

OREGON BOARD OF ACCOUNTANCY
SPECIAL TELEPHONIC BOARD MEETING AGENDA
April 23, 2009
9:00 AM

3218 Pringle Road SE #110
503-378-2235

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

James Gaffney, CPA, *Chair*
Ray Johnson, CPA, *Vice-Chair*
Roberta Newhouse, CPA, *Treasurer*
Stuart Morris, PA
Ken Bailey, CPA
Jessie Bridgham, CPA (*departed at 9:30 am*)
Eric Lind, *Public Member*

Staff Members

Pat Hearn, *Executive Director*
Noela Kitterman, *Investigator*
Joyce Everts, *Committee Coordinator*

Guests Attending

Jeffrey Dover, Asst. Attorney General
Cheryl Langley, OSCPA
Nichole Kobliha, CPA, OSCPA
Gerald Burns, CPA
J. Robert Wall, CPA
George Wilber, CPA
Dean Sartain, CPA
David Adams, CPA
Jeanne Chamberlain, ESQ

1. CALL TO ORDER

A quorum being present, Chair Gaffney called the phone conference meeting to order at 9:05 a.m.

2. APPROVAL OF MINUTES

A. February 9, 2009 Board Meeting

BOARD ACTION: Moved by Johnson and carried to approve the February 9, 2009 Board minutes.

VOTE: 7 ayes

3. COMPLAINTS

A. Acceptance of the March 20, 2009 Complaints Committee meeting Minutes.

BOARD ACTION: Moved by Johnson and carried to accept the March 20, 2009 Complaints Committee minutes.

VOTE: 7 ayes

B. Complaint Investigations

1. J Robert Wall/Wall & Wall 08-09-028

Gerald Burns, CPA Contract Investigator and J. Robert Wall, CPA joined the meeting at 9:30 am by phone conference.

The Secretary of State Audits Division (SOS) performed a desk review of an audit report prepared by Wall & Wall PC, CPAs for the City of Yachats. They noted some deficiencies. The Board reviewed the report and contracted with Gerald Burns, CPA to investigate

Mr. Burns explained his method for accomplishing the investigations for J Robert Wall/Wall & Wall, George Wilber/Oster Professional Gp and Heck & Berry/Dean Sartain. He stated that, among other checklists and standards, he used the generally recognized checklists published by:

Government Finance Officers Association (GFOA)

American Institute of Certified Public Accountants (AICPA)

Practitioners Publishing Company (PPC)

ALLEGED VIOLATION(S)

OAR 801-030-0010 (1) and (2) General Standards and Auditing Standards

Mr. Burns found that the reissued financial statements of City of Yachats for the year ended June 30, 2007 contain only "moderate" non-compliance with the professional standards relating to the presentations and disclosures contained in the financial statements. He also found that the individual deficiencies and omissions were not material in the aggregate to the financial statements taken as a whole. He concluded that the financial statements and the independent auditor's reports sufficiently comply with professional standards to be acceptable as issued.

COMMITTEE RECOMMENDATION: Moved and carried to recommend no violation.

Board Discussion: *The Board noted that Wall reissued his report and the financial statements. Based on the results of the investigation, the overall non-compliance rate fell from 12% in the original financial statements to 8% in the reissued financial statements. Since this was a desk audit, Burns did not review the workpapers. Some Board members thought that workpapers should have been reviewed. One lesson learned is to emphasize the use of checklists and have the audits reviewed by people higher up in the firm whose opinion makes a difference.*

BOARD ACTION: Moved by Johnson and carried to find no violation.
VOTE: 6 ayes

2. George Wilber/Oster Professional Gp 08-09-028

Mary Jo Evers joined the meeting at 10:00 am via phone conference.

The Secretary of State Audits Division (SOS) performed a desk review of an audit report prepared by Oster Professional Group for Harney County. They noted some deficiencies. The Board reviewed the report and contracted with Gerald Burns, CPA to investigate.

ALLEGED VIOLATION(S)

OAR 801-030-0010(1) and (2) Failure to comply with General Standards and Auditing Standards

Mr. Burns found that the financial statements of Harney County, for the year ended June 30, 2007, contain a number of deficiencies and omissions that indicate moderate compliance with professional standards relating to the presentations and disclosures contained in financial statements.

Mr. Burns concluded that the financial statements and the independent auditor's report sufficiently comply with professional standards to be acceptable as issued.

COMMITTEE RECOMMENDATION: Moved and carried to recommend no violation.

Kent Bailey recused himself from this matter as the Oster Professional Group is a potential competitor with his Firm.

Board Discussion: Since there was a higher range of "no" answers, Burns recomputed the percentage results and found several small wording errors. The County operates six (6) small landfill operations. The "no" answers related to these small operations. The operations were not material to the financial statements. The amount of the misstatement in the financial statements was minuscule. The recomputation took the "no" answers down to 12%.

BOARD ACTION: Moved by Johnson and carried to find no violation.
VOTE: 5 ayes (Bailey abstained)

3. Heck & Berry/Dean Sartain 08-10-030

Dean Sartain, CPA joined the meeting at 10:00 am by phone.

The Secretary of State Audits Division (SOS) performed a desk review of an audit report prepared by Heck & Barry LLC for The Corvallis Rural Fire Protection District. They noted some deficiencies. The Board reviewed the report and contracted with Gerald Burns, CPA to investigate

ALLEGED VIOLATION(S)

OAR 801-030-0010 (1) and (2) General Standards and Auditing Standards

Mr. Burns stated that that the financial statements of CRFPD for the year ended June 30, 2007 contain a number of deficiencies and omissions that indicate serious non-compliance with professional standards relating to the presentations and disclosures contained in the financial statements. He concluded that the financial statements and the independent auditor's reports are not acceptable.

COMMITTEE RECOMMENDATIONS: Moved and carried to recommend a \$500 civil penalty for violation of OAR 801-030-0010 (1) and (2) General Standards and Auditing Standards.

Board Discussion: *Sartain is the only licensed municipal auditor in his office. The fire district in Corvallis is small and the fire chief and board of directors prepare the budget. Sartain noted that he tried to correct all errors that The Secretary of State Audits Division noted in their letter to Sartain. Burns commented that the complaints committee considered the size of the fire district, the degree of harm to the public and the size of the municipal audit.*

BOARD ACTION: Moved by Bailey and carried to assess a \$3,000 civil penalty, 24 additional hours of continuing professional education in GASB 34 and Governmental and Municipal Audits and pre-issuance review of all municipal audits (desk and/or workpaper review) for the year ending June 2009.

VOTE: 6 ayes

Mr. Burns suggested that the Division of Audits use a checklist and advise everyone which checklist they are using. Burns also suggested the OSCPA provide practice aids and additional educational information.

The Board thanked Mr. Burns for taking the time to explain his review methodology. The Board also commended Mr. Burns for his thorough and fair investigation.

4. Ilene Faxon Anderton 09-002-C-NK

Anderton is a licensed tax consultant and an enrolled agent with the IRS. Anderton does not hold a permit and A & S Accounting does not hold a registration issued by the Board.

Anderton issued a December 15, 2006 letter to a private school. The letter contained language conventionally used in a report that accompanies a financial statement. Anderton expressed an opinion providing positive assurance as to the reliability of the school's financial statements. Anderton's report included language conventionally reserved for a holder of a certificate and permit issued under ORS 673.010 to 673.457. She did not use the "safe harbor" statement described in ORS 673.325.

Anderton also issued a December 15, 2006 letter to the school's Board on the strengths and weakness of the school's accounting system. This service could be considered an attestation service that can only be performed by a person who holds a certificate and permit issued under ORS 673.010 to 673.457.

ALLEGED VIOLATIONS

ORS 673.320 Permit or registration required to provide attestation or compilation services or issue report

OAR 801-005-0200(1) Report

ORS 673.325 Statement allowed without permit or authorization

COMMITTEE RECOMMENDATIONS: Moved and carried to recommend issuing a Cease & Desist Order and assessing a \$5,000 civil penalty for violation of ORS 673.320.

Board Discussion: *The Board reviewed a proposed Stipulation and Order which imposed a civil penalty of \$5,000 with \$2,000 stayed.*

BOARD ACTION: Moved by Johnson and carried to amend the Stipulation and Order to add that Faxon Anderton cease and desist from doing this again in the future and assess a \$5,000 civil penalty with \$2,000 stayed for five (5) years.

VOTE: 6 ayes

5. Janece Herzog 09-003-C-NK

Ms. Herzog's attorney, Jeanne Chamberlain, was on the phone only to listen.

Janece Herzog is licensed in Texas as a non-resident CPA. Herzog does not hold an Oregon CPA certificate or permit. Herzog is employed as the practice administrator for Radiation Oncologists PC in Portland, Oregon. Herzog used the CPA designation in the signature line of business related emails.

ALLEGED VIOLATION(S)

ORS 673.320(3) Permit or registration

COMMITTEE RECOMMENDATION: Moved and carried to recommend a \$250 civil penalty for violation of ORS 673.320(3), Permit or registration.

Board Discussion: *There was no discussion.*

BOARD ACTION: Moved by Johnson and carried to assess a \$250.00 civil penalty.

VOTE: 6 ayes

6. Geffen Mescher 09-011-C-NK

David Adams Esq. joined the meeting at 10:45 am via phone.

Chair Gaffney recused himself from discussion and from voting as his firm, Moss Adams, succeeded Geffen Mescher as the CPA firm for the client that was involved in this matter.

Geffen Mescher was named as a defendant in a lawsuit filed in Multnomah County Circuit Court. The plaintiffs' allegations included fraud.

Pursuant to ORS 673.160(6)(e) and OAR 801-010-0345(5)(c), Geffen Mescher was required to provide written notice to the Board within 45 days of the filing of any lawsuit relating to professional services, if an essential element of such lawsuit involved fraud, dishonesty or misrepresentation. Geffen Mescher did not provide the required written notice to the Board.

The Board received Geffen Mesher's firm registration renewal form on December 31, 2007, after a lawsuit was filed against them alleging fraud, dishonesty or misrepresentation. Question 5.b. of the form asked "Has any lawsuit involving fraud, dishonesty or misrepresentation in the practice of public accountancy been filed against the firm or against any owner or manager of the firm?" The answer to question 5.b. was "No."

ALLEGED VIOLATION(S)

OAR 801-010-0345(3) Application Requirements

OAR 801-010-0345(5) Issuance of Firm Registration

ORS 673.160 Registration of business organizations; fees; rules

COMMITTEE RECOMMENDATION: Moved and carried to recommend assessing a \$1,000 total civil penalty (\$500 for each violation) for violation of OAR 801-010-0345(3) and OAR 801-010-0345(5).

Board Discussion: *The Board reviewed the proposed Stipulation and Order which imposed the Complaints Committee's recommendation.*

BOARD ACTION: Moved by Johnson and carried to accept the complaints committee recommendation and accept the proposed Stipulation and Order.

VOTE: 5 ayes (Gaffney abstained)

4. REPORT OF EXECUTIVE DIRECTOR

A. Legislative Update

1. SB 867 - Mobility

Mr. Gaffney stated that the Board and the OSCPA are in disagreement regarding the bill. The Board's primary concern is 'Out of State Licensees' coming into Oregon when their firm has no Oregon office. The Board, at the very least, wants to include registration for firms that do reviews and compilations while the OSCPA is holding fast to attest functions only.

The bill is in the Senate Business and Transportation Committee today and will likely be moved on with a recommendation to pass. The Board will use all energies to oppose the bill on the House side.

Both OSCPA and the Board express disappointment about the impasse on the bill.

2. SB 274

This bill would affect the Office of Administrative Hearings (OAH). It would change the appointment process for the chief ALJ. It would also change the standard of proof from preponderance to "clear and convincing". For instance, if the board wanted to change a historical fact, that change must be based on clear and convincing evidence.

3. HB 5001 (BOA budget)

The Ways and Means subcommittee approved the Governor's Recommended Budget. There was a recommendation that BOA work with the Department of Administrative Services and the Legislative Fiscal Officer regarding key performance measures with respect to the amount of time the BOA takes to complete investigations. The bill passed out of the House by a vote of 57-1 and has been referred to the Senate.

4. SB 690

Mr. Hearn stated that this bill was initiated by the Department of Revenue (DOR). It will allow the DOR to provide the Board with information about CPAs that the DOR thinks may be in violation of BOA rules or laws. The bill has had two hearings and is not scheduled for further hearings in the senate.

Mr. Dover noted that the advice from the Tax Section of the Department of Justice is that, if the board wants documents from the DOR, everyone involved will have to sign a nondisclosure agreement (if we subpoena the documents). This may be an important topic in the future.

5. SB 865 – bookkeeping bill:

Ms. Langley stated that this bill emanated from Senator Vicki Walker over a homeowner association bookkeeper. The OSCPA explained to Ms. Walker potential problems with another regulatory level, but Ms. Walker continues to proceed. The OSCPA is monitoring the progress of the bill.

Hearn noted that if this bill becomes law, it will affect the Board of Tax Practitioners.

B. Case Settlements

1. Jerry Dunning

Mr. Hearn stated that this is a 2007 case in which Mr. Dunning had a tax client and due to a severe stroke, Mr. Dunning did not respond to client inquiries. At a Board meeting in February 2007, the Board

assessed a \$5,100 civil penalty with \$2,500 stayed for violations of professional misconduct and failure to inform the board of a change of address. Mr. Hearn presented a Stipulation & Order to Mr. Dunning with the same terms and conditions the board moved at the February 2007 meeting. Mr. Dunning signed the Order.

BOARD ACTION: Moved by Johnson and carried to accept the the proposed Stipulation and Order.

VOTE: 6 ayes

2. Fischer Hayes & Assoc.

Mr. Hearn stated that this case was deferred by the Board for additional information. Respondent's attorney informed Mr. Hearn that they wanted to settle the matter. Mr. Hearn and the attorney negotiated a proposed Stipulation & Order for the Board to review.

Board Discussion: *The Board concurred that they want to know to what extent commissions were received. The Board wants additional finding of fact; did the firm accept referral fees and commissions; did the firm violate the code of conduct; was integrity and objectivity violated and what if any ethical issues were violated. The Board also requested staff to determine if the firm had additional clients involved in the tax shelter program. The Board suggested staff speak with the clients who were involved in the tax shelter.*

There is now a second litigation in this matter. The Board needs to enter into another litigation monitoring agreement.

BOARD ACTION: Moved by Johnson and carried to reject the the proposed Stipulation and Order and proceed with further investigation.

VOTE: 6 ayes

3. Linda Schade

This case involves failure to comply with peer review requirements and was discovered in a random peer review audit. Ms. Schade failed to obtain required peer review for the years 2002, 2004, and 2006. This case went to the Board in February 2009 and the Board assessed an \$11,000 civil penalty.

Ms. Schade advised Mr. Hearn that she has a small practice, a limited number of clients and makes about \$25, 000 a year from her practice. Mr. Hearn presented a proposed Stipulation & Order, which would assess a \$5,000 civil penalty.

BOARD ACTION: Moved by Johnson and carried to accept the the Stipulation and Order assessing a \$5,000 civil penalty.

VOTE: 6 ayes

4. Timothy Steers Update (not on agenda)

Ms. Kitterman gave an update and stated that there are three different actions going on at the same time with Mr. Steers.

#1. The complaint filed by an audit client. A pre-hearing conference is scheduled for June 1, 2009.

#2. As part of the PCAOB matter, the Order requires Steers submit a letter describing his practice restrictions will be issued to all clients. The letter is to be submitted to the Board for approval prior to sending it to clients. Steers submitted the letter and a list of clients for approval.

#3. An employee filed a complaint against Steers for failing to pay his wages. The LMA requires that every 90 days Steers is to provide the Board with an update about the progress of the litigation.

BOARD ACTION: Moved by Bailey and carried to authorize Chair Gaffney to review his letter to clients and the list of clients to receive the letter submitted by Steers in connection with the continuing sanction taken against him.

VOTE: 6 ayes

5. PUBLIC COMMENTS

No comments

6. REPORT OF OAIA

No report

7. REPORT OF OSCPA

Ms. Langley noted that the OSCPA is closely monitoring the Mobility Bill, the Bookkeepers Legislation and the Reconnect/Disconnect Tax Bill.

The OSCPA is sponsoring a leadership conference at Sun River beginning Friday, May 1, 2009. The CPE portion of the conference will be May 3 and 4. The conference is open to the general membership.

8. PROCESS OBSERVER REPORT

Ms. Newhouse stated that the phone conference went smooth and that the time Gerry Burns spent explaining his review methodology was time well spent.

9. NEXT SCHEDULED MEETINGS:

Work Session, May 17, 2009, 9:30 A.M.

Board Meeting, May 18, 2009, 8:00 a.m.

Location for Both Dates: University of Oregon
Lillis Hall

10. ADJOURN

The meeting adjourned at 11:30 am