



## Oregon Board of Accountancy Public Session Minutes February 10, 2014

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### Board Members:

Jessie Bridgham, CPA, Chair  
Larry Brown, CPA, Vice Chair  
Scott Wright, CPA, Treasurer  
Al Crackenberg, PA  
Roberta Newhouse, CPA  
Roger Graham, Public Member  
John Lauseng, CPA

### Guests:

Phyllis Barker, OSCPA  
Tim Filkins, OSCPA  
Laura Caldera Taylor, Attorney for Hart (by phone at 2:45 – 3:18 p.m.)  
Debra Dimone, CPA (by phone)  
Shawna Meyers, Attorney for Dimone (by phone)

### Board Staff:

Martin Pittioni, Executive Director  
Susan Bischoff, Assistant Attorney General  
Noela Kitterman, Investigator  
Theresa Gahagan, Investigator  
Bethany Reeves, Compliance Specialist  
Kimberly Fast, Licensing Program Manager  
Kristen Adamson, Licensing Specialist  
Marika Garvey, Licensing Specialist

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### 1. Call to Order

Chair Bridgham called the public session to order at 2:09 p.m. and announced the meeting was being recorded.

### 12. Complaints Committee

#### A. Joanne Shackelford, Case #11-039AI

**BOARD ACTION:** Moved by Mr. Brown and seconded by Mr. Wright to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0005(2), Conflict of Interest and OAR 801-030-0015(1), Disclosure of Confidential Client Information. Mr. Crackenberg requested they be considered separately. Mr. Wright withdrew his second.

Mr. Brown then changed his motion to: Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0005(2), Conflict of Interest.

**VOTE:** 6 ayes, 1 nay (Crackenberg)

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0005(2), Conflict of Interest and OAR 801-030-0015(1), Disclosure of Confidential Client Information.

**VOTE:** 7 ayes

**COMMENTS:** The Board recommended all practitioners follow the best practice of getting written disclosures each time a client waives a conflict of interest.

**B. Gregory Fowler, Case #11-044NK**

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0020(1)(b), Professional Misconduct relating to material misrepresentations

**VOTE:** 7 ayes

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0020(1)(b), Professional misconduct relating to his investment in a real estate venture that was a related party investment.

**VOTE:** 7 ayes

**C. Kyle Cummings, Case #12-020NK**

Mr. Wright declared a conflict of interest in this case and recused himself from the discussion and vote on this matter.

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1)(b), Professional Misconduct for material misrepresentation.

**VOTE:** 6 ayes, 1 abstention (Wright)

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1)(b), Professional Misconduct relating to his investment in a real estate venture that was a related party investment.

**VOTE:** 6 ayes, 1 abstention (Wright)

**DISCUSSION:** Board members believe the licensee should have exercised greater professional skepticism. Various members noted that the conduct was serious, and they would support a mid-to-high civil penalty. Ms. Bischoff noted that the Complaints Committee (BOACC) thought revocation was appropriate. Board consensus was that a mid to high civil penalty and continuing professional education related to professional skepticism would be appropriate because the Respondent had already faced consequences in the civil proceedings.

**D. Tyson Pruett, Case #12-036NK**

Mr. Crackenbergh declared a conflict of interest and recused himself from the discussion or vote on this matter.

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence make a preliminary finding of a violation of OAR 801-030-0010(1)(b) due professional care for failure to send a refund check timely.

**VOTE:** 6 ayes, 1 abstention (Crackenbergh)

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0010(1)(b) due professional care for an error regarding estimated tax payments.

**VOTE:** 6 ayes, 1 abstention (Crackenbergh)

**BOARD ACTION:** Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0010(1)(c) Planning and Supervision.

**Comments:** Mr. Graham asked if there was a reasonable expectation that if a client were to review their prepared tax return, and if the return showed that estimated tax payments had been made when the client had not actually made those payments, then the client would be expected to notify their tax preparer that the return

contained an error. Mr. Crackenberg and Ms. Newhouse said it would depend on the client, but in this case, the tax return had been filed before the client had been given the tax return to review. There was general agreement from the members of the Board that if the client had been given the tax return to review before the tax return had been filed, the responsibility for noticing the error would be on the client.

**VOTE:** 1 ayes (Lauseng), 5 nays, 1 abstention (Crackenberg) **MOTION FAILED**

**BOARD ACTION:** Moved by Mr. Brown 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 for to oversee and supervise office procedures related to filing client's tax return.

**VOTE:** 5 ayes, 1 nay (Lauseng) 1 abstention (Crackenberg)

**Discussion:** The Board consider the circumstance of this case as a lesser violation, and thought a lower civil penalty would be appropriate. The situation could have been avoided if there was a policy in place and they had back-up measures. It was noted that only asking clients to authorize a filing after they have reviewed their tax return would keep this from happening again.

**E. Donald King, Case #12-037NK**

Mr. Crackenberg declared a conflict of interest and recused himself from the discussion and vote in this matter. Mr. Lauseng declared a potential conflict of interest in that this Respondent had previously worked at the firm where Mr. Lauseng is currently employed, but Mr. Lauseng said he did not believe it would affect his objectivity, so he would participate in the discussion and vote.

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0010(b), Due Professional Care when reviewing a tax return.

**VOTE:** 6 ayes, 1 abstention (Crackenberg)

**F. Roy Rogers, Case #12-049NK**

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 801-030-0005(2), Integrity and Objectivity and OAR 801-030-0020(1), Professional Misconduct.

**VOTE:** 7 ayes

Comments: Mr. Graham noted that this was a case where an employee alleged that the principal of the firm had arranged for a quid pro quo for signing off on the Complainant's experience requirements for licensure, in exchange for the Complainant agreeing to resign from his employment at the Respondent's firm. There was no evidence to support the allegations.

**G. Debra Dimone, Case #12-074NK**

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0015(1), confidential client information (safeguarding a client's tax return).

**VOTE:** 5 ayes, 2 nays (Graham, Bridgham)

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of a violation of:

1. OAR 801-030-0015(1), Confidential client information (safeguarding client names)
2. OAR 801-030-0020(1), Professional Misconduct (approving the purchase of a specific telephone system without authorization and for the financial benefit of herself and/or her husband)
3. OAR 801-030-0020(1), Professional Misconduct (performing work for her personal business during paid work time at another business where the Respondent was an employee)

4. OAR 801-030-0020(1), Professional Misconduct (receiving unauthorized reimbursements)

5. OAR 801-030-0010(1)(b), Due Professional Care (obtaining credit cards for the business without authorization)

6. OAR 801-030-0010(1)(b), Due Professional Care (transferring funds from the business owner's personal bank account to the business account without authorization)

7. OAR 801-030-0010(1)(b), Due Professional Care (failure to adequately document and memorialize shareholder loans to the business)

8. OAR 801-030-0010(1)(b), Due Professional Care (processing unauthorized reimbursements for other employees)

**VOTE:** 7 ayes

**Discussion:** The Board believes a modest civil penalty is appropriate for this matter.

#### **H. Kimberly Guerber-Santana, Case #13-037**

**BOARD ACTION:** Moved by Mr. Brown, seconded by Mr. Wright, to find that there is insufficient evidence to make a preliminary finding of a violation of OAR 673.320(3), Use of the CPA designation.

**VOTE:** 2 ayes (Brown, Graham), 5 nays **MOTION FAILED**

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is sufficient evidence to make a preliminary finding of a violation of OAR 673.320(3), Use of the CPA designation.

**VOTE:** 5 ayes, 2 nays (Brown, Graham)

**Discussion:** The Board discussed possible sanctions and found consensus on a nominal civil penalty and she should correct her LinkedIn account. They agreed the conduct was not egregious. Ms. Newhouse added that CPA's without an active CPA license may not prepare tax returns unless they are licensed by the tax board. Lauseng added that licensees need to be very careful of any use of the CPA designation on social media that is within their control.

#### **G. Cherina Hart, Case #13-053**

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-010-0345(1), Requirements to register a firm for the period 2010 and 2011.

**VOTE:** 7 ayes

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-020-0620(3) and (4), Bidding and Contracting for Municipal Audits.

**VOTE:** 7 ayes

**BOARD ACTION:** Moved by Mr. Brown to find that there is insufficient evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(a), Professional Competence.

**VOTE:** 3 ayes, 4 nays (Bridgham, Wright, Lauseng, Newhouse) **MOTION FAILED**

**BOARD ACTION:** Moved by Mr. Wright and carried to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0010(1)(a), Professional Competence.

**VOTE:** 4 ayes, 3 nays (Crackenber, Graham, Brown)

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0020(1), Professional Misconduct.

**VOTE:** 5 ayes, 2 nays (Lauseng, Graham)

**BOARD ACTION:** Moved by Mr. Brown and carried to find that there is sufficient evidence to make a preliminary finding of violation of OAR 801-050-0020, Peer Review Enrollment and Participation in Peer review program.

**VOTE:** 7 ayes.

Ms. Hart and her attorney, Ms. Caldera Taylor were present on the phone for Board discussion.

**Discussion:** The Board found a violation for objectivity and integrity in a prior matter at the August, 2013 Board Meeting. The Board asked for additional 20 CPE hours in tax, a low civil penalty and that Ms. Hart find a mentor. The Board members want to have input on the mentor that Ms. Hart selects.

In this matter, the Board members agreed that specific CPE is necessary, and an ethics course that includes a review of the statutes and rules would be a good place to start. They recommended that the Respondent complete 16 hours of CPE in review and compilation services. These hours could be part of the 80 hours of CPE needed for renewal, and are not in addition to the 80 hours. However, the 20 hours from the prior matter are in addition to the 80 renewal hours. Ms. Hart completed some CPE in January 2014, prior to this Board meeting, which are approved to be included in the required 16 hours. If Ms. Hart performs any attest or compilation services, the first compilation and the first review should be subject to a pre-issuance review. If the pre-issuance review of any attest or compilation services results in significant findings, the matter will be brought back to the Board for further review. Entire civil penalty to be stayed pending compliance.

### **13. Proposed Case Settlements**

#### **A. Kurt Hagerman Case #12-065NK**

This case was discussed at the Board meeting in December. The Board reviewed a draft settlement in January. Although they all wanted to settle this case quickly, they wanted to ensure the level of stayed civil penalties would be high enough to deter Mr. Hagerman from committing additional violations. The stayed civil penalties of \$20,000 in that draft were not deemed to be enough. Mr. Pittioni entered into negotiations with the Respondent and presented the Board a revised draft that proposed revocation, provided 45 days for the Respondent to close down his accountancy practice, and contained stayed penalties of \$65,000 plus the Board's attorney costs if any provisions of the settlement are violated. This revised proposed settlement had been signed by the Respondent.

**BOARD ACTION:** Moved by Ms. Newhouse and carried to accept the Stipulation and Order as proposed.

**VOTE:** 7 ayes.

#### **B. John Paul Kenote, Case #11-062NK**

This case involved a tax shelter that was challenged by the IRS, and Mr. Kenote did not disclose to his client that he received a commission from the arrangement or recommend that she seek advice from outside counsel. The proposed Stipulation and Order assesses an \$8,000 civil penalty and requires 16 hours of CPE.

**BOARD ACTION:** Moved by Mr. Graham and carried to accept the Proposed Stipulation and Order presented.

**VOTE:** 7 ayes.

#### **C. Tracy Stelling, Case #12-060CI**

The proposed Stipulation and Order assesses a \$3,000 civil penalty, requires 8 hours of CPE and requires the Respondent to meet with a mentor.

**BOARD ACTION:** Moved by Mr. Wright and carried to approve the proposed Stipulation and Order as presented.

**VOTE:** 7 ayes.

**14. Continuing Professional Education Committee**

- A. Minutes of January 29, 2014  
Minutes of February 6, 2014**

The minutes were presented for information only.

- B. Approval of Municipal Auditor Applications**
- 1. Mark Damon**
  - 2. Robin Briggs**

**BOARD ACTION:** Moved by Mr. Graham and carried to approve municipal licenses the municipal auditor applications as listed.

**VOTE:** 7 ayes.

**15. Qualifications Committee**

- A. Minutes of January 15, 2014**

The minutes were presented for information only to Board members.

- B. Consent Agenda**
- 1. Recommendations for Approval**
    - a. Li Deng
    - b. Tessa Hurn
    - c. Erin Richmond
    - d. Francis DeMonte
  - 2. Approval of Applications**
    - a. 52 CPA Applications
    - b. 0 PA Applications
    - c. 9 Firm Registrations
- C. Applications for Discussion**
- a. Amanda Matlin**

The Qualifications committee reviewed the application submitted by Amanda Matlin and found there was insufficient evidence to demonstrate she had gained experience to meet the competencies. Her work experience was primarily related to pension plans. The committee reviewed the supervisor licensee information provided, and it was clear that the position did not allow experience sufficient for a CPA license.

**BOARD ACTION:** Moved by Ms. Newhouse and carried to find that there is insufficient evidence to demonstrate that Amanda Matlin has achieved competency in the seven core areas. The applicant will be allowed to withdraw her application and reapply when she has gained additional experience.

**VOTE:** 7 ayes.

- b. Susan Han**

Ms. Han was previously denied by the Qualifications committee and the Board. Ms. Han reapplied a month later and did not provide any additional information that would show she had gained the necessary experience to be licensed in Oregon.

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**BOARD ACTION:** Moved by Ms. Newhouse and carried to find that there is insufficient evidence to demonstrate the applicant has achieved the seven core competencies. The applicant will be allowed to withdraw her application and reapply when additional experience is achieved.

**VOTE:** 7 ayes.

## **11. Report of the OSCP**

The OSCP will announce the new curriculum for the 2014-15 year in the near future. A new online self-study module is now available. OSCP reports that most of the users of this module are licensees in industry. The Society continues to work with the Board on the sponsored legislation regarding private investigator licenses.

## **5. Report of Treasurer**

Mr. Wright stated that the Board is only 6 months into the 24 month biennium. There are actuals to date and there have been modifications to the budget projections.

## **7. New Business**

### **A. NASBA Vice-Chair Nominations**

The Board reviewed support letters for two nominees for the Vice-Chair position at NASBA, Jenny Gray and Ted Long. Chair Bridgham recommended Ms. Gray as a great candidate for this position. She has interacted with her in the past and reported that she is very knowledgeable and personable. Board members agreed to support her candidacy and a letter will be sent to NASBA to that effect.

### **B. Attendance at NASBA's Regional June 11-13, 2014**

Ms. Newhouse encouraged any interested Board member to attend the NASBA Regional Conference in June. The NASBA conferences are very interactive and deliver valuable information. Mr. Lauseng, Mr. Crackenberg, Mr. Brown and Chair Bridgham all expressed interest in attending the conference. Mr. Graham also encouraged staff members to attend if possible.

### **C. Review of Legislative Proposals**

The Board has previously discussed different strategies for proposing legislative concepts. There are currently five concepts that the Board has expressed interest in moving forward. Some will be place holders and some can be combined together into one bill. Mr. Pittioni will work on developing legislative concepts that include: broadening board authority; amending the definition of attest; changing some general definitions; a placeholder concept for firm registration requirements; and cease and desist and emergency suspension language.

The Board discussed whether to pursue a separate legislative concept to allow examination candidates to sit for the examination with 120 hours of education rather than the current requirement of 150 semester hours, without changing the current statutory threshold of 150 semester hours required at the point of initial licensure. The discussion clarified that while many states have already made that regulatory change, there is no consensus at this time in Oregon on this issue. In addition, the Board discussed whether or not to accept or deny internship credits given through universities and colleges. Presently, the Board accepts internship credits granted by the institution; however, some states are no longer consider the credit to be acceptable for meeting the entry requirements for the examination. The Board agreed to move forward with a legislative concept on the issue of lowering the educational requirement necessary to sit for the examination as a placeholder. Board members will discuss placeholder concepts further at the June Board meeting. Putting in a placeholder for a legislative concept will extend the time the Board has to work with stakeholders before drafting of a concept occurs, but it does not lock the Board into pursuing changes because the Board could choose to take no further action on that legislative concept.

**8. Old Business****A. Final Adoption of Administrative Rules**

The Board sent out a Notice of Proposed Rulemaking to amend Division 001 and Division 010 under chapter 801. Division 001 was amended to change the date for professional standards to those in effect as of January 1, 2014. Division 010 was amended to require all foreign educational evaluations be performed by NASBA's International Evaluation Services (NIES). The rule amendment allows applicants to use other providers that are members of the National Association of Credential Evaluation Services if the application is received prior to June 1, 2014.

No comments were received during the comment period provided during the rulemaking process.

**BOARD ACTION:** Moved by Mr. Wright and carried to approve the proposed rule amendments to Divisions 001 and 010.

**VOTE:** 7 ayes.

Mr. Wright noted that Ms. Newhouse might not attend the next meeting as the Governor's office is recruiting for the position she holds. Mr. Wright and the other board members expressed their appreciation for her service and said they had enjoyed working with her over the years.

The meeting adjourned at 4:47 p.m.