



OREGON BOARD OF ACCOUNTANCY
COMPLAINTS COMMITTEE
PUBLIC SESSION MINUTES
August 28, 2015

3218 Pringle Rd SE #110
Salem, OR 97302

1st Floor Conference Room Morrow Training Center

503-378-4181

Committee Members Present

Josh Dunlap, CPA Chair
Kent Bailey, CPA
Bill Holmes, CPA (9:06)
Joe Sullivan, CPA
Nancy Young, CPA (8:35)
Jessie Bridgham, CPA
Marissa Nelson, CPA

Staff

Martin Pittioni, Executive Director
Theresa Gahagan, CPA, CFE, Investigator
Joel Parks, Licensing Specialist

Board Counsel

Susan Bischoff, AAG

Members Excused

Haley Lyons, CPA

Board Liaison

Scott Wright, CPA

1. Call to Order

Chair Dunlap called the public session to order at 8:31 a.m. and announced that the meeting was being recorded.

2. Review and Approval of Agenda

Mr. Dunlap and the Board approved the Agenda.

3. Approval of Minutes

A. Corrected April 24, 2015 BOACC – Public Session

Discussion: Mr. Pittioni mentioned that there was a correction to the April 24, 2015 Minutes that was discussed at the last meeting and the version that the Board now has is the corrected version of those Minutes.

Committee Action: Moved by Mr. Bailey and carried to accept all the Board Meeting public session minutes.

Vote: 7 ayes

4. Old Business

- A. Report from the June 29, 2015 Board Meeting
- B. Report from the July 8, 2015 Special Board Meeting
- C. Report from the August 3, 2015 Board Meeting

June 29, 2015 Board Meeting

Mr. Wright reported that the Board was in agreement with the BOACC in all of the cases from the June 29, 2015 meeting except for Rosemarie Howell (#13-043), who had been zeroing out the income and then adjusting rent to zero out income. Where the Board differed with BOACC was with regard to the rule on Tax Standards. The Board found sufficient evidence whereas the BOACC did not consider this rule. The other cases were found to have insufficient evidence and there was no violation.

Alyateem (#15-005) bypassed the Complaints Committee as part of streamlining the complaint process, and staff is working out whether all cases need to come through the BOACC or if some can go directly to the Board. This case was a follow up on a prior case where the individual had agreed to a settlement and then evidence came forward that he had violated the settlement, so that case came directly to the Board. There was sufficient evidence for a finding in this case. The Board also approved settlements in the cases of Todd Goebel (#13-033) and Rodney L. Manser (#14-037).

July 8, 2015 Special Board Meeting

During the July 8th meeting The Board discussed the Gustafson case (09-116CNK). This case went through the whole process to the judicial level where the judge confirmed the findings. Ms. Bischoff told the BOACC that Mr. Gustafson petitioned for Supreme Court review. If the Supreme Court accepts the petition to review, the Board will move to dismiss it for being improperly granted. Mr. Bailey remembered that the BOACC was trying to prevent them from practicing for a period of time because of some tax issues. Mr. Pittioni told the BOACC that Mr. Gustafson is still practicing at this time and was granted a stay. The tax issue for this case involved the client's refund of \$117,000.00 that was diverted directly to the firm's bank account so that they could take out their fees and then give the remainder to the client. The client did not agree to this. Mr. Bailey said he thought Gustafson ended up with suspension from practicing for two years but the case has been delayed in the legal process and it appears Gustafson may be able to retire before there is a final verdict. Ms. Bischoff reported that they had filed for a petition for reconsideration in the Court of Appeals in part because the opinion in their view did not set forth enough nice things about Mr. Gustafson. Ms. Bischoff added that there are questions about the rules this licensee is a 75% owner in the firm and his name is in the firm name. This raises questions that were not fully anticipated at the time the rules were developed.

The Dan Barnes (#14-021) settlement was approved. Mr. Pittioni excused himself from this case because he had a direct personal conflict and had no involvement in the investigation or BOACC and Board consideration.

August 3, 2015 Board Meeting

During the August 3rd meeting the Board voted on two cases in agreement with the BOACC. One case involved Arthur Pratt (#14-039) with multiple violations and the second case involved a Respondent where the Board found insufficient evidence.

The settlements for Peggy Cole (13-052), Rosemarie Howell (13-043) and Robert Nelson (14-002) were all adopted by the Board as they were presented by the staff and are now closed.

In some cases where the Board found violation, the Board was not always unanimous in its voting decisions. The Board ultimately agreed in the long run that there were a series of events that resulted in violations. Mr. Kent asked what the Board was pursuing in the Pratt case. Mr. Wright answered that suspension, revocation and fines were all brought up. Mr. Pratt came to the last meeting with a different lawyer. Mr. Pratt seemed contrite whereas in previous (BOACC) meeting, he was defensive and not wanting to take the blame for what he had done. Ms. Bischoff added that the specific facts that are alleged may warrant bringing it back to the Board for further consideration and make sure the violations are adequately stated and the severity as well. Mr. Pittioni said that there was not a lot of clarity on whether Mr. Pratt would make different decisions on the tax practice side going forward. Mr. Bailey struggled with the fact that many returns were not completed but that he still received payment for them. Ms. Bischoff reminded the BOACC of Mr. Holmes' questions. Mr. Holmes had asked if these advances were for work that he had already done or for future work. Ms. Bischoff questioned if Mr. Pratt was asking for advances when he was insolvent.

Mr. Wright reported that the Minutes for the June 29th and July 8th meetings are available on Public Record. The August 3rd Minutes are in draft form and are not ready for Public Records yet.

5. New Business – BOACC updates / Appoint Vice Chair

A. Introductions

Everyone at the meeting introduced themselves.

B. BOACC Updates

Mr. Pittioni explained that we have one full time investigator, Ms. Gahagan, but that Ms. Kitterman is semi-retired and working half time for at least one more year. We lost the investigator who was recently hired. A new posting for the investigator position will post today. Adjustments were made to the posting to emphasize that the salary was fully negotiable along the published salary range. Mr. Pittioni also briefly discussed his work with the Department of Administrative Services (DAS) to change the classification structure of at least one investigator position of the Board to reflect a minimum qualifications requirement of an active CPA license. The current state classification system does not contain a classification where the Board could require a CPA credential as part of any of its positions, including as Board investigators. Ms. Sherry Carter, the new DAS HR consultant assigned to the Board, has been very supportive and will work on this on the Board's behalf over the next few months, and Mr. Pittioni expressed his appreciation for the significant amount of support received from Ms. Carter on this critical Board infrastructure improvement initiative.

Mr. Pittioni is also in the process of finding a replacement for the Compliance Specialist Ms. Reeves. There is currently an internal recruitment open for the Compliance Specialist position.

Mr. Wright spoke about the Department of Energy's Business Energy Tax Credit (Energy Incentive Programs) and whether Agreed Upon Procedures performed were up to Professional

Standards. The Board has been in contact with the DOE. Within the DOE, there are Electric Producers incentives that need verification. If it is more than \$50,000.00, the DOE need a verification of cost by a CPA. Board representatives met and discussed with the DOE representative what the CPAs can and can't do. This meeting covered what CPAs can provide while following Board rules and the DOE's rules. While it was agreed that this work is an Attestation engagement, falling under Agreed Upon Procedures or Examination, Board representatives discussed allowing a level of determination made by the applicant and the CPA to decide which type of engagement (either the AUP or an examination) would be most applicable based on the number of transactions involved. The DOE representative was on board with this suggestion. Hopefully this will allow our rules and DOE's rules to align. Mr. Pittioni mentioned there was a Public Records request to the DOE by a Respondent in a Board case, which produced a DOE records release that involved 756 Energy Tax Credit applications, where accountants were providing these verifications. When the Board reviewed these verification letters and determined that many of the verification letters were not up to the standards for an AUP, the accountants who provided the verification letters were sent non-disciplinary letters of concern to send a clear signal to the practice community that in the view of the Board these were AUP engagements. The Board is now working to address with DOE the underlying problem that practitioners have been getting different messages from the Board and DOE. That is what the Board is trying to fundamentally fix, and DOE has been very cooperative to date to address this problem constructively.

C. Appoint Vice Chair

Mr. Sullivan motioned to appoint Haley Lyons to the position of Vice Chair.

Vote: 7 ayes - unanimous

3. Approval of Minutes

B. June 5, 2015 - Public Session

Discussion: Mr. Bailey moved to accept the minutes for June 5, 2015 as they are written and the corrected minutes.

Committee Action: Moved by Mr. Dunlap and carried to accept all the Board Meeting public session minutes.

Vote: 4 ayes, 3 abstain (Nelson, Bridgham, and Young)

6. Convene Executive Session / Public Session Reconvened

At 9:10 am, executive session was convened pursuant to ORS 192.660(2)(f), for the purpose of examining exempt public records. After the executive session concluded, public session was reconvened at 1:59 pm.

7. Committee Recommendations

A. Case #13-034

Committee Action: Moved by Ms. Young and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0010(1) – Multiple counts of General Standards violations for the 2010 audit performed on Lane Electric. Moved by Ms. Young and carried to recommend that there is sufficient evidence to make a preliminary finding of violation of OAR 801-030-0005(2)(a) – Integrity and objectivity, for subordinating the licensee’s judgement to the judgment of others, in the performance of the Lane Audit.

Discussion: Ms. Young suggested the Respondents consider whether they should have someone come in externally and help them review their process. They have been doing these audits for the co-ops for thirty years and may not been paying attention to what they need to do in the audit. The Respondent needs to be brought up to date and their process needs to be revamped within the auditing approach. The BOACC suggested that they encourage the Respondents to complete CPE that relates specifically to Audit Approach.

Vote: 7 ayes – unanimous

Recommendation to the Board: Ms. Young recommended the Board consider someone coming in externally and helping the Respondents with their process of updating and revamping their audit procedures and find a new Peer Reviewer. Their process needs to be brought up to date. Respondents should complete CPE specifically related to audit approach and within industry.

B. Case #14-069

Committee Action: Defer

Discussion: Awaiting further evidence.

Vote: No vote.

Recommendation to the Board: NA

C. Case #14-070

Committee Action: Defer

Discussion: Mr. Dunlap wanted to note that the respondent needs to improve his general and technical standards. Waiting for more evidence from case #14-069 before moving forward.

Vote: No vote.

D. Case #15-007;15-008;15-009;15-018;15-036;15-045

Committee Action: Moved by Ms. Young and carried to recommend that there is **sufficient** evidence to make a preliminary finding of violations per OAR 801-030-0010(1)(c) – Planning and supervision {2015 Edition} or OAR 801-030-0020(1) Professional misconduct {2015 Edition} and OAR 801-030-0010(1)(b) – Due professional care {2015 Edition} and OAR 801-030-0015(2) – Client records and working papers {2015 Edition} and OAR 801-030-0020(6) – Board communications and investigations {2015 Edition} and OAR 801-030-0020(8) – Notification of change of address {2015 Edition} and OAR 801-010-0345(7)(a) – False and misleading firm names {2015 Edition}.

Discussion: None.

Vote: 7 ayes unanimous

Committee Action: Moved by Mr. Bailey and carried to recommend that there is **insufficient** evidence to make a preliminary finding of violation per OAR 801-050-0020 – Peer Review enrollment and participation.

Discussion: None.

Vote: 7 ayes unanimous

Recommendation to the Board: Mr. Bailey wants to revoke or suspend the Respondent's license. The BOACC wants to know what life-changing event has caused the Respondent to start acting in this manner. If he fails to disclose this event, then the Board should revoke his license. There was some back and forth on how much additional CPE the Respondent should complete.

8. Announcements and Adjournment

Mr. Pittioni told the BOACC that the recruitment for the Investigator position had posted. Mr. Pittioni noted that the next BOACC meeting that was scheduled for September 25, 2015 is canceled. Chair Dunlap adjourned the meeting at 2:15 pm.