

**OREGON BOARD OF ACCOUNTANCY
2007 SPRING WORK SESSION
MINUTES**

Sunday, May 20, 2007

Eugene Hilton

Eugene, Oregon

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

Board Members

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

Staff Members

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

Guests

Jeff Dover, AAG
Scott Wright, CPA, OSCPA
Ivan Besemann, CPA, OAIA (1:00 p.m.)
Karey Schoenfeld, CPA, OSCPA (1:55)

1. CALL TO ORDER

Vice Chair Kent Bailey called the meeting to order at 9:07 a.m., appointed Morris as Process Observer, introduced guests and welcomed Scott Wright, the OSCPA liaison to the Board from April 2007 through April 2008.

2. Professional and Regulatory Issues

A. Strategic Planning

The Board officers agreed to meet in June to develop a strategic planning outline for discussion at the August meeting. Larry Brown was invited to join the meeting to share his large firm experience.

1. Substantial Equivalency Task Force Development

The Board suggested that the OSCPA and the Board each appoint one member as a representative to a task force. The two representatives will then work together to develop other members of the task force, meeting schedules, etc. It is imperative that the task force receive comments from a cross section of the licensees, including large and small firms. Membership on the task force should reflect this diversity.

The Board included an article on proposed revisions to substantial equivalency provisions in the May 2007 newsletter and invited written comments. Mr. Wright did not know whether the OSCPA planned to include an article in the *OSCPA Accountant* regarding proposed revisions to Substantial Equivalency requirements. The Board suggested that this topic be included on the agenda of the OSCPA town hall meetings that are conducted in the fall. It was noted that if legislation were to be proposed, the timeline for submitting a legislative concept would be different for the Board than for the Society. Mr. Andersen volunteered to act as the Board representative on the task force, and Mr. Gaffney agreed to assist if needed.

2. Enforcement Database Development

Ms. Rives reported that the first stage of the enforcement database is complete. The database has been upgraded and includes disciplinary information beginning January 1, 2000. Staff is ready to proceed with phase two of this project and needs direction from the Board regarding the scope of information to be available on the licensee search function. Disciplinary information displayed by other state boards of accountancy was provided for review. The Board agreed that the process should go forward in two phases.

During the first phase, a licensee record will include a field titled "No Disciplinary History" or "Disciplinary History". If "Disciplinary History" appears, the viewer will be advised to contact the Board office for specific information about the disciplinary action.

The second phase will provide specific disciplinary information on the licensee search, without the need to call the Board office. The Board agreed that the following standards should apply to disciplinary information that is available on the website:

- The on-line information will be limited to actions that occurred from 2000 and forward, except that all license revocations and suspensions shall be included no matter what date
- All disciplinary actions shall be available, including those that are described as administrative: (change of address, failure to respond to Board communications, failure to renew a firm registration or individual license), allowing the public to make an informed decision based on all information available
- Disciplinary information should remain on the web site indefinitely
- Information should be provided that the authority for civil penalties was increased from \$1,000 to \$5,000 in January 2000, which will explain why recent civil penalties are higher than those issued for violations that occurred prior to 2000.

The second phase will include scanned copies of the Notice and Final Order issued in each disciplinary action. The Board indicated a preference to provide disciplinary action using a format similar to that of the California Board of Accountancy, without the brief description of violations that California provides. A description is very subjective based on who wrote it and reconstruction of this information would be beyond current staff resources. Information should be factual and include only a citation of the rule or statute that was violated, followed by a link to the scanned documents. Ms. Rives will try to provide more information regarding the cost and timeline for each phase of this project at the August Board meeting.

3.a. Fingerprint Requirements

The Board has authority to require fingerprints of exam candidates, license applicants, contractors, vendors and employees. Administrative rules should be

developed before the Board implements this requirement. There is a \$52 charge for conducting the state and federal background checks. The fee for background checks is paid by the agency directly to the appropriate enforcement division, but the cost for each individual background check should be passed on as a special purpose fee paid by the licensee or exam candidate, rather than by the Board through a fee increase. The Board agreed that exam candidates and initial license applicants should be required to provide fingerprints as part of the application process. Renewing licensees could be required to participate as part of a random audit conducted each year.

If administrative rules are developed and approved in time for a January 2008 effective date, staff should provide notice of the new requirement on the website, newsletter and list serve in a timely fashion. The Board agreed that Board members should be the first to provide fingerprints for a background check.

3.b. Cost Recovery

The Board discussed various methods to determine the cost of an investigation under its authority to recover costs. The Board discussed whether cost recovery should be included as a component of consent orders. If restitution to the client becomes an issue, the Board can subordinate its claim for cost recovery to the client's claim for restitution.

There was a consensus on the following standards:

- The cost of staff investigations should not be included because salaries are supported by licensing fees
- Cost recovery should be available only when the Board prevails
- If the Board prevails on two out of three alleged violations, costs would be allocated accordingly
- The following costs should be included in cost recovery:
 - AG fees
 - Administrative hearing costs
 - Contract Investigator fees
 - Expert Witness fees
 - Costs of appeal

4. On-line Licensing Development

Ms. Rives described three proprietary programs for on-line licensing procedures. State agencies that have worked with Systems Automation have experienced a multitude of problems, even though those agencies have a significant internal IT staff. At least one state agency tried to use the GL Suite program, and abandoned it when costs were far beyond the scope of the project and the program was not workable. The third proprietary program is designed for small licensing programs, and the Board's needs exceed the program parameters. Proprietary software severely limits the Board's flexibility to trouble shoot problems in-house, and limits technical support to that provided by the owner of the system.

Some proprietary programs charge an annual fee for the right to upgrade to system updates as they occur. Staff training provided is minimal, and limited to user support. Proprietary systems do not allow staff to have any administrative privileges within the system.

The File Maker database has the capacity to provide on-line services, and seems to be the most practical and economic approach. The Board already provides some on-line services, e.g. change of address, registration for ethics providers. The system itself is not proprietary, and can be modified to the user's specifications. Our staff has administrator privileges to the extent that we deem appropriate, and we can contract for technical support by any qualified technician.

Ms. Rives suggested that we hire a Project Coordinator to assist with project management, stating that the 07-09 policy package approved by the legislature should be sufficient to cover this expense. The Administrator solicited Board member assistance to review an RFP for project management, and agreed to circulate a draft to board members when available. Mr. Andersen offered review assistance with the IT RFP.

5. Administrator Succession Planning

In preparation for Ms. Rives proposed retirement on December 31, 2008, the Board reviewed the administrator position description and identified the following planning needs:

- Rives will advise the Board of a firm retirement date at the August meeting
- Whether Administrator qualifications should include a legal background to provide continuity of expertise provided by Rives. In the alternative, preparation and review of legal documents would be referred to DOJ, and the Board would need to quantify the cost and submit a policy package in 09-11 for increased AG fees
- Whether Administrator qualifications should include a CPA license
- Either of these qualifications should be expressed as a preference rather than as a requirement, allowing the Board greater flexibility
- The Board feels it is very important that applicants have a strong background and knowledge of the budget and legislative process
- Whether budget appropriations will allow the Board to double fill the position, and if so what period of time is appropriate to allow Administrator training. Rives recommends one month at most
- Rives noted that the Board is fortunate to have a very competent and knowledgeable staff who manage the day to day work with minimum supervision, and technical support from committee and board members, all of which will be very helpful to a new Administrator
- Announcements should be posted on the "State of Oregon Jobs Page" and with NASBA

Mr. Lind offered to assist with executive search, review and selection, but demurred from acting as Chair for such committee. Other Board members

undoubtedly have experience in this regard that can be brought to our advantage. Messieurs Morris, Andersen, Gaffney and Johnson will be senior on the Board in the next year and may be persuaded to assist.

6. Evaluation of Best Board Practices Performance Measure

The Department of Administrative Services (DAS) will work with the Legislative Fiscal Office (LFO) to develop best management practices performance measures with respect to governance oversight for applicable boards and commissions. The best practices measures and a list of entities to which these measures should apply will be approved by the Joint Legislative Audit Committee (JLAC) by August 1, 2006. Board and commissions identified as benefiting from adoption of these measures shall adopt them as Key Performance Measures after they are approved by JLAC. The performance measures should then be made part of the set of performance measures included in the 2007-2009 requested budget of each affected agency.

Ms. Rives observed that the Board already performs each of the functions outlined by the JLAC, and that the important consideration for the Board will be to establish the manner and timeframe in which this review is performed each year. Results will be reported with the annual Performance Measure Report that is filed in September of each year. Results for the year 06-07 will be reported in the report submitted in September 2007.

It was suggested that the Board use a facilitator to develop procedures to objectively measure the Board's performance under the new performance measure, and tag the procedures for re-evaluation in five years. The Board agreed that it would be valuable to have procedures in place, both for the existing Board and also for new Board members. The Administrator is directed to retain a qualified facilitator within the Board's \$5,000 contracting authority.

The Board suggested the possibility of extending the August meeting to include a half day session on Tuesday August 7th to work with the facilitator. Mr. Johnson will check on the availability of a room at PSU for the half day session. If none is available, Mr. Gaffney offered a meeting room at Moss Adams. The Board suggested that limited staff would be necessary for this portion of the Board meeting.

7. Complaint Backlog

Ms. Rives prepared a draft request for proposals to identify and select contract investigators to reduce the Complaint Backlog. The Board suggested modifications to identify different types of attest work that may be contracted. Clarify that an individual may have expertise in one type of audits without being required to be an expert in every type of audit. The Board would not want an individual to not apply because the area of expertise does not meet all the areas defined in the RFP.

The Board discussed the following questions:

- Whether the Board should require a standard report form for contract investigators
- Whether a committee member could provide services as a contract investigator while serving on a Board committee. It was suggested that a committee member who conducted an investigation under contract could present the matter to committee and abstain from voting on the Committee recommendation.
- Additional areas of expertise to be included, i.e. fraud detection

B. Non-disclosure Agreements

Johnson summarized results of meetings between Board and OSCPAs representatives with regard to non-disclosure agreements and explained the five points in Attachment A. These are options for the Board's consideration rather than recommendations.

Karey Schoenfeld joined the Board meeting for this discussion and stated that OSCPAs would like modifications to paragraphs three and five of the attachment, explaining that OSCPAs prefers the Board of Medical Examiners rule to the safe harbor provisions described in paragraph three and that a requirement to initial such a provision is extreme. OSCPAs also questions the need for a reporting requirement described in paragraph five. Schoenfeld inquired whether the Board really wants to know about every non-disclosure agreement and if so, will the Board then investigate each instance.

The Board's mission is to protect the public and Board discussion indicated a clear intent to ensure that members of the public know and understand that their right to report complaints to the Board cannot be compromised. The purpose of the rule is to make it clear to licensees that provisions of a settlement agreement may not be used to prohibit the filing of a complaint with the Board. Settlement and non-disclosure agreements should not be an opportunity to hide wrongdoing. The Board agreed with Mr. Lind that safe harbor language that is conspicuous and initialed by all parties would provide clear notice to the public member of the right to file a complaint, and also protect the licensee if there is a business reason to have a non-disclosure agreement.

If the Board effects a self-reporting requirement on renewal applications (check a box), information drawn from the query would be used to monitor the frequency of non-disclosure agreements. While Board subpoena authority would require the turn-over of a settlement agreement, the Board cannot request records that they do not know exist. A self-reporting requirement should define a date that does not require reporting prior to the date of the rule. The Board also discussed inclusion of an "un-wind provision."

The Board concurs that the draft rule on non-disclosure agreements provided by Jeff Dover and dated September 15, 2006 (Attachment B) includes appropriate wording. The intent of a non-disclosure provision is three fold:

- Put licensees on notice that they should not use non-disclosure agreements
- If a licensee enters a non-disclosure agreement, include safe harbor language that is conspicuous and initialed by the parties, and
- Initiate a self-reporting requirement on renewal applications for licensees to report whether they entered into such an agreement in a defined period of time.

The Board discussed a requirement for firms to self-report tolling agreements on the firm renewal form. It was agreed that the non-disclosure rule should be included in administrative rules. At the August 2007 Board meeting the Board will develop specific language for the renewal application and the non-disclosure agreement.

C. Licensee Comments re “comfort letters”

The Board discussed licensee inquiries relating to client requests for “comfort letters”. The Board believes that a licensee who responds to these requests is performing an agreed upon procedure, which is subject to peer review. Industries that make these requests are outside of the Board’s authority; licensees must make the appropriate decision with regard to their business needs and professional standards.

D. Firm Responses to PRO Request Letters

After receiving 2005 PCAOB Firm Inspection Reports for seven firms doing business in Oregon, the Board sent a letter to each firm’s headquarters stating that the Oregon Board will be communicating with the firm regarding questions that it may have regarding the firm’s 2005 PCAOB Report and requesting information as to whom the firm would like correspondence to be directed. A second Board letter inquires whether any of the work under PCAOB review was performed by Oregon licensees or for Oregon clients. The Board received three responses in which the firm stated “n/a” to each question, three responses in which the firm refused to provide the requested information and firms did not respond to the letter. Apparently Oregon is the only state making such requests.

The Board questioned why firms that are subject to PCAOB Inspection and doing business in Oregon are reluctant to respond to Oregon’s inquiry. The Board believes that it is within its authority to request additional information from those firms, notwithstanding any confidentiality provisions between the firm and PCAOB. These firms should have the same response requirements as Oregon firms that are required to disclose the results of peer review reports to the Board.

Johnson and Bailey will attend the NASBA Western Regional Conference in June 2007 and report back to the Board about the activities of other state boards regarding PCAOB reports. The Board adjourned the PCAOB Firm Inspection

Report Review discussion in public session to convene in executive session for a discussion of the confidential sections of PCAOB reports.

3. Staff and Board Reports

A. Committee Member Requirements

The Board anticipates vacancies on several standing committees in December 2007 and reviewed a list of licensees who expressed an interest in serving on a Board committee on the 2006 renewal form. Staff will follow up with the licensees.

B. New Licensee Application Records, with Reciprocal Percentage

The Board reviewed the number of licensees who obtained their license by reciprocity. These numbers will diminish if proposed mobility provisions prevail. The Board will want to address this in its strategic planning to determine whether a fee increase will be necessary to offset the reduction of revenue.

C. Licensee Statistics, May 1, 2007

Current licensee statistics were presented.

4. Administrative Rule Development

Deferred to August, 2007 Board meeting

5. Process Observer Report

Mr. Morris reported that the Board failed to follow the agenda at times. In addition, he suggests that there be more breaks in the day. The discussion on non-disclosure was lengthy and more circular than productive. Although the discussion was important, the Board needs to stay on track.

6. The Board adjourned at 5:30 p.m.