



Oregon Board of Accountancy

3218 Pringle Rd. SE #110 Salem, OR 97302 | 503-378-2270

BOARD MEETING PUBLIC SESSION MINUTES

June 29, 2015

Board of Accountancy Office, 2nd Floor Conference Room
Salem, Oregon 97302

Present:

Larry Brown, CPA, Chair
Scott Wright, CPA, Vice-Chair
John Lauseng, CPA, Treasurer
Candace Fronk, CPA
Roger Graham, Public Member
Lynn Kingston, CPA
Al Crackenberg, PA

Staff:

Martin Pittioni, Executive Director
Susan Bischoff, AAG
Noela Kitterman, Investigator
Theresa Gahagan, Investigator
Bethany Reeves, Compliance Specialist
Kimberly Fast, Licensing Manager
David Hunter, Administrative Assistant
Kristen Adamson, Licensing Specialist
Joel Parks, Licensing Specialist

Guests present for all or part of the public session:

Phyllis Barker, OSCPA
Sherri McPherson, OSCPA (by telephone)
Stuart Morris, PA, OAIA

Rod Kitterman
Gwen Bielemeier
Darryl Dorrell, CPA

1. Call to Order / Announce Recording / Review Agenda

Chair Brown called the meeting to order at 8:32 a.m. and announced that the meeting was being recorded.

2. Convene Executive Session Under Authority of ORS 192.660(2)(f) and (h)

Chair Brown convened executive session at 8:35 a.m. Upon conclusion of the executive session, public session was reconvened at 12:51 p.m.

6. New Business

B. Staff Requests for Guidance on Inactive and Retired Status

Mr. Pittioni requested the Chair to add an agenda item of 6.B, under New Business, to give guidance to staff on how to process renewal applications in retired and inactive status, and to identify provisions which should be considered by the Laws and Rules Taskforce for possible revision. Mr. Pittioni said that there is a statutory definition of inactive, and the Rules create

retired status, so he was requesting the Board to decide what activities licenses in each status may engage in, at least with respect this the current renewal cycle.

In 2010, the Board proposed rules for inactive licensee that were complex and very broad, and were ultimately not considered for permanent rulemaking. However, other rules in existence at that time, related to not holding out and not doing any work within the practice of public accountancy, remained in effect. Ms. Fast noted that initially, inactive was used for a person who wanted to leave the profession for a period of time, and then return, such a mother who might go into inactive status to raise her children, then return to work a few years later. She noted that there is an inconsistency for licensees in inactive status that are allowed to do certain types of work in Government or Industry because the Board considers that work to not be the "practice of public accountancy", yet applicants obtain the core competencies doing the same type of work and are approved for a license.

Ms. Fast continued that on the renewal application, the licensees must sign a different section for each status type (active, inactive, retired), that describes the type of services permitted to be performed by each status. Mr. Wright suggested the Board provide information in plain language on what licensees in the various statuses may do, and Ms. Fast noted that this information is available on the Board website. She also explained that the in the past, if the licensee indicated on the renewal application that they work 100% in industry, they were always granted inactive status, but if they describe their work as "consulting" or "CFO", that sounded like the practice of public accounting, so staff were not sure if the Board would want those people to be in inactive status. Also, she said that the number of inactive applications is declining, and licensees in inactive status were returning to active status or moving to retired status. Mr. Pittioni thought the CPE requirements for inactive status were driving that change.

Ms. McPherson noted that the general understanding in the profession is that only licensees in public accounting needed to be in active status, while those outside of public accounting, such as comptrollers, were allowed to be in lapsed or inactive status.

There was a lot of discussion around the definition of "client" as used in the definition of "inactive". Consensus was developed that "client" did not mean a single employer when the licensee is a W-2 employee, but the employer would be a "client" if the licensee was a contractor or a consultant or was a CFO for multiple businesses. However, there were dissenting members who were of the opinion that a single employer is still a "client".

There was consensus to having staff continue to use the same process they have been using, but it was noted that the Board may give different directions for future renewals cycles. It was agreed that the LRC should look at the definition of Inactive and Retired and Client in the near future. Staff were directed to renew licenses to inactive status as long as the licensee is in industry.

In regards to applicants who were applying for retired status, Ms. Fast noted that the Rules say a licensee in this status cannot work for direct or indirect compensation. Mr. Pittioni added that he saw the Board's treatment of inactive status as more precedent-setting, because licensees in

retired status are already prohibited from performing public accounting services for direct or indirect compensation.

There was some discussion about the intent of the Board at the time retired status was created. Chair Brown said retired status was created so that CPAs who were no longer using their accounting skills could keep their wall certificates and continue to refer to themselves as CPAs (retired). Ms. Barker said that OSCPAs members sometimes ask about retired status once the members have left public accounting. She pointed out, however, that the OSCPAs is a membership organization, not a regulatory body. Ms. McPherson said she would like there to be a way for a licensee in retired status to return to active status. Mr. Morris, who was a member of the Board at the time retired status was created, said that retired status was intended to be a permanent status at the end of a CPA's career, when they were no longer working, and was not intended as an option for a licensee in retired status serving as a CFO in private industry. Mr. Brown added that one reason inactive status requires CPE but retired status does not, is because retired status was intended for those who were no longer providing any type of service and it was intended to be permanent. Mr. Graham was also on the Board at that time, and affirmed that the intent was for retired status to be permanent and only for licensees who were not working, and it was intended to be a reward for being in the profession for at least 20 years. He noted that there was one licensee who asked the Board if he could assist non-profits while in retired status, and the Board talked about it, and said he could use his experience to help non-profit organizations without compensation. He added that if a licensee wants to work, the licensee should not be in retired status.

Ms. Kingston recommended that the Board consider retired status because as Baby Boomers retire, the nature of retirement is changing. Ms. Fast clarified that she did not understand the Board to be including licensees who have gone into another field entirely, but it would apply to licensees who were doing accounting consulting. She noted that at first the applications for retired status were for people who were truly retired, but applicants are now including a wider range of activities they would like to participate in while in retired status. Mr. Brown disclosed a potential conflict of interest, because in 2 years and 3 days he will be renewing in something other than active status, and he is the trustee for 6 or 8 trusts he has had as clients for 40 years. So since he can't do trust work while in inactive status, he may depending on where the Board ends up on this issue need to resign his license at that time. Ms. Bischoff pointed out that he could participate in the discussion because it was only a potential conflict of interest. Mr. Wright said he thought licensees in retired status should not have any accounting employment or consulting at all, and they would need to demonstrate that any other work was NOT in the field of accounting.

Mr. Lauseng said that if the Board were to suddenly change what is allowed, they should set up a time period and path to compliance to allow licensees time to complete the CPE needed to move into a different status, if the work the licensee currently does would no longer be allowed. He suggested that the Board notify applicants, give them 90 days to move to a different status, and delineate what work the licensees could do during that time. He said communication during any change would be key. Chair Brown suggested that staff call renewal applicants to discuss the status requirements with them, if at all possible. Ms. Bischoff pointed out that limiting the

work a licensee could do in retired status offers significant protection to the public, because licensees in retired status do not take any CPE.

3. Minutes

A. May 18 and 19, 2015 Board Meeting Public Minutes

Mr. Pittioni noted that the minutes are not in numerical order since it was a two day meeting. The minutes were prepared in the order the items were taken up by the Board, not the order the items were listed on the agenda.

AMENDMENT: Mr. Lauseng corrected the minutes under the treasurer's report, noting that he said the Board projections created by the former director were inaccurately projected, not improperly projected.

BOARD ACTION: Moved by Mr. Wright and carried to approve the minutes of May 18 and 19, 2015 as amended.

VOTE: 7 ayes – unanimous

4. Complaints Committee / Motions on Cases

A. BOACC Minutes - *informational only*

1. Review June 5, 2015 BOACC Public Session Minutes

2. Review April 24, 2015 BOACC Public Session Minutes (only with respect to Case #14-021)

B. Motions on Cases Considered in Executive Session

1. Rosemarie Sibley Howell, Case #13-049

Mr. Lauseng commented that this case relates to the questionable tax treatment of some items. There were errors in the tax positions that had been taken, and there was a lack of quality assurance.

BOARD ACTION: Moved by Mr. Wright 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, due to the numerous errors and for failure to appropriately advise the client on the IRS Notices.

DISCUSSION: Mr. Lauseng noted that the Respondent advised their client to ignore certain tax notices based on a quick description read by the client over the phone rather than obtaining and reading the notices. These notices were of a nature that they could not be ignored.

VOTE: 7 ayes - unanimous

BOARD ACTION: Moved by Mr. Wright to find that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0010(4) - Tax standards, for a tax strategy of inappropriately zeroing out corporate income.

DISCUSSION: Mr. Wright noted that the Respondent had employed a methodology to zero out the income from a business while reporting income elsewhere, but the numbers did not have a basis in economic substance. This was a form of "after the fact" tax planning. Mr. Crackenber added that the Respondent had taken actions without the client's knowledge, but he appreciated the Respondent coming in and admitting and taking responsibilities for the errors. Chair Brown noted that he was concerned that the Respondent was unilaterally making decisions without any documentation or support.

VOTE: 7 ayes – unanimous

BOARD ACTION: Moved by Mr. Wright to find that there is sufficient evidence to make a preliminary finding of a violation of OAR 801-030-0010 (1)(a) - Professional Competence, for in fact employing that tax strategy that resulted in a zero corporate income.

DISCUSSION: Mr. Wright noted that he made separate motions, but the allegations stem from the same set of actions by the Respondent.

VOTE: 7 ayes – unanimous

DIRECTION TO STAFF: Mr. Lauseng noted that the BOACC thought the actions were fairly egregious, and recommended a sanction of CPE, putting a quality assurance program in place, and mentoring. Mr. Wright suggested mid-level civil penalties, but staying some or all if the Respondent were to participate in mentoring and do 20 – 40 hours of CPE in complex tax matters. He noted that the Respondent's work did not appear to have been deliberately inaccurate, but appeared to have had more work than she could adequately complete. Ms. Fronk commented that the client volume appeared to have contributed to the Respondent's errors, and noted that as a sole practitioner the Respondent did not have anyone to review her work. Ms. Bischoff noted that a negotiated settlement could require the Respondent to hire or contract with another CPA to review her work during tax season. Ms. Kingston suggested the mentoring last for two tax seasons, and Chair Brown agreed. Chair Brown further suggested that the Respondent be required to take a minimum of 20 hours of CPE, and that a portion of the civil penalties be stayed if she would agree to complete more CPE. Mr. Crackenber recommended the Respondent complete 8 hours of CPE in practice management.

2. Case #14-065

Mr. Lauseng noted that after the Complainant in this case filed a complaint about a tax return, the investigator found that the Respondent's license was not in Active Status. However, the Respondent documented that he completed all of the CPE prior to the renewal date of July 1st. The Respondent said he mailed the renewal application in on time, and there was no information to the contrary.

BOARD ACTION: Moved by Mr. Wright to find that there is insufficient evidence in the case of 14-065 to make a preliminary finding of violation, and direct that the licensing record for this licensee be administratively modified to reflect no lapse in licensure between July 1, 2013 and the present time.

DISCUSSION: Roger asked if that this motion means that the Board will consider the Respondent to have been licensed since July 1st. Ms. Bischoff said yes it would, because an administrative glitch kept it from being renewed on time. However, Mr. Wright dissented, and noted that the license was out of active status for almost two years.

VOTE: 6 ayes, 1 no (Wright)

3. Jiryis Alyateem, Case #15-005

Mr. Lauseng noted that the Respondent had previously been found in violation in another case. That case concluded with a stipulated final order where the Respondent resigned his license in lieu of revocation, and included provisions that the Respondent sell his business and remove all signs with his name and the CPA designation. The Board learned that the Respondent worked in the back office past the date the stipulated final order allowed him to do so.

BOARD ACTION: Moved by Mr. Wright to find that there is sufficient evidence in case 15-005 that Respondent violated the settlement agreement and stipulated final order (Order) issued by the Board on July 22, 2013 and by way of an order in the other than a contested case that all penalties and costs stayed in the July 22, 2013 stipulated order are immediately due and payable pursuant to the terms of the Order.

DISCUSSION: Mr. Wright commented that in the prior case, the Respondent was allowed to assist in the transition when he sold his business, but he was not to refer to himself as a CPA, and it appears that his assistance lasted past April, 2014, and in fact went through tax season, 2015. Mr. Pittioni noted that the prior order prohibited the Respondent from any backroom practice with the exception of assisting with the transition through April, 2014, and Board staff viewed the assistance during the 2015 tax season as much more serious than the signs.

VOTE: 7 ayes - unanimous

4. Case #13-004

Mr. Lauseng noted that the Respondent prepared taxes for a couple. He took deductions on the loss of a sale of their house. The IRS disallowed the deduction. The clients made a complaint to the Respondent, and the Respondent made a claim to his insurance carrier. The clients ultimately settled with insurance company for the interest that was due on the additional taxes.

BOARD ACTION: Moved by Mr. Wright to find that there is insufficient evidence for making a preliminary finding of violation of OAR 801-030-0010(1)(b) - Due Professional Care, for errors made on the 2010 tax return.

DISCUSSION: Mr. Lauseng commented that the BOACC had considered this case, and this case centered on deductions that were disallowed by the IRS, but the client never provided the IRS documents to the Respondent. Mr. Crackenberg noted that he was concerned because that tax strategy has not been allowed for about 20 years. In response to a question, Mr. Lauseng noted that the BOACC did not consider any allegations of a violation of Tax Standards. Ms. Fronk commented that there was some rational to the tax position, because the deductions matched a taxable employer reimbursement.

VOTE: 4 ayes (Fronk, Lauseng, Kingston, Brown), 3 nays (Wright, Graham, Crackenberg)

BOARD ACTION: Moved by Mr. Wright to find that there is insufficient evidence for making preliminary finding of violation of OAR 801-030-0020(1) - Professional Misconduct, for not responding to phone calls and emails from the client.

DISCUSSION: Mr. Lauseng commented that there was evidence that the Respondent talked with the clients numerous times until the claim was turned over to the insurance company, at which time the insurance company took over communications.

VOTE: 7 ayes - unanimous

5. Case #13-013

Mr. Lauseng noted that the Complainant in this case is an author, and he received a royalty check in an envelope with the Respondent Firm's return address on it. Because the publishing company had a policy of holding part of the royalty payments back in case some of the books that had sold were returned, the royalty check was for less than the full royalty. The Complainant believed the Respondent Firm was responsible for calculating the royalty amounts or had advised the publishing company to send out partial royalty checks.

BOARD ACTION: Moved by Mr. Wright to find that there is insufficient evidence for making a preliminary finding of violation of OAR 801-030-0020(1) - Professional Misconduct, while providing services to the client and/or the complainant.

DISCUSSION: Mr. Lauseng commented that the Respondent did not have access to the bank account of the client, and did not advise the client to distribute partial royalty payments.

VOTE: 7 ayes - unanimous

6. Case #13-032

Mr. Lauseng noted that the Respondent in this case made some poor choices in his personal life and was involved in a domestic dispute. The Respondent was remorseful and has made positive changes in his personal life.

BOARD ACTION: Moved by Mr. Wright to find that there is insufficient evidence in Case #13-032 for making a preliminary finding of violation of OAR 801-030-0020(1) - Professional Misconduct.

DISCUSSION: It was noted that in the heat of the moment, the Respondent took a cell phone that did not belong to him and threw it out the window. The Board could not establish a nexus between the practice of public accountancy and the domestic dispute or the alleged theft. The Respondent has successfully completed a diversion program through the courts.

VOTE: 7 ayes – unanimous

It was noted that the Board does not condone such behavior, and except for the statute requiring a nexus to the practice of public accountancy, the Board vote may have resulted in a different outcome.

C. Settlement Proposals

1. Accounting Associates CPAs PC/ Accounting Associate CPA PC/ Todd Goebel, Case #13-033

Ms. Kitterman commented that this case stemmed from the firm's use of a plural firm name when there were neither two or more CPA partners nor the owner and at least one licensed employee in active status who worked at least 20 hours a week. The firm has since changed its name to comply with the Rules, and the settlement agreement reflects the Board's direction.

BOARD ACTION: Moved by Mr. Wright to accept the Settlement Agreement and Stipulated Final Order as presented.

VOTE: 7 ayes – unanimous

2. Rodney L. Manser CPA PC/ Rodney Manser, Case #14-037

Ms. Kitterman commented that this case stemmed from the firm's failure to register and to be enrolled in a peer review program.

BOARD ACTION: Moved by Mr. Wright to accept the Settlement Agreement and Stipulated Final Order as presented.

VOTE: 7 ayes – unanimous

6. New Business

A. Review of SOS Audits Division Administrative Rule Update

It was agreed to defer a discussion of the proposed rule changes to the August Board meeting because most of the changes were "housekeeping" updates.

B. Discussion of Process Change of Bringing Proposed Settlement Agreements and Stipulated Final Orders to the Board before a Preliminary Violation Has Been Found

Mr. Graham wanted to discuss the process of how Board leadership directed staff to try this new procedure without giving each Board member the opportunity to consider it. He was very concerned because in the past, Board leadership pushed controversial actions through by working closely with the former executive director and excluding Board members who disagreed with the actions. However, in the interest of time this discussion was deferred.

C. Update on the appeals in Case #09-116CNK – Kenneth Gustafson

Ms. Bischoff notified the Board that Mr. Gustafson's attorney has requested the Board to re-enter settlement negotiations. She said it is possible Mr. Gustafson could request reconsideration to the Oregon Court of Appeals on the case he just lost, and Mr. Gustafson's attorney has indicated he may also petition for review by the Oregon Supreme Court. However, the Oregon Supreme Court only takes up cases at its discretion, and the Appeals Division of the Oregon Department of Justice, who would represent the Board in any appeal, believes Mr.

Gustafson would be very unlikely to prevail on appeal. Board members discussed the policy issue of whether or not to set precedent to re-enter settlement negotiations in cases that have made their way nearly all the way through the legal process.

Chair Brown voiced concerns that in effect doing so would amount to overriding the decision-making of a prior Board from years ago, and could incentivize those with deep pockets to not agree to settlements with the Board early in the process in the hopes of getting a second shot at a different outcome from another Board with different membership years later. Mr. Pittioni added it would also amount to setting aside the outcome of the contested case process and the unanimous decision of the Court of Appeals upholding the outcome in full of the contested case process. Board members discussed the matter and generally agreed that setting such a precedent would not be a good idea.

Mr. Crackenberg noted it would not be a good idea in his view to set a strict policy of never entering into such settlement negotiations at a very late stage because the Board could at some point face a unique set of circumstances or changes in underlying facts that it may want to react to. Board members agreed with that sentiment and directed Board counsel to respond to counsel for Mr. Gustafson that the Board was very reluctant to re-enter into settlement negotiations at such a late stage in the process and were not inclined to do so in this matter. Ms. Bischoff advised that given that direction she would not prepare a full briefing on the case for the August 3 Board meeting and contact opposing counsel accordingly.

9. Adjournment and Announcement of Next Meeting

The next regularly scheduled meeting will be held on August 3, 2015 at the Board Office. However, because several agenda items were deferred, it was decided to hold a short meeting the following week. It was agreed that Mr. Pittioni would coordinate the scheduling of that meeting. Mr. Graham noted that he wanted to be recused from that meeting because of the way the consideration of settlement agreements before a preliminary finding of violation had been made had been proposed.

The recording was turned off and Chair Brown announced the recognition of Ms. Kitterman's service to the Board, after which recognition the meeting was concluded.

8. Recognition of Noela Kitterman's Service to the Board

Chair Brown noted that Ms. Kitterman had served the Board well for 13 years, and said he appreciated her hard work, diligence, and kindness and presented her with an inscribed plaque.

Mr. Pittioni also described what an asset Ms. Kitterman was to the Board, and said how happy he is that she will be staying on in a part time basis, even after her retirement on July 1, 2015.