

OREGON BOARD OF ACCOUNTANCY
October 17, 2005, Minutes
Eugene Hilton Eugene, Oregon 97401

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

Board Members Present

Stuart Morris, PA, *Chair*
James Gaffney, CPA
Lynn Klimowicz, CPA, *Vice-Chair*
Jens Andersen, CPA, (excused at 2:40 pm)
Kent Bailey, CPA, *Secretary-Treasurer*
Ray Johnson, CPA
Anastasia Meisner, *Public Member*

Staff Members

Noela Kitterman, *Investigator*
Kimberly Bennett, *Committee Coordinator*
Joyce Everts, *Committee Coordinator*
Heather Shepherd, *Committee Coordinator*

Excused

None

Guests Attending

Christine Chute, Asst. Attorney General
Jim Aldrich, OAI Representative
Cheryl Langley, OSCPA

1. CALL TO ORDER

Chair Morris called the meeting to order at 9:00 a.m.

A. Appoint Process Observer

James Gaffney was appointed process observer.

B. Introduction of Guests

Guests were introduced and welcomed to the meeting.

2. APPROVAL OF MINUTES

A. August 22, 2005, Board Meeting

BOARD ACTION: Moved by Johnson and carried to approve the minutes as amended (Attachment A). The amended page of the minutes is attached and made a part of these records. The amendment provides clarification that:

1. Ms. Chute was in attendance
2. Remove "the" in the sentence of the Board discussion regarding the application of Mr. Snooky at the bottom of page 6. The sentence should read: *Without additional information from the employer, there are not sufficient facts to justify denial.*

VOTE: Chair Morris did not vote; 5 ayes, 1 abstain (Gaffney)

B. September 23, 2005, Board Meeting, Phone Conference

BOARD ACTION: Moved by Gaffney and carried to approve the minutes.

VOTE: 4 ayes, 3 abstain (Andersen, Johnson, Klimowicz)

3. REPORT OF CHAIR

A. NASBA

1. CBT Symposium

Mr. Johnson and Ms. Rives attended a one day CBT Symposium in Washington DC. Ms. Rives prepared a memo of the highlights and comments from other state boards. Johnson added that there was discussion on the content of the exam which the Board of Examiners continues to develop. There was also discussion about mobile exam sites to provide service to less populated areas and areas with large numbers of

candidates. Johnson also attended a conference introducing NASBA's Center for the Public Trust.

4. REPORT OF VICE CHAIR

A. Action from Work Session

1. Legislative Concept, 2007 Session

a. ORS 673.410(3)(d); Proposed Revision

ORS 673 requires one member of the Board to be a licensed Public Accountant.

Board Discussion: *Forty-eight Public Accountants hold an active license. If there comes a time when no public accountant is interested or available to serve on the Board, a public member should be allowed to serve in this position; however the preference is to have a Public Accountant in this position.*

BOARD ACTION: Moved by Klimowicz and carried to direct the administrator to prepare a legislative concept which allows the Public Accountant position to be filled by a public member if no Public Accountant is willing or able to serve on the Board.

VOTE: Chair Morris did not vote; 6 ayes

b. Simple Majority of Ownership of a Business Organization

Board Discussion: *ORS 673.160 does not allow a firm to be renewed if a simple majority is not owned by licensed CPAs or PAs. The Board acknowledged that 90 days may not provide sufficient time for a firm with non-CPA ownership to establish a partner who is a licensed CPA/PA if a partner dies and causes firm ownership to fall below the simple majority.*

BOARD ACTION: Moved by Klimowicz and carried to direct the Board administrator to develop a legislative concept to allow 180 days or until the next renewal period, whichever is longer, for a firm to establish a simple majority of licensed CPAs or PAs.

VOTE: Chair Morris did not vote; 6 ayes

2. UAA Exposure Draft

The Board reviewed the UAA Exposure draft dated August 1, 2005 during the work session. The Board requests that Board staff submit a response to the AICPA based on the following Board comments.

Board Discussion: *The Board believes that Oregon's definition of principal place of business is better than the proposed definition in the UAA, Section 3. Oregon is prohibited from adopting confidentiality provisions as proposed in sections 4 and 12 under the Oregon Public Records Law. The Board does not support section 23 that proposes to extend the grandfathering requirements under substantial equivalency until year AD 2012.*

3. Delegated Authority

a. CPE Audit Penalty

At the May 17, 2004 Board meeting two separate motions were passed that require clarification.

Board Discussion: *If a licensee does not respond to the Board CPE audit request within 21 days as required, the penalty should be \$250. The Board's mission is to protect the public and regulating continuing education is a significant way for licensees to maintain competency. If a licensee is unable to provide proof of completion for the programs claimed, a notice of suspension should be issued.*

BOARD ACTION: Moved by Klimowicz and carried to issue a notice of \$250 civil penalty for failure to respond to the CPE audit request within 21 days as required by OAR 801-030-0020(7) and a notice of suspension for failure to comply with CPE requirements under ORS 673.170(2)(L).

VOTE: Chair Morris did not vote; 6 ayes

b. CPE Certification on Renewal Application

Board Discussion: *The renewal application has a check box for licensees to certify whether they have met the CPE renewal requirements. If the licensee checks the "yes" box but does not list enough hours on the CPE report, the Board will issue a civil penalty for \$250. If the licensee can substantiate the required hours before a final order is issued, the penalty may be withdrawn.*

Licensees should know before checking the box whether they have the proofs of completion for CPE programs. If the licensee cannot substantiate the required hours, issue a civil penalty for \$1000 for fraud or deceit in applying for a permit as provided at ORS 673.170(2)(a) and refer to the investigator for possible further discipline.

If the licensee checks "no" in the box, issue a \$250 civil penalty plus 16 hour CPE penalty for failure to obtain continuing professional education in the timeframe required.

BOARD ACTION: Moved by Klimowicz and carried to issue a \$250 civil penalty plus 16 hour CPE penalty to licensees who do not have the required CPE on June 30.

VOTE: Chair Morris did not vote; 6 ayes

BOARD ACTION: Moved by Klimowicz and carried to delegate authority to the administrator to issue notice of suspension and notice of civil penalty to licensees for violations described above.

VOTE: Chair Morris did not vote; 6 ayes

c. Subpoena Authority

Board Discussion: *Ms. Chute is concerned that the Board does not have authority to delegate authority to issue subpoenas. The Board would like staff to research the possibility of using electronic signatures of the Board Chair and Vice Chair. The administrator could then obtain verbal approval from the Chair or Vice Chair prior to using the electronic signature. The administrator could also obtain verbal authority from the Board Chair to sign a subpoena on behalf of the Board Chair.*

4. Committee Membership

The Board reviewed a memo describing current committee vacancies.

Board Discussion: *Johnson will recruit two licensees in private industry, one member each for the Code of Professional Conduct Committee and the CPE committee. Gaffney will recruit one member for the Complaints committee. The Peer Review Oversight committee should be increased to seven members. Gerald Burns, CPA has expressed an interest in serving on the PRO committee. The Board would like to extend invitations to Jessie Bridgham, CPA and Donald New, PA to join the committee.*

BOARD ACTION: Moved by Klimowicz and carried to appoint Mr. Burns, and to invite Ms. Bridgham and Mr. New as members of the Peer Review Oversight Committee.

VOTE: Chair Morris did not vote; 6 ayes

5. Administrative Rules

1. Division 001

BOARD ACTION: Moved by Klimowicz and carried to increase response period described in OAR 801-001-0055 to 14 days and to delete paragraph 4.

VOTE: Chair Morris did not vote; 6 ayes

2. Division 030

BOARD ACTION: Moved by Klimowicz and carried to remove the term “and associates” from OAR 801-030-0020.

VOTE: Chair Morris did not vote; 6 ayes.

3. Division 050

BOARD ACTION: Moved by Klimowicz and carried to approve proposed revisions to Division 050.

VOTE: Chair Morris did not vote; 6 ayes.

5. REPORT OF SECRETARY-TREASURER

Bailey reviewed Month 25, 2005 financial reports and noted that projections and the variances are off \$18,000, but the ending balance is correct according to the financial reports from the State. Staff will research and correct the error.

6. REPORT OF ADMINISTRATOR

No report.

7. REPORT OF OAIA

Aldrich reported that OAIA will have a Board meeting and education seminar the week of October 17, 2005 in Wilsonville.

8. REPORT OF OSCPA

Langley reported that the election of officers had been announced. Mr. Bob Bunting, AICPA, will provide an AICPA update at the November 3, 2005 OSCPA meeting.

9. CONTINUING PROFESSIONAL EDUCATION

No meeting held.

10. PEER REVIEW OVERSIGHT

A. Report of Peer Review Oversight Committee

1. Acceptance of Minutes

a. July 26, 2005

BOARD ACTION: Moved by Andersen and carried to accept the Peer Review Committee minutes dated July 26, 2005.

VOTE: Chair Morris did not vote; 6 ayes

b. National Society of Accountants Peer Review Program

The National Society of Accountants (NSA) issued a letter advising the Board that the NSA Peer Review Program was discontinued, effective September 1, 2005. There are currently 27 Oregon firms enrolled under the NSA Peer Review program.

11. COMPLAINTS COMMITTEE

A. Report of Complaints Committee

1. Acceptance of Minutes

a. September 9, 2005

Board Discussion: *With respect to streamlining the complaint process, the Board discussed the possibility of having six (6) complaint committee meetings a year and the Board would schedule one biannual work session meeting for two days rather than one. Kitterman noted a correction to page 9 of the minutes with respect to Committee Recommendations for Cheryl Anderson: change the reference from subsection (8) to subsection (3), under ORS 673.320, use of a title or designation that implies the person holds a CPA permit.*

BOARD ACTION: Moved by Klimowicz and carried to accept the minutes of the September 9, 2005 Complaints Committee meeting, as corrected.

VOTE: Chair Morris did not vote; 6 ayes.

b. September 19, 2005, Specially called meeting

BOARD ACTION: Moved by Klimowicz and carried to accept the minutes of the September 19, 2005 Special Complaints Committee meeting.

VOTE: Chair Morris did not vote; 6 ayes.

B. Consent Agenda

James Gaffney requested that item *1.a. James Karas*, be removed from the Consent Agenda, as he must abstain from voting in that matter.

BOARD ACTION: Klimowicz moved and it was carried to accept the consent agenda after the removal of *1.a. Joseph Karas*.

VOTE: Chair Morris did not vote; 6 ayes.

1. Complaint Investigations

- a. Joseph Karas 02-08-050
- b. Jim R Cole 03-05-020
- c. Ken Behymer, David Blauser 04-12-095
- *d. Mark E. Eklund 05-05-011
- e. Gayle Bassett Jensen 05-05-012
- *f. Cheryl L Anderson 05-07-019
- *g. Seydel Lewis Poe Moeller & Gunderson LLC (*Michael Poe*), 04-09-082
- *h. Theodore Petersen, 04-07-064

**Items moved to 11.C. for discussion*

C. Items Removed from Consent Agenda

1. B.1.a. Joseph Karas, 02-08-050

BOARD ACTION: Klimowicz moved and it was carried to approve the complaints committee recommendation of no violation.

VOTE: Chair Morris did not vote; 5 ayes, 1 abstained (Gaffney)

2. B.1.d. Mark E. Eklund, 05-05-011

Mark Eklund agreed to prepare client's late tax returns and to correspond with Internal Revenue Service (IRS) regarding these filings. IRS seized Client's bank account after Eklund failed to respond to IRS notices.

ALLEGED VIOLATIONS:

Responsibilities to Clients, 801-030-0015(2) Client records and working papers.

(b) Requested records. Licensees are required to furnish the following records to a client or former client, upon request, within a reasonable time after such request:

(A) In response to a client's request for client records, made within a reasonable time, that occurs prior to issuance of a tax return, financial statement, report or other

document prepared by a licensee, the licensee shall furnish to the client or former client any accounting or other records belonging to or obtained from or on behalf of the client that the licensee received for the client's account or removed from the client's premises.

When Eklund did not respond to Client's telephone and e-mail inquiries, Client hired an attorney. Client's attorney requested documents from Eklund. Eklund did not respond to the attorney's request for Client's documents.

Other Responsibilities and Practices, 801-030-0020 (1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the

Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

Eklund did not respond to IRS notices which resulted in the seizure of Client's bank account. Eklund's conduct would cause a reasonable person to have substantial doubts about Eklund's respect for the rights of others or for the laws of the state and the Nation.

INVESTIGATOR SUMMARY:

801-030-0015(2) (b) Requested records Civil penalty of \$500
for failure to provide requested records

\$ 500

801-030-0020 (1) Professional misconduct Civil penalty of \$500
for failure to respond to IRS notices, or for failure to inform Client
that Eklund did not intend to respond to IRS notices

500
\$1,000

Committee Discussion: Better communication by Eklund could have prevented IRS seizure of the client's bank account.

COMMITTEE RECOMMENDATION: Moved and carried to assess civil penalties of \$500 for failure to provide requested records and \$500 for failure to respond to IRS notices for total civil penalties of \$1,000.

BOARD ACTION: Klimowicz moved and it was carried to assess total civil penalties for violations described in the committee recommendation.

VOTE: Chair Morris did not vote; 6 ayes.

3. B.1.f. Cheryl L. Anderson, 05-07-019

Cheryl Anderson (Anderson) issued a report for Homeowners Association in which she stated that she audited their books.

ALLEGED VIOLATIONS:

ORS 673.320(1) Permit or registration required

A person or business organization in this state shall not provide attestation or compilation services for or issue a report on financial statements of any other person, firm, organization or governmental unit unless the person or business organization holds a permit or registration issued under ORS 673.010 to 673.457.

Anderson does not hold a certificate or permit in Oregon. Anderson issued a report on Homeowner's books and records, and expressed an opinion on those books and records. Anderson did not include an exception as defined in ORS 673.010(19)(b) or ORS 673.325.

Anderson's statement that that she is a member of OSCPAA could be misleading. A reader might assume that, as a member of OSCPAA, Anderson is a CPA and is qualified to issue a report and to audit Homeowners.

Anderson violated ORS 673.320 when she issued Homeowner's audit report.

INVESTIGATOR SUMMARY:

ORS 673.320(1) Permit or registration required

Civil penalty for issuing a report on financial statements \$1,000

Committee Discussion: Anderson's report stated that she audited the books. Better word choices are: *looked at, analyzed, summarized, etc.* The committee noted that Anderson is an associate member of the OSCPAA and that including information describing OSCPAA membership without stating that it is associate membership on the report could mislead the public to believe she is a CPA.

COMMITTEE RECOMMENDATION: Moved and carried to assess a \$500 civil penalty under 673. 320(1), permit or registration required.

COMMITTEE RECOMMENDATION: Moved and carried to assess a \$500 civil penalty under 673. 320(3) for use of a title or designation that implies the person holds a CPA permit.

Board Discussion: Anderson stated that she 'audited' the books for Homeowners. Anderson does not have a CPA permit, yet she acted as if she did, thus inflicting harm to the public. Anderson held out by including her association with the OSCPAA on the report. The Board determined that Anderson issued a report on financial statements without a license and held out as a CPA.

BOARD ACTION: Klimowicz moved and it was carried to assess total civil penalties in the amount of \$1,000 for violations described in the committee recommendation.

VOTE: Chair Morris did not vote; 6 ayes.

4. B.1.g. Seydel Lewis Poe Moeller & Gunderson LLC (Michael Poe), 04-09-082

ALLEGED VIOLATIONS:

OAR 801-030-0010 Competence and Technical Standards

OAR 801-030-0020(1) Professional misconduct

Seydel Lewis Poe Moeller & Gunderson LLC (Firm) have audited financial statements for XESD (ESD) since before 1998. In March 2004, X District Attorney asked Oregon State Police to investigate ESD based on information obtained from the Education/Workforce Development Committee, a citizen watchdog group. The results of a fraud audit were released to the public in September 2004, disclosing irregularities in financial information of ESD.

Based on information received, the Board opened a complaint against Firm and contracted with a consultant (Consultant) to provide an investigation report of Firm's audits of ESD financial statements. Consultant submitted a report and presented his findings to the Complaint Committee.

A subcommittee of the Complaints committee members met to review Consultant's report and workpapers submitted by Firm and Michael Poe (Poe), partner of Firm. The

subcommittee requested additional information. The full committee held a special meeting September 19, 2005 to discuss Firm's response to the additional request. The Committee discussed questions relating to two issues: the reporting of PERS bond obligations and testing of Average Daily Membership (ADM).

PERS Bonds

Firm issued a clean opinion on the financial statements of ESD when PERS Bonds were incorrectly classified as a reduction of equity.

In May, 2004 Firm auditors were advised in a peer review that PERS Bonds should be classified as a deferred asset not a reduction of equity. Firm auditors did not advise ESD to make appropriate disclosures to those relying on the audited financial statements until January 2005.

Committee Discussion: Firm did not comply with SAS 98 when Firm failed to give timely advice to ESD to make the necessary disclosures to prevent further reliance on the audited financial statements.

COMMITTEE RECOMMENDATION: Moved and carried to assess a civil penalty in the amount of \$5,000 for violation of 801-030-0010 (1) Competence: Firm failed to give timely advice to ESD regarding the correct reporting of PERS bonds.

COMMITTEE RECOMMENDATION: Moved by Armstrong and carried to assess a civil penalty in the amount of \$5,000 for violation of 801-030-0010 (2) Auditing Standards: Failure to timely restate PERS Bond as a deferred asset.

Average Daily Membership (ADM) Testing

Firm did not provide adequate documentation of Average Daily Membership (ADM) testing. A schedule of students tested was not included in the audit workpapers for 2002 or 2003. The only documentation provided for ADM testing was a memorandum.

Committee Discussion: Firm's 2002 and 2003 audit work papers did not include a schedule of students tested. Firm memorialized testing of ADM compliance in a work paper memorandum. The ADM work paper memorandum did not include a record of the documents inspected, confirmations of the items tested or the basis of the final conclusions reached. The audit work papers did not disclose the reason why the ADM test sample size was reduced from 40 students to 25 students. The ADM memorandum did not comply with documentation requirements of SAS 96.

COMMITTEE RECOMMENDATION: Moved and carried to assess a civil penalty in the amount of \$5,000 for violation of 801-030-0010 (2) Auditing Standards for failure to document testing of Average Daily Membership (ADM) in audit workpapers. In addition Poe and the senior auditor (or in-charge accountant) are assessed an additional 16 hours of audit related CPE.

Discussion at Board meeting from Michael Poe (Poe) and Marc Blackman (Blackman), attorney for Poe, who joined the Board meeting at 1:00 p.m. Kent Bailey recused himself and left the room. Poe stated that he has been with Seydel Lewis Poe Moeller & Gunderson LLC since 1994 and the firm has prepared the ESD audits since 1984. Several people from the firm worked on the audit.

Poe stated that they did not list names of students tested for Average Daily Membership (ADM), nor were their names included in the audit workpapers for 2002 or 2003 due to confidentiality issues. Poe stated that their greatest control was third party reliance because the local districts must sign off on the report. Poe stated that the actual

testing was completed by Brent Gunderson. Seydel relied on third party verification and also reviewed the files to determine if the students existed.

Poe stated that the firm made an error on the PERS Bonds. The unfunded liability was not listed in the statement of assets. In May 2004 Seydel was advised through the peer review process that PERS bonds were incorrectly reported on audited financial statements. Poe did not notify the ESD audit committee about the error nor did he advise ESD that the 2003 financial statements should be restated. Rather, Poe telephoned the ESD business office to advise of the error regarding PERS Bonds.

Marc Blackman, attorney for Poe, stated that there was nothing in the standards at that time to indicate that names of students needed to be listed. Blackman stated that the PERS Bond error was not due to negligence and further that the Firm consulted with their peers regarding the issue. Blackman noted the difference between professional misconduct and gross misconduct stating that gross misconduct is a far greater deviation of conduct than professional misconduct. Blackman stated that the PERS error and the lack of proper ADM testing documentation does not demonstrate gross negligence.

When questioned about how the firm verified that third party information was valid, Blackman stated that the firm had no reason to believe the school district was involved in fraud and also that ESD could not have misstated the numbers without the school districts knowing.

The Board questioned how the ESD committee, Board and the fraud auditors could all be "off base" regarding the lack of ADM documentation if the documentation is adequate. The Board noted that the Firm's 2004 Peer Review Report identified the same issues that were stated in the Consultant's report. The Board questioned whether it is reasonable to take twelve (12) months to correct the PERS error and the lack of documentation on the ADM testing.

Board Discussion: Seydel did not adequately document ADM testing and did not notify ESD audit committee to restate financial statements to correct PERS Bonds. The Board wants to review the firm's peer reviews for prior years to determine if the issues of concern may have been noted in prior reports. Kitterman will request the Firm to provide copies of Peer Review Reports and the Board will allow 21 days for the firm to respond.

BOARD ACTION: Klimowicz moved and it was carried to assess \$15,000 in total civil penalties for the violations described in the committee recommendation, plus a requirement of 16 additional hours of audit related CPE for all Firm audit members.

VOTE: Chair Morris did not vote; 5 ayes, 1 abstained (Bailey)

5. B.1.h. Theodore Petersen, 04-07-064

Utilizing the *AICPA Litigation Services and Applicable Professional Standards* document, the committee discussed whether or not Petersen expressed an opinion on an executive summary that he prepared and used while providing litigation services. Attestation standards do not apply to litigation services when the practitioner does not issue a report expressing an opinion about the assertion of another party. It was concluded that Petersen issued a report on the assertion of the client and that according to AICPA's litigation standards, it is not a violation if the testimony is subject to cross examination.

The committee agreed that Petersen testified under oath that he was a CPA, when in fact, his permit was in lapsed status.

COMMITTEE RECOMMENDATION: Moved and carried to assess a civil penalty in the amount of \$5,000 for holding out while in lapsed status, in violation of ORS 673.320(3).

COMMITTEE RECOMMENDATION: Moved and carried to assess a civil penalty in the amount of \$5,000 for dishonesty in the practice of public accountancy when Petersen testified under oath that he was a CPA, in violation of ORS 673.170(2).

Board Discussion: *Jens Andersen did not participate in the discussion nor did he vote. The Board is in favor of issuing a cease and desist order to Petersen after January 1, 2006, which is the effective date of cease and desist authority approved in the 2005 Legislative session. Cease and desist is a 'stop' order. Petersen stated under oath that he was a CPA, when in fact he was in lapsed status.*

BOARD ACTION: Klimowicz moved and it was carried to assess civil penalties in the total amount of \$10,000 for violations described in the committee recommendation, and to issue a cease and desist order after January 1, 2006.

VOTE: Chair Morris did not vote; 5 ayes, 1 abstained (Andersen)

D. OTHER

1. Response to Committee request re: Lockitch Clements & Rice PS

Lockitch Clements & Rice audited a pension plan that invested in Capital Consultants. The Committee discussed whether the auditors of individual pension plans are responsible to determine the market value of pension plan investments listed on the SEC. The Committee questioned who was determining the value of these securities and whether they were limited or full scope audits. The committee determined they need additional information including financial statements before a conclusion can be reached.

Staff will search OJIN records for Oregon and Washington to determine if lawsuits have been brought against Lockitch Clements & Rice PS by pension plan administrators. Brown volunteered to review additional information received. Rives will report the substance of the discussion to the Board and let them make the final decision whether or not to pursue a complaint.

Board Discussion: *The Complaints Committee is concerned about resources if the Board decides to pursue as a complaint, stating that there will be many other unions initiating a complaint. The Board determined that since we have a complaint from a member of the pension plan, we need to review it.*

BOARD RECOMMENDATION: *Open complaint investigation.*

12. LEGAL

A. Report of Legal Items

1. Proposed orders after hearing

a. none

2. Proposed Consent Orders

a. Christine Clemmer

On August 22, 2005, the Board approved the assessment of a \$1,000 civil penalty for holding out as a CPA. On October 5, 2005, Clemmer submitted a Proposed Consent Order offering to pay a \$100 civil penalty in four payments for holding out as a CPA.

BOARD ACTION: Klimowicz moved and it was carried to reject the Proposed Consent Order and request the Investigator to work out a payment schedule for the \$1,000 civil penalty.

VOTE: Chair Morris did not vote; 5 ayes, 1 absent (Andersen)

b. Stacey Elmore

On February 14, 2005, the Board approved a \$25,000 civil penalty for failure to use ORS 673.325 safe harbor language. On May 23, 2005, the Board approved Elmore's late request for hearing.

On August 25, 2005, Elmore submitted a Proposed Consent Order that reduced the civil penalty to \$5,000. The Proposed Consent Order was approved by the Administrator.

BOARD ACTION: Moved by Bailey and carried to ratify the consent order.

VOTE: Chair Morris did not vote; 5 ayes, 1 absent (Andersen)

13. QUALIFICATIONS COMMITTEE

A. Report of Qualifications Committee

1. Acceptance of Minutes

a. September 8, 2005

BOARD ACTION: Moved by Meisner and carried to accept the committee minutes.

VOTE: Chair Morris did not vote; 6 ayes.

B. Consent Agenda

1. Committee Recommendations

a. Jennifer Baxter

Ms. Baxter gained her experience with the following employer:

McCormick & Schmick 24 mos. All competencies

Ms. Baxter passed the CPA exam in November 1999. Ms. Baxter is a senior accountant with McCormick and Schmicks. Mr. Rawls reviewed the application and supporting documents and was very impressed on how well the supervisor documented the applicants' achievements. Mr. Rawls would like to use this write-up as an example to other applicants. Staff will contact the supervisor licensee for permission to use.

COMMITTEE RECOMMENDATION: Moved by Rawls and carried to recommend approval application. Vote: 4 ayes, 1 excused (Santiago)

b. Rozetta Fan-Walth

Ms. Fan-Walth gained her experience with the following employer:

CH2M Hill 52.5 mos. All competencies

Ms. Fan-Walth passed the CPA exam in November 2001. Mr. Selid reviewed the documentation provided by the supervisor licensee, and while brief he thought it explained how competencies were met in a clear and concise manner. Ms. Fan-Walth has worked with both US and international tax work as well as financial statements.

COMMITTEE RECOMMENDATION: Moved by Selid and carried to recommend approval of the application of Rozette Fan-Walth. Vote: 5 ayes.

c. Keith Parker

Mr. Parker gained his experience with the following employer:

Xerox 12.5 mos. All competencies

Mr. Parker passed the CPA exam on February 24, 2005. Mr. Emberland reported that the write-up on the competencies for this candidate was very strong. Mr. Parker works in the internal audit department at Xerox and has been working with Sarbanes Oxley rules for compliance in reporting. Emberland also noted that the applicant worked as an attorney prior to his employment with Xerox.

Committee Discussion:

Ms. Santiago mentioned that while the rules state that applicants are only required to have 12 months experience, it would be difficult to achieve a broad base of experience in twelve months, especially for competency "b", assessing the achievement of an entity's objectives. Other committee members agreed and stated that although the rule provides for a 12 month experience requirement, many firms hold their candidates to an 18 month cycle. Ms. Rives added that the Board and committee must rely on the professional integrity of the supervisor licensee and that the competencies act as a safety net for those candidates who may require more than 12 months experience to achieve all seven competencies.

The committee requested staff to advise the Board of the committees concern regarding 12 month experience requirement. They are concerned that applicants are not able to achieve competency in all areas in such a short amount of time. In addition, the committee would like the Board to clarify the employer/employee relationship in regard to supervision, discharging the employee and how many hours per week or month is appropriate for the applicant to be supervised adequately?

COMMITTEE RECOMMENDATION: Moved by Emberland and carried to recommend approval of the application of Mr. Parker. Vote: 5 ayes.

***d. Saiprasad Sathiamoorthy**

Mr. Sathiamoorthy gained his experience with the following employer:
CSWL Inc. 69 mos. All competencies

Mr. Sathiamoorthy passed the CPA Exam in May 2000. Mr. Wang, supervisor licensee provided documentation supporting the applicant's file on his own letterhead which indicated that he is located in Danville, California. CSWL is located in Pleasanton, California. Mr. Selid questioned whether Mr. Wang had "direct" supervision over the applicant. A letter was sent to Mr. Wang asking him to describe the supervision relationship with the applicant and provide additional information describing how the applicant achieved each competency.

Mr. Wang's response provided clarification of the competencies; however the supervisor relationship was still questionable. The committee concluded that the supervision is not that of an employer/employee but rather Mr. Wang has more of a consultant role who provided input on Mr. Sathiamoorthy's work. Because there was no in-house CPA working for CSWL Inc., Mr. Wang worked with the applicant to try and gain the competencies for certification.

COMMITTEE RECOMMENDATION: Mr. Selid moved to recommend denial of the application for certification, because the supervisor licensee does not meet the requirements of OAR 801-010-0065(2)(b)(A) and (B). Vote: 4 ayes, 1 excused (Rawls)

C. Items Removed from Consent Agenda

1. Saiprasad Sathiamoorthy

Board Discussion: The Board agrees with the committee recommendation. The supervisory relationship between the applicant and the supervisor does not meet the requirements. A supervisor licensee must have the authority to hire and fire the applicant or have significant influence on the decision to hire or fire an employee being supervised.

BOARD ACTION: Moved by Meisner and carried to deny the application for certification for Saiprasad Sathiamoorthy.

VOTE: Chair Morris did not vote; 5 ayes. 1 excused (Andersen)

14. CPA EXAM

A. July/August 2005 Passing Candidates

The Board reviewed a list of candidates who passed the CPA exam during the July/August 2005 testing window.

15. CODE OF PROFESSIONAL CONDUCT

A. Approval of Minutes

1. September 21, 2005

BOARD ACTION: Moved by Johnson and carried to accept the minutes of the September 21, 2005 CPC Committee meeting.

VOTE: Chair Morris did not vote; 5 ayes, 1 excused (Andersen)

B. Recommendations

None presented for consideration

16. OLD BUSINESS

A. Lance Brant 02-03-022

ALLEGED VIOLATIONS:

OAR 801-030-0010(1) Competency

OAR 801-030-0020 (1) Professional Misconduct

OAR 801-030-0020(4) Public Communications and Advertising

In October 2004, the Committee requested the investigator obtain additional information to present to the Board, and recommended civil penalties against Lance Brant (Brant). The Board reviewed the case and referred it back to the Committee for further consideration and recommendation. In January 2005 Brant's attorney requested that the case be deferred until Brant could obtain qualified counsel. Brant subsequently decided to represent himself.

REVISED INVESTIGATOR RECOMMENDATION(S):

OAR 801-030-0010(1) Competency

Civil penalty for failure to withhold payroll taxes for 3 COIHS officers on ISO bonus transactions

1999 – 3 at \$1,000

2000 – 3 at \$5,000 each

2001 – 3 at \$5,000 each

\$33,000

Civil penalty for overpayment of 8 shares (5/1 split) that were previously sold but not cancelled

5,000

OAR 801-030-0020(1) Professional misconduct.

records at Oregon State University and PricewaterhouseCoopers, good peer review, worked on the United Way Campaign and active in the community. Brant stated that he was not charged with a felony and he would like to resolve this matter. When asked why Brant sued his employer after agreeing not to sue, he replied that he sued the company because of the letter that was sent to his clients and to Jones and Roth stating that Brant was a crook. With respect to the email incident, Brant stated that the company CEO told too many erroneous stories about him and he wanted to set the record straight with his co-workers. And, yes, he opened a Yahoo account in the CEO's name.

Board Discussion: *The Board concurred that Brant altered his story numerous times and lied to the Board. The Board believes that Brant violated Board rules relating to dishonesty when he opened an e-mail account in the name of another person, without the permission of that person, and then used that account to send an e-mail to a group of recipients, using the name of the unauthorized e-mail account. This amounts to identity fraud. Brant was also dishonest in his statements to the Board of Accountancy; and on two occasions he misstated information to his employer's board of directors.. Brant also violated Board competency standards in connection with company stock options.*

BOARD ACTION: Moved by Klimowicz and carried to suspend Brant's license for 12 months, and to assess a total civil penalty of \$25,000 for the following violations: \$5,000 for violation of OAR 801-030-0020 (1) for opening an e-mail account and sending e-mail messages under the name of another person without authorization; \$5,000 for each of two instances when Brant did not provide accurate information to the Board of Directors; \$5,000 for making false statements to the Board of Accountancy, and \$5,000 for competency with respect to stock options

VOTE: Chair Morris did not vote; 5 ayes, 1 abstained (Andersen)

17. NEW BUSINESS

A. 2006 Board Meeting Schedule

The Board approved the meeting dates proposed for 2006. The Board expressed a preference to have the spring work session at the Coast and the fall work session in Bend.

B. Division of Audits Inquiry

Mr. Hopkins from the Division of Audits provided a memo in which he noted that CPA firms sign audits that are submitted to the Audits Division under the name of the firm only, without the additional signature of a CPA. Hopkins asked if the audit reports prepared by the Division of Audits need to be signed by a CPA, or if they may be signed "Secretary of State, Audits Division".

The Board noted that the exemption for public officials under ORS 673.320 applies to the *public official or employee in the performance of official duties*. The exemption does not mention the agency or department. This section also authorizes *individuals or business organizations licensed under ORS 673 to perform attest services or issue reports on financial statements*. Since the Audits Division is not a registered firm, and the exemption describes specific individuals, it appears that an individual signature is required for audits performed by the Audits Division. However the individual who signs such reports is not required to be a licensed CPA or PA under ORS chapter 673.

18. PROCESS OBSERVER REPORT

Gaffney commented that the group worked well together. It would be helpful to use a flip chart during the work session as the items are discussed and recommendations made for the Board meeting. The visitors were allowed additional time for discussion.

19. NEXT MEETING

Date: December 12, 2005
Location: Board Office, Salem, Oregon
Time: 8:00 a.m.

20. ADJOURNED

There being no further business, the meeting adjourned at 4:00 p.m.