

**OREGON BOARD OF ACCOUNTANCY
2005 SPRING WORK SESSION
MINUTES**

Sunday, May 22, 2005

Salem, Oregon

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

Board Members

Stuart Morris, PA, *Chair*
T. Lynn Klimowicz, CPA, *Vice Chair*
Kent Bailey, CPA, *Treasurer, phone*
Jens Andersen, CPA
James Gaffney, CPA
Ray Johnson, CPA,

Staff Members

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

Excused

Anastasia Meisner, Esq., *Public Member*

Guests

Christine Chute, *Asst. Attorney Gen*
Harry Bose, CPA, *phone*
Gerry Burns, CPA, *phone*
Fred Erickson, CPA
Sandra Suran, CPA
Jim Aldrich, PA, *OAIA Representative*
Rob Moody, CPA, *OSCPA Representative*

1. CALL TO ORDER

Vice Chair T. Lynn Klimowicz called the meeting to order at 8:32 a.m.

A. Appoint Process Observer

James Gaffney was appointed Process Observer.

B. Introduction of Guests

Guests were introduced.

2. Professional Issues

A. Oswald West Award

The award will honor past Oregon Governor Oswald West, who signed into law the act establishing the Board of Accountancy in 1913. The Oswald West Award will be presented by the Board of Accountancy to an Oregon citizen who, through legislation, education or public service, demonstrates the standards of excellence and public protection in public accountancy that Governor West exemplified as Governor of Oregon. Representative Thomas Butler, CPA nominated Catherine Pollino, Oregon State Auditor, as the first recipient of the Oswald West Award.

B. Committee Membership

Some of the standing committees do not have full membership, or additional members would be helpful. It is sometimes difficult to find volunteers within the profession who have adequate experience and who have time to volunteer for committee membership.

Board Discussion: *The Committee By-laws state that an active license is required for committee membership. Ms. Chute stated that because the requirement is in the By-laws and not the statutes or administrative rules, it could be waived if the Board wished. The Board will review on a case by case basis the applications of inactive licensees. An inactive licensee*

should not sit on the continuing education committee as the inactive provision does not require CPE to be maintained.

Mr. Morris suggested that a check box be added to the renewal form. Licensees complete this form every two years and Board staff could maintain a list for referrals when opportunities are presented. The website is another tool to provide detailed information about each committee's responsibilities and time commitment, with information on how licensees can express an interest in participation. Mr. Gaffney requested that a list of current openings be compiled and distributed to Board members. He suggested that Board members review the list and help to fill current vacancies.

Board members are unanimous in their appreciation and respect for the time and effort expended by members of standing committees and task force members. It is important to convey this appreciation in a meaningful way. The Board is limited in what type of recognition can be provided. An annual banquet was rejected because of the difficulties in coordination. A suggestion was made to allow committee members to receive a designated number of CPE hours for committee work; however the idea was rejected based on the appearance of a conflict of interest that could result. Committee member recognition should be included in the newsletter when cmte members finish a term. Letters of appreciation from the Board are currently mailed to committee members who have completed service on a committee or taskforce.

C. NASBA Report of State Responses

State Boards are asked to consider peer review requirements for firms that have businesses in multiple states. Will a peer review from one state be approved to meet peer review requirements in another state? The proposed revision to Division 50 addresses this issue.

A question was raised whether the title "Peer Review" should be changed to "Quality Review". There is some interest on a national level to use the term "Quality Review". Sandra Suran was a member of the Board of Accountancy when the peer review requirement was implemented, and she noted that the title "Quality Review" was selected to avoid the appearance that peer reviews were not objective. Even though peer reviewers are required to be independent of the licensee under review, the public may not understand the professional requirements for meeting that standard. It was believed at that time that the title "Quality Review" provided greater assurance to the public of quality work. The Board does not feel that it is necessary to change the title from "Peer Review" to "Quality Review" at this time.

D. Peer Review Task Force recommendations

Board member Kent Bailey, and task force members, Gerry Burns and Harry Bose attended the work session by phone conference. Fred Erickson and Sandra Suran attended in person. The Board expressed its appreciation for the work of the Peer Review Task Force and reviewed the revisions to OAR 801-050 recommended by the Task Force. Additional revisions suggested by the Board are outlined below and are incorporated in Attachment A. Andersen will invite comments from the task force members the next Peer Review Task Force meeting.

1. OAR 801-050-0080: Principles-based Peer Review Standards

The Task Force recommendations include a suggestion that the Board may wish to consider establishing principles that could be required as the minimum standards for peer review for programs, rather than restricting program sponsors to adoption of the AICPA Peer

Review Standards. The principles stated in OAR 801-050-0080 are borrowed from the *AICPA Audit and Accounting Practice Aid Series*.

Board Discussion: *The Board discussed whether the minimum standards required for Peer Review Programs should continue to be tied to the AICPA Peer Review Standards. Board members believe that adherence to the AICPA Peer Review Standards provides various measures for quality control that allow the Board to make a determination about the effectiveness of a peer review program. The AICPA standards also provide guidance for practitioners. It may prove difficult to step away from the standards that are familiar to peer review program sponsors, and that are accepted by every state board. Such guidance would have to be developed by the Board if a principle based approach were adopted. Principle-based standards may also be more susceptible to argument from a sponsor because of different interpretations of the principles. Guidance would have to be fairly specific to be of any value. Concern was expressed that the Board may be writing and rewriting administrative rules. The Board discussed whether administrative rules could refer to the AICPA PR Program as a model, and decided that doing so may undermine the purpose of adopting a different standard. A copy of Establishing and Maintaining a System of Quality Control for a CPA Firm's Accounting and Auditing Practice, prepared by the AICPA was provided. (Attachment B).*

However not all licensees are AICPA members and some licensees may prefer to use the peer review program provided by other professional organizations. Principle based peer review standards would allow other organizations to obtain approval without having to meet every particular of current and subsequent revisions of the AICPA standards. As an example, the NSA program was approved even though it is not an exact replica of the AICPA program. Principle based standards would provide an unbiased approach and allow the Board latitude to interpret a sponsor's compliance with the standards, plus flexibility to revise the standards if necessary. For example, a sponsor could advise the Board of their program standards, and the Board would determine whether those standards meet the principles established by the Board, without having to pass on program details.

The Board would like to have further consideration of proposed changes to OAR 801-050-0080 that introduce principles as the minimum standards for peer review programs, including a discussion of the resources that would be required to implement and administer this standard.

2. OAR 801-050-0020

A suggestion was made to include *internal control* engagements among the attest services that are subject to the peer review requirement in (2) of this rule. The rule states "*included, but not limited to*", which may be sufficient to pick up services that are not named. Refer this question to the task force.

3. OAR 801-050-0035

The OSCPA questioned whether the rules require the program sponsor to provide peer review documents to the Board. Program sponsors are generally restricted by confidentiality agreements with regard to peer review reports. Subsection (3)(a) makes it clear that the reports to be provided for specific review will be provided by firms. The other provisions in this section are necessary to provide oversight of the program. Subsection (2)(d) provides for a

random review of peer reviews performed by sponsors. While this rule is discretionary, it is contemplated that documents would be produced by the sponsor, and that such documents could be redacted by the sponsor to preserve confidentiality. The purpose is not to pass judgment on any specific report, but to assure that the process is conducted according to the standards. It was noted however, that members of the Peer Review Oversight Committee may have a conflict in this responsibility if the committee member is also a Peer Reviewer for the sponsor program that is under review by the committee.

4. OAR 801-050-0040 “Significant issues” under AICPA standards

OAR 801-050-0040(2)(d) refers to *Two consecutive report review reports with “significant issues” as defined by the AI CPA Peer Review Board requirements*. Attachment C is the AICPA interpretations regarding “significant issues”. A definition will be added to section 050-0010 to clarify “significant issues”. The Board requests task force comments on the definition.

OAR 801-050-0040(1)(c) is a new section that will require a check box on the firm renewal form. The Board will audit firms that claim to be exempt from the peer review requirement and also firms that claim to be exempt from the requirement to report substandard peer review reports.

Under OAR 801-050-0040(2), The Task force recommended an additional requirement for firms to provide copies of peer review reports that express a scope limitation. The AICPA Peer Review Standards regarding scope limitation reports have been expanded under the 2005 revisions. Scope limitation reports may occur when the firm is unable or refuses to provide information to the peer reviewer, or refuses to sign the management letter, or the firm does not cooperate with all aspects of the peer review.

E. NASBA Exposure Draft: UAA Rules 5-1 and 5-2

NASBA circulated an Exposure Draft revising the education requirements in rules 5-1 and 5-2 of the UAA. The stated purpose for the revisions is to avoid competition between states that one 150 hour requirement is better than another, and to set acceptable standards on a national basis.

The draft proposes increasing the number of accounting hours from 24 to 30 semester hours, with a list of specific courses that must be completed, and an increase from 24 to 36 semester hours in related subject matter, including a minimum number of hours in each subject. In addition, the draft proposes candidates obtain 3 semester hours in ethical and professional responsibilities and 3 semester hours in Ethical Foundations and Applications in Business, both of which would need to be developed and offered by universities.

The Board received letters of concern from the University of Portland and the OSCPA. Both believe the revisions place unnecessary requirements on the candidate and would create undue hardship on the colleges and universities.

Board Discussion: *The original intent of the 150 hour rule was to develop “well rounded” candidates. All agree that this is still the goal. It was difficult for states to achieve legislative approval of the 150 hour requirement. It would be difficult to provide justification to our stakeholders or to the legislature for changes of this magnitude. The additional requirements do not appear to be necessary and may be a disadvantage to both the education process and students in accounting program. There is also concern that the proposed changes may result*

reduced number of entries to the profession. The current requirement has created licensees with valuable backgrounds that help them better serve clients.

The Board also discussed the proposal regarding ethics requirement and concluded that ethics learning begins very early in life. It is not known whether additional college requirements will provide great benefit, but the proposed requirements will certainly impose a burden on higher ed systems.

The Board wants to respond with comments expressing Board concerns about the value of the changes presented, noting that the added cost that such changes would impose on students and institutions of higher education removes flexibility, limits choice and may reduce the number of students who are interested in entering the profession. Ray Johnson and Carol Rives will work on the response. A copy of the letter will be attached to these minutes.

3. Staff and Board Reports

A. Legislative Committee Request for Discussion

1. HB 5002

This bill requests the legislature to approve a \$100 fee for out of state CPAs who intend to provide professional services in Oregon to register under Substantial Equivalency. Legislators who reviewed the Board's ending balance questioned the need for the fee. The Board's position is that the fee provides equity. If out of state CPAs are not charged for privileges under Substantial Equivalency, Oregon CPAs would be burdened with the cost of administering this program. Approximately 45 Substantial Equivalency applications are received annually at a fee of \$100 per year, resulting in \$9,000 revenue per biennium.

2. Cash Reserves and Carry Forward Question

The legislative joint committee reviewed the Board's large ending balance and requested that the Board discuss the ending balance during their regularly scheduled meeting, and report back to the committee. DAS does not have a standard for an appropriate ending balance, because each agency is different. There is a rule of thumb to maintain a minimum of three months operating expenses in cash reserves, to provide funds for expenses that occur when revenue is not evenly received. However this is neither a DAS rule nor a policy

Board Discussion: *There are several options available to the Board, including a) withdrawal of HB 5002, b) justify the need for the ending balance, and c) determine if the ending balance is excessive, and if so, reduce it to an appropriate level. A reduction could be effected by reducing exam application fees or initial application fees. This would benefit new licensees who are struggling to pay for college expenses, and would reduce the ending balance slightly. However it would be inadvisable if in the long run the ending balance drops below the necessary safety net. An alternative to retaining a larger ending balance would be to consider legislation that would allow the Board to recover litigation costs. This legislative concept was considered by the Board for this legislative session, but was abandoned when the Board learned that the Bar Association was actively opposing cost recovery authority by state agencies.*

The Board reviewed details of projected investigation and litigation costs of files that are currently in the office, and concurred that it is prudent to maintain a sufficient balance to afford the costs to protect the public through investigations of alleged violations by licensees. The cost of investigations is increasing with more complex cases. It would be unconscionable to

burden future generations with the costs of current investigations and litigation fees. The Board recommended that assumptions regarding cost recovery should be included in the projections they reviewed and the revised projections should be provided to the legislative committee.

In addition to the cost of complaints and resulting litigation, the Board has realized a reduction in income due to computer based testing. Board expenditures are projected to be greater than revenue. The minimum ending balance occurs in April of the second fiscal year, and has decreased in each of the past three biennia. The Board cannot adequately protect the public if it is financially weak or has budgetary concerns. A one-time refund to licensees as a means of reducing the balance is not acceptable. The amount refunded would be so small as to be meaningless to individual licensees, and the cost to do so would exceed the amount of the refund. It would be more beneficial to make a contribution to the General Fund.

The Board concluded that an adequate cash reserve is necessary for both public protection and equity reasons. Licensees who benefit by Board approval to perform services in Oregon should provide the revenue to fund the cost of that privilege. Public protection requires adequate funds to do the necessary review of complaints received, and to support and defend disciplinary actions that may result. Board members will make appointments with members of the legislative committee and discuss the reasons that an ending balance is necessary, providing copies of the justification for these funds, and at least one board member will attend each of the legislative committee hearings next week.

B. Enforcement

1. Department of Justice Civil Penalty Report

The Board reviewed a report of litigation expenditures that does not include staff and investigation costs. The Board noted several cases that have been higher than average. Historically civil penalties and resulting collections do not cover legal fees, although revenue from civil penalties has been increasing. Board operating costs are generally covered by licensing fees. It is not good policy to budget for civil penalties as a means of recovering litigation expenses because of the appearance that high civil penalties are imposed to benefit the Board. Nevertheless the Board has an obligation to make reasonable efforts to collect civil penalties as a result of mandated accounts receivable procedures.

2. Office of Administrative Hearings

The Board also reviewed a report of fees charged for Administrative Law Judges and the Office of Administrative Hearings. The number of administrative hearings has increased. The Board has been very fortunate to have hearings officers who have an excellent understanding of our law. There has been very little need to modify Proposed Orders issued by the ALJ.

C. Administrative

1. Licensee Concerns Regarding "Attest" Requests

Licensees are often asked to "attest" to various client matters for insurance companies, banks, mortgage brokers and other businesses. Concern arises when the word "attest" is used for these purposes. The Board was asked for guidance on whether or not licensees can provide this type of letter, and if so, are there guidelines.

Board Discussion: *Board members were familiar with the requests. It was noted that a licensee can simply cross out any word or words that pertain to "attest", and not opine on work*

that the licensee has not performed. The licensee should avoid making conclusions, and provide only factual information. Licensees should be warned against providing client information that is confidential and to structure any response so that it does not come within the definition of "attest". Jim Gaffney and Ray Johnson will work on developing a FAQ for the Board website for guidance to licensees.

2. Statewide Television Channel Under Consideration

The State Legislative Administration office sent a survey to state agencies regarding the development of a statewide television channel to broadcast Board and/or committee meetings. The Board has no objection to participating.

3. Commission and Referral Fee Provisions

The Board asked the Department of Justice for an opinion on whether CPAs, PAs and registered firms that do attest work may share in profits obtained in part from commissions and referral fees related to work for or by clients. The words "directly or indirectly" were removed from the statute in 2001. In the absence of that language, the statute does not prohibit licensees from sharing revenue from commissions and referral fees that are derived from separate legal entities, even if the commissions or fees relate to work for or by clients.

The conclusion was that the Board's authority to limit commissions received by licensees in the form of a distribution of profits from a separate business entity (other than a registered firm) is questionable. Christine Chute will look further into this matter for further discussion.

4. Administrative Rule Development

A. Division 001

On advice of legal counsel, staff prepared a new rule in Division 001 regarding the requirement to state claims and defenses before administrative hearings. Under this rule individuals who fail to put all claims and defenses in writing prior to the hearing will be presumed to waive such claims.

The Board supports the proposed revision to Division 001.

B. Division 005

Among the changes to Division 005, the Board wants to leave the words "directly or indirectly" in the definition of contingent fee. All definitions that were in Division 030 will be moved to Division 005 to avoid discrepancies when a definition occurs in more than one division. A new definition was added for fees, which Christine Chute will research further. The definition of peer review should be compared with the definition in Division 050 to assure uniformity.

C. Division 010

No proposed changes.

D. Division 020

No proposed changes.

E. Division 030

1. Secretary of State Request

The Professional Code of Conduct Committee supports removing the reference to Division of Audits in the independence rule, and the Board concurs.

2. Student Loan Provisions

The State of Oregon is no longer tracking scholarship programs and all references to disciplinary actions based on failure to repay student loans have been removed from ORS 673.

F. Division 040

A revision to Division 040 recommended by the CPE committee requires licensees to provide a written statement for the CPE audit only if staff is unable to determine by the course title whether the course contributes to the licensee's professional competency.

5. Other

Robert Moody, OSCPA Representative, requested to be allowed to report for the OSCPA at the work session because he is unable to attend the meeting on May 23, 2005. Mr. Moody discussed HB 2166A. An amendment to HB 2166 was brought by Rep. Butler to remove the requirement for separate municipal auditor qualifications. The OSCPA learned of this bill in the 11th hour and introduced an amendment requiring GAGAS for all municipal audits performed in Oregon. Representative Butler agreed with the OSCPA amendment, and the amended bill passed the House. After further evaluation of the CPE requirements for GAGAS, OSCPA believes it could be very costly for a sole proprietor and for small municipalities. The OSCPA plans to oppose the bill in the Senate.

Ms. Rives explained that Rep. Butler believes this requirement is no longer necessary and that it restricts competition, especially for small rural municipal corporations that are subject to the audit requirement. Butler also feels that the requirement is out of step with AICPA requirements and the national norm. Oregon is one of two states that impose additional qualifications to perform municipal audits and reviews, yet Oregon does not have additional licensing requirements for other specific areas of public accounting. Butler believes that the Board can rely on CPE requirements to assure public protection in this area of practice.

6. Process Observer Report

Mr. Gaffney commented that the teleconference phone system worked great. It was easy to hear each individual. It was a good meeting with everyone pulling in the same direction on the issues.

Mr. Andersen commented that it helps to eliminate background noise if participants on a conference call use the mute function when they are not talking.

7. Adjournment

The meeting was adjourned at 4:03 p.m.-