2005 Annual Committee Report

The Board reviewed the report of activities from the Qualifications committee.

BOARD ACTION: Moved by Meisner and carried to accept the annual report.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

B. Approval of Applications issued administratively

a. CPA Certificates/Permits

57 Certificates

b. PA Licenses/Permits

None

c. Firm Registrations

18 registrations

d. Substantial Equivalency Authorizations

13 authorizations

15. CPA EXAM

A. North Carolina

The North Carolina Board expressed its support of the request by the New York and California Boards for NASBA to issue a Request for Information to identify a provider of an alternative examination.

B. Letter from AICPA, NASBA and Prometric

The CBT Steering Group reported CPA Exam statistics in regard to the volume, passing rate, and score reporting.

C. CBT Contract

Consideration of the Oregon/NASBA CBT agreement is deferred until review by counsel is completed. One question posed to the Board relates to candidate exam payments for an exam section that the candidate does not attend. In this event the seating fee was scheduled and is not refundable, and NASBA fees to process the application were incurred; however there is no exam section for which a grading fee is incurred. Total fees paid to NASBA include grading fees. The question to the Board is whether to request that the grading fees in this situation be returned to the Board. The Board noted that we elected not to receive candidate payments for Pro-metric, AICPA or NASBA services. The Board decided to maintain consistency regarding exam fees, and that such unused fees should not be returned to the Board.

16. CODE OF PROFESSIONAL CONDUCT

A. Report of Code of Professional Conduct Committee

1. Acceptance of Minutes

a. November 16, 2005

BOARD ACTION: Moved by Johnson and carried to accept the Code of Professional Conduct Committee minutes dated November 16, 2005.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

B. Consent Agenda

1. Recommendations

***a. 101-3 Performance of Non-Attest Services, revised May 19, 2005**

***b. 2005 Annual Report**

***c. Ethics Requirement**

***d. CPC Charge**

C. Items Removed from Consent Agenda

1. 101-3 Performance of Non-Attest Services, Revised May 19, 2005

Changes were made to 101-3 dealing with independence. All recommendations were previously discussed by the Board and committee. Additional minor changes have been made and the Committee believes it is important for the Board to maintain its consistency with the changes to Independence standards and rules.

BOARD ACTION: Moved by Johnson and carried to adopt the AICPA rules on independence.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

2. 2005 Annual Report

The Board reviewed the committee's annual report.

BOARD ACTION: Moved by Johnson and carried to accept the Annual Report.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

3. Ethics Requirement

This item was discussed earlier in the meeting under the CPE report. The CPE and CPC committee will schedule a joint meeting to discuss ethics requirements in Oregon.

4. CPC Charge

The Board administrator prepared a memo to the committee explaining the committee charge. Because this is a new standing committee with additional new members, clarification of the committee's responsibilities was requested. The committee will also review outsourcing issues in 2006.

17. NEW BUSINESS

A. Oswald West Award

Mr. Gaffney suggested an individual that the Board may wish to consider for the Oswald West Award. Board staff will gather background and historical information on the candidate for discussion at a future meeting.

B. Election of 2006 Officers

The following slate of officers and committee liaisons was presented:

Chair – James Gaffney
Vice Chair – Lynn Klimowicz
Treasurer – Kent Bailey

Committee Liaisons:
Complaints – Kent Bailey
Peer Review – Jens Andersen
CPC – Ray Johnson
Qualifications – Anastasia Meisner
CPE – Lynn Klimowicz

BOARD ACTION: Moved by Morris and carried to approve the slate of officers for 2006.

VOTE: 6 ayes, 1 excused (Andersen).

18. PROCESS OBSERVER REPORT

The meeting went well, good discussion especially on items discussed in executive session and then brought forward to the regular session.

19. NEXT MEETING

Date: February 6, 2006
Location: Phone conference

20. ADJOURNED

There being no further business, the meeting adjourned at 6:15 p.m.