

# OREGON BOARD OF ACCOUNTANCY

May 17, 2004

Cannon Beach, Oregon

*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, *Vice Chair*  
T. Lynn Klimowicz, CPA, *Secretary-Treasurer*  
Anastasia Meisner, Esq., *Public Member*  
Kent Bailey, CPA  
Alan Steiger, CPA

## **Excused**

Jens Andersen, CPA

## **Staff Members**

Carol Rives, *Administrator*  
Noela Kitterman, *Investigator*  
Kimberly Bennett, *Cte. Coordinator*  
Carol Hanlon, *Cte. Coordinator*  
Heather Shepherd, *Cte. Coordinator*

## **Guests Attending**

Jim Aldrich, PA, OAIA Representative  
Robert Boden, President, OAIA  
Christine Chute, Asst. Attorney General  
Doug Henne, OSCP Board Liaison  
Cheryl Langley, OSCP, Representative  
Mike Lewis, CPA  
Steve McConnel, CPA, OSCP Rep.  
Robert L. Stacy, CPA

## **1. CALL TO ORDER**

The meeting was called to order at 9:00 a.m. Robert L. Stacy joined the meeting at 9:00. His case was taken out of order and made first item on the agenda.

### **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. February 17, 2004**

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

Vote: 6 ayes , 1 excused (Andersen)

## **3. REPORT OF CHAIR**

### **A. NASBA**

#### **1. Agendas – 2004 Regional Meetings**

The 2004 Regional Meetings will be held in Orlando, Florida and La Jolla, California. The Oregon Board of Accountancy will have representation at both meetings. Anastasia Meisner will attend the Orlando conference. Stuart Morris, Chair and Carol Rives, Administrator will attend the La Jolla conference.

#### **2. Proposed Rules to Accompany Uniform Accountancy Act**

No action was required for this item.

### 3. Nominations

#### a. Vice Chair

Ms. Rives reported that Diane Rubin has been selected for this position. NASBA is requesting nominations for the Nominating Committee. Bill Green, CPA has been a member of this committee in the past. No action is required unless the Board would like to submit a candidate.

#### b. Director-at-Large

##### 1. Sadler

##### 2. Long

##### 3. Sandra Wilson, Alaska

The Board of Accountancy previously expressed support for Mr. Sadler. Sandra Wilson was recently submitted as a nominee from the Alaska State Board of Public Accountancy. Mr. Steiger has previously interacted with Sandra Wilson and reports that she was positive with good ideas and energetic.

**BOARD ACTION:** Moved by Steiger and carried to approve support for Sandra Wilson for the Pacific Region Director at Large.

Vote: 6 ayes, 1 excused (Andersen)

### 4. NASBA Conference Reports

#### a. Executive

#### b. Legal

The Board administrator and investigator attended the Executive and Legal Conferences February 9-11, 2004 and provided brief information about the main topics from each conference. The Board commented on Louisiana's requirement to report bankruptcy on renewals which this may be useful information during an investigation.

### 5. Kent Bailey Membership on NASBA Strategic Initiatives Committee Mission: "Identify emerging and significant issues that will impact Pro-active measures"

Ms. Rives noted that Mr. Bailey has been a member of this committee since January 2004. Mr. Bailey reports that the committee held the first meeting in March. The meeting focused on a report from Columbia University on the future of the accounting field. Mr. Bailey does not agree with all the conclusions on the report. The report is available on Columbia University's web site.

### 6. Committee Interest Forms

NASBA is requesting volunteers to serve on the Legal Counsel Committee. Christine Chute offered to volunteer if the Board supported her.

**Board Discussion:** *Would the Board be charged the expense of its legal counsel on this committee. Ms. Rives reported that NASBA covers the expenses of committee members. Ms. Chute reported this would be something that her supervisor would have to discuss with the Board. It has been past practice that if DOJ determines the committee to be professional development, DOJ allows the time. Ms. Rives reported the Board AG Budget would not be able to support billing for time spent on the committee. The Oregon Board of Accountancy would be well served if Ms. Chute was a member of this committee.*

**BOARD ACTION:** Moved by Steiger and carried to support legal representation on NASBA legal counsel committee.

Vote: 6 ayes, 1 excused (Andersen)

### **7. Highlights of the Board of Directors Meeting**

The third bullet item, 4.26, has to do with whether or not Thompson Corporation has an ownership interest in any CPA exam prep course. Ms. Rives stated that she did not have further information regarding this item.

### **8. Regional Directors' Focus Questions**

The Board reviewed the quarterly focus questions and discussed outsourcing. The CPA who signs off on an engagement is subject to professional standards. This is an issue that will be determined by the marketplace.

### **9. State Responses to Focus Questions**

The Board reviewed the responses to the quick poll on ethics courses provided by NASBA. Thirty-eight states responded to the survey.

### **10. Nominations for NASBA Awards**

**BOARD ACTION:** Moved by Steiger and carried to nominate Gerald Burns for the *NASBA Distinguished Service Award*.

Vote: 6 ayes, 1 excused (Andersen)

## **B. Action from Executive Session**

### **1. Jerome Caplan – Proposed Consent Order**

**Board Discussion:** *The proposed terms provide that Caplan close his office, remove his name from the door and building directory, destroy his business cards and letterhead, notify all clients of his retirement, that he is no longer in the practice of public accountancy and that he understands any future violations could be subject to a civil penalty of \$5,000 per violation. The order provides that the civil penalty be reduced from \$270,000 to \$100,000, \$80,000 which is stayed and \$20,000 due within 12 months through a payment plan.*

**BOARD ACTION:** Moved by Klimowicz and carried to accept the Proposed Consent Order submitted by Caplan's attorney with the additional provision that Caplan close his office prior to final acceptance of the settlement and the Administrator be directed to sign the order upon verification that the office is closed.

Vote: 6 ayes, 1 excused (Andersen)

### **2. Stephan P. Sykes – Proposed Consent Order**

**Board Discussion:** *The proposed terms provide for public censure for failure to cooperate with a Board investigation.*

**BOARD ACTION:** Moved by Steiger and carried to accept the consent order.

Vote: 6 ayes, 1 excused (Andersen)

### **3. Flaviano D. Reyes – Request to Reconsider**

**Board Discussion:** *Reyes' attorney requested that the Board reconsider the requirement of the timeframe in which Reyes was given to obtain additional CPE.*

**BOARD ACTION:** Moved by Gaffney and carried to reject the request to reconsider the timeframe and to suspend Reyes' license until he complies with the CPE directive from the Board. Further, suggest to Reyes that he obtain Board acknowledgement that each CPE program qualifies prior to obtaining the CPE.

Vote: 6 ayes, 1 excused (Andersen)

### **C. Notice of Resignation**

Alan Steiger, CPA announced his resignation from the Oregon Board of Accountancy as of October 2004. Mr. Steiger was appointed to the AICPA Executive Directors Board.

**Board Discussion:** *This vacancy is for an individual in Industry or Academia. The position could also be filled by a public member. The Board is unrepresented by women, it would be nice to try and find a female interested. Individuals who express an interest should be brought to the August Board meeting for consideration.*

## **4. REPORT OF VICE CHAIR**

### **A. Action from Work Session**

#### **1. Delegated Authority**

##### **a. Penalty for CPE Audit**

**Board Discussion:** *The Board discussed whether failure to respond to a CPE audit warrants a civil penalty greater than the civil penalty of \$100 for failure to change address. The civil penalty for failure to respond to a complaint letter is \$1,000 and \$500 for failure to renew firm registrations. The penalty for failure to respond to CPE audit request should be more than the penalty for an address change because:*

1. The potential for public harm is greater, and
2. The licensee receives a letter from the Board that requests specific information within a designated number of days.

**BOARD ACTION:** Moved by Steiger and carried to adopt a penalty of \$250 for non-response to CPE audit requests and delegate authority to the Administrator to initiate disciplinary action for violations.

Vote: 6 ayes, 1 excused (Andersen)

##### **b. Non-response letter to firms that fail to notify the Board of peer review**

**Board Discussion:** *Peer review is part of continued competency to do attest work, and non-response from firms to the peer review audit is a potential for great public harm. The Board believed this violation warrants a civil penalty of \$1,000 and suspension of permit. The administrator would have some authority to review on a case by case basis. The Board has the authority to waive a civil penalty and suspension. The Board believed it unnecessary to issue courtesy letters that allows licensees additional time to respond.*

**BOARD ACTION:** Moved by Steiger and carried to impose a civil penalty of \$1,000 and suspension or permit for non-response to firms selected in the peer review audit and delegate authority to the Administrator to initiate action.

Vote: 6 ayes, 1 excused (Andersen)

**BOARD ACTION:** Moved by Steiger and carried to discontinue the practice of sending courtesy letters that allow licensees an additional 14 days to respond to the initial request letter.

Vote: 6 ayes, 1 excused (Andersen)

## **2. Administrative Rule Changes**

### **a. 801-030-0020(8)(a) Business Transactions with Clients**

**Board Discussion:** *The word "entered" as used in this rule is not definable and is replaced with the word "accepted", along with the changes suggested at work session, as follows:*

801-030-0020(8)(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein, unless the client has consented to the transaction after full disclosure of the differing interests in writing. Disclosure shall be made prior to the time the business transaction is accepted.

**BOARD ACTION:** Moved by Steiger and carried to adopt the changes as noted above to 801-030-0020(8)(a).

Vote: 6 ayes, 1 excused (Andersen)

**b. 801-010-0050(2)(i)**

**Board Discussion:** *This section includes the temporary rule regarding social security numbers for ratification.*

**BOARD ACTION:** Moved by Klimowicz and carried to approve the rule.

Vote: 6 ayes, 1 excused (Andersen)

**c. 801-010-0065(2)(B) – Supervisor Provision**

**Board Discussion:** *The Board added the word “immediately” to clarify the requirement that five consecutive years of active status may not be interrupted by inactive or lapsed status.*

(B) In order to qualify as a supervisor licensee for the purpose of this rule the person providing supervision must have held an active CPA or PA permit recognized by the state or a recognized Chartered Accountant during the period of supervision and for at least five consecutive years immediately prior to such supervision.

**BOARD ACTION:** Moved by Steiger and carried to accept Division 010 rule changes as noted above.

Vote: 6 ayes, 1 excused (Andersen)

**d. 801-020-0620(3)(d) – Licensees authorized to bid and contract for municipal audits**

**Board Discussion:** *The word “associate” was replaced with “employee”, as follows:*

(d) For purposes of this rule, a member of a business organization means a partner, shareholder, member or employee of the firm. Any other license, including an independent contractor, office sharer or licensee working for or with a firm on a limited basis is not a member.

**e. 801-030-0015(2)(E) – Custody and Disposition of Working Papers**

**Board Discussion:** *The Board believes that record retention requirements should be consistent with the UAA requirements.*

**(e) Attest and audit working papers**

(a) Licensees must maintain for a period of at least seven years, the working papers for any attest service or audit report prepared by the licensee together with any other supporting information, in sufficient detail to support the conclusions reached in such report.

**BOARD ACTION:** Moved by Steiger and carried to accept the changes as noted in Division 030.  
Vote: 6 ayes, 1 excused (Andersen)

**d. Division 040**

**Board Discussion:** *Section 0030 is referred back to the Committee for further consideration. One change noted as follows:*

801-040-0050(7) (b): Evidence of completion includes proof of attendance, provided by the sponsor of the approved Peer Review Program, for each meeting attended.

**BOARD ACTION:** Steiger moved and it was carried to adopt the changes in Division 040, except for section 0030 which will be referred back to the Committee.  
Vote: 6 ayes, 1 excused (Andersen)

**4. Legislative Concepts**

**a. Peer Review Confidentiality, LC No. 12000/07**

**Board Discussion:** *The Board will continue to work on this concept. Some modifications were considered: adding "and supporting documentation" and replace "exempt to public record" with "confidential". A committee will be appointed to assist in developing procedures to support peer review transparency in preparation for legislature presentation. McConnel volunteered to be on this committee and will confirm if Mike Lewis can also commit. Vice Chair Steiger, Administrator Rives and Jens Andersen, Board Liaison to the Peer Review Oversight Committee should be associated with this project as well.*

**BOARD ACTION:** Steiger moved and it was carried to proceed with the intention of developing this concept in rule and to direct the Administrator and Andersen to appoint a committee.  
Vote: 6 ayes, 1 excused (Andersen)

**b. Semi-Independence, LC No. 12000/08**

**Board Discussion:** *A task force will be assigned to develop the concept.*

**BOARD ACTION:** Steiger moved and it was carried to retain a placeholder for this concept and request that the Vice Chair and Administrator appoint a task force including members of other professions and agencies that are semi-independent.  
Vote: 6 ayes, 1 excused (Andersen)

**c. Continuing Violation, LC No. 12000/02**

**Board Discussion:** *The Board discussed addressing this violation in rule and will develop language for consideration in August.*

**BOARD ACTION:** Steiger moved and it was carried to direct staff to develop an administrative rule to address and define continuing violations and present the draft to the Board in August.  
Vote: 6 ayes, 1 excused (Andersen)

**d. Cost Recovery, LC No. 12000/03**

**Board Discussion:** *Legal Counsel advised the Board that the Oregon State Bar is taking a position opposing cost recovery by state agencies based on the opinion that collection of civil penalties should be an adequate sanction. Chute recommends modification providing that cost recovery would not be collected at the administrative level, but would be collectible at the appellate level.*

**BOARD ACTION:** Steiger moved and it was carried to change the legislative concept to clarify the Board's limitations on cost recovery.

Vote: 6 ayes, 1 excused (Andersen)

**e. Reporting Suspected Violations, LC No. 12000/06**

***Board Discussion:** The Board discussed the possibility that licensees who do not report suspected violations may be in violation of the professional code of conduct. A specific requirement for reporting violations may be more appropriately a professional ethics training issue. No other state has such a provision. The Board discussed developing a Board Newsletter article.*

**BOARD ACTION:** Klimowicz moved and it was carried to withdraw Legislative Concept 06 and to develop a Newsletter article concerning the licensee's responsibility to report suspected violations in compliance with the professional code of conduct. Further direct the Administrator to draft a letter to the ethics provider to further publicize this information.

Vote: 6 ayes, 1 excused (Andersen)

**f. Investigator License Required**

***Board Discussion:** The Board discussed the requirement of the Oregon Board of Investigators for expert witnesses to hold a license with that Board. An exemption was suggested. It was concluded that the concerns regarding this requirement are more appropriately addressed by the OSCPA.*

**g. Outsourcing**

***Board Discussion:** The Board believes that outsourcing is a market issue that is beyond the parameters of regulatory responsibility. A disclosure requirement was suggested.*

**h. Board Policies**

***Board Discussion:** The Board reviewed Policies S-04-030, Discrimination in the Workplace, and S-04-031, Drug-Free Workplace.*

**BOARD ACTION:** Klimowicz moved and it was carried to adopt Board Policies S-04-030 (Discrimination and Workplace Harassment) and S-04-031 (Drug-Free Workplace).

Vote: 6 ayes, 1 excused (Andersen)

**5. REPORT OF SECRETARY-TREASURER**

**A. Financial Report: March 2004**

The Board is in a favorable position and it was noted that as a semi-independent agency, there would be greater control of Board revenue.

**6. REPORT OF ADMINISTRATOR**

**A. Delegated Authority**

The Board reviewed the history of delegated authority in two different formats. The Administrator submitted three additional requests for delegated authority as follows:

**1. Notice of Civil Penalty for Failure to Renew Firm**

The Administrator requests authority to issue Notice of Proposed \$500 civil penalty plus late renewal fee for firms that fail to renew by January 31.

At this time the Board office mails firm registration renewal forms the last week of November. A 14-day courtesy letter is mailed after January 31. In February or March a complaint file is opened and the firm receives a complaint letter providing notice of a potential violation.

The Board does not want to issue 14-day courtesy letters any longer.

**BOARD ACTION:** Moved by Gaffney and carried to approve delegated authority to the Administrator to issue a Notice of Civil Penalty to firms who fail to renew by January 31 and to discontinue the practice of the 14-day courtesy letters.

Vote: 6 ayes, 1 excused (Andersen)

### **2. Notice of Suspension for Failure to Respond to CPE Audit**

The Administrator requests authority to issue Notice of Suspension for failure to respond to the CPE Audit.

Licensees who are selected for the CPE Audit and who do not respond to the Board office by providing documentation of the audited CPE programs are in violation of OAR 801-030-0020 and OAR 801-040-0070.

**BOARD ACTION:** Moved by Gaffney and carried to delegate authority to the administrator to issue Notice of Suspension to licensees who fail to respond to the CPE Audit.

Vote: 6 ayes, 1 excused (Andersen)

### **3. Approve and Release Uniform CPA Exam Grades**

The Administrator requests authority to approve and release CPA Examination scores to candidates.

The CBT CPA Exam eliminates many timelines associated with the traditional CPA Exam. There is no longer a deadline for submitting exam applications and candidates may schedule exam sections throughout the year. Delays in providing candidates with exam scores will have a negative impact on the candidate's ability to schedule retesting of exam sections in a timely manner.

**BOARD ACTION:** Moved by Steiger and carried to delegate authority to the administrator to approve and release scores from the CBT exam to CPA examination candidates.

Vote: 6 ayes, 1 excused (Andersen)

### **B. 2003 Budget Note – Board of Tax Practitioners**

The Legislative Fiscal office is conducting a study regarding benefits that may be gained by combining the Board of Accountancy and the Board of Tax Practitioners. This study was a budget note to the Tax Board. This study is part of a larger study reviewing semi-independence. A report will be submitted in August.

### **C. Reminder, Board Members Submit POC for all CPE Reported at Renewal**

Board members who renew their license during this renewal cycle are reminded to attach the proof of completion for each CPE course reported.

### **D. Reschedule October Board Meetings**

The NASBA meeting is being held on the same dates as the scheduled Board meeting. The meeting will be rescheduled to October 24-25, 2004 – location is undecided at this time.

#### **E. Travel Awards Audit Report**

The Board is required by DAS to report whether or not the Board or staff members earned any unreported travel awards. The Administrator reported that no awards were received or redeemed by staff or Board members during the calendar year 2003.

#### **F. Travel Authorization CLEAR Conference**

The Board authorized travel to the NASBA conference for the administrator and two board members and also for the administrator to attend the CLEAR conference.

**BOARD ACTION:** Moved by Steiger and carried to approve the travel of the administrator and two board members to attend the NASBA conference in August and approve travel of the administrator to attend the CLEAR conference.

Vote: 6 ayes, 1 excused (Andersen)

### **7. REPORT OF OAIA**

Aldrich reported that a meeting was held on May 15, 2004. The slate of officers and nominating committee was the focus of the meeting. The OAIA does not have any legislative concepts at this point. The main focus is the tri-state convention on June 24, 2004.

### **8. REPORT OF OSCPA**

McConnel reported that Ms. Rives and Mr. Morris attended the Circle of Excellence Awards night. New CPAs were inducted into the profession and scholarship awards were given. The OSCPA will have representation at the AICPA meeting and the NASBA regional meeting. The only legislative concepts for the OSCPA are the ones discussed during this meeting. The OSCPA is watching the start/stop process for tax reform. Mr. McConnel thanked the Board for its hospitality over the last year. Mr. McConnel stated that it is nice to see a regulatory board deliberating in a thoughtful manner in its mission to protect the public.

### **9. CONTINUING PROFESSIONAL EDUCATION**

#### **A. Report of CPE Committee**

##### **1. Acceptance of Minutes**

##### **a. February 18, 2004**

**BOARD ACTION:** Moved by Steiger and carried to accept the minutes of February 18, 2004.

Vote: 6 ayes, 1 excused (Andersen)

#### **B. Consent Agenda**

##### **1. Recommendations**

**BOARD ACTION:** Moved by Steiger and carried to accept the consent agenda.

Vote: 6 ayes, 1 excused (Andersen)

##### **2. Municipal Auditor Applications**

##### **a. John Risen**

COMMITTEE RECOMMENDATION: Accept; the applicant completed the requirements for the municipal audit roster, as required by OAR 801-020-0690.

##### **b. Mary Case**

COMMITTEE RECOMMENDATION: Accept; the applicant completed the requirements for the municipal audit roster, as required by OAR 801-020-0690.

**10. PEER REVIEW OVERSIGHT**

**A. Report of Peer Review Oversight Committee**

**1. Acceptance of Minutes**

**a. February 24, 2004**

**b. May 4, 2004**

**BOARD ACTION:** Steiger moved and it was carried to accept the minutes of February 24, 2004 and May 4, 2004.

Vote: 6 ayes, 1 excused (Andersen)

**B. Consent Agenda**

**1. Recommendations**

None

**11. COMPLAINTS COMMITTEE**

**A. Report of Complaints Committee**

**1. Acceptance of Minutes**

**a. April 23, 2004**

**b. May 5, 2004**

**BOARD ACTION:** Klimowicz moved and it was carried to accept the minutes of April 23, 2004 and May 5, 2004.

Vote: 6 ayes, 1 excused (Andersen)

**B. Consent Agenda**

**BOARD ACTION:** Klimowicz moved and it was carried to accept the consent agenda with the exception of items removed.

Vote: 6 ayes, 1 excused (Andersen)

**1. Complaint Investigations**

**a. Robert L. Stacy, CPA**

**1. 02-01-003**

**2. 02-06-039**

**3. 02-06-041**

**4. 02-07-048**

**5. 02-12-074**

**6. 03-03-008**

**7. 04-04-047**

**8. 04-04-052**

**9. 04-04-053**

**b. Theresa Wilcox, CPA**

**1. 02-10-064**

**2. 04-03-010**

**3. 04-03-041**

**4. 04-03-042**

**5. 04-04-048**

**6. 04-04-049**

**7. 04-04-050**

- c. **Kenneth Kuhns, CPA/Kenneth Kuhns & Co.**
  - 1. **03-10-033**
- d. **Donald J. Sherry, CPA**
  - 1. **04-01-004**
- e. **Stephen A. Larsen, CPA/Stephen Larsen, CPA, PC**
  - 1. **02-08-052**
- f. **Harry Kylo**
  - 1. **04-01-001**
  - 2. **04-05-054**

*\*Items 11.B.1.a., 11.B.1 b., 11.B.1.d. and 11.B.1.f. moved from Consent Agenda to 11.C. for discussion.*

**C. Items Removed from Consent Agenda**

- 1. a. **Robert L. Stacy**
  - 1. **02-01-003 JH**
  - 2. **02-06-039 Council**
  - 3. **02-06-041 NW**
  - 4. **02-07-048 NK**
  - 5. **02-12-074 SD**
  - 6. **03-03-008 GC**
  - 7. **04-04-047 KC**
  - 8. **04-04-052 NW**
  - 9. **04-04-053 NS**

**ALLEGED VIOLATIONS:**

**OAR 801-030-0020(1) – Professional Misconduct**

**CASE SUMMARY:**

Jack JH was billed \$600 for returns he did not receive.

CC requested that Robert L. Stacy (Stacy) prepare 1989 through 1998 income tax returns, and an amended return for 1999. Stacy stated that he prepared tax returns for 1986 through 1998. CC said she paid Stacy about \$7,000 for 1989 through 1998 income tax returns. CC did not receive an amended tax return for 1999.

NW requested that Stacy prepare a personal income tax return. NW paid Stacy \$1,447.75 for work not requested and for a tax return that was never delivered. NW picked up her records and paid a licensed tax consultant \$175 to prepare her tax return.

NK requested and Stacy prepared an offer in compromise for Internal Revenue Service. NK received a bill for \$1,432.88.

SD requested that Stacy prepare her personal and corporate income tax returns. SD said she paid Stacy \$500 for tax returns that were not delivered. Stacy's records show he received payment of \$250. SD picked up her records and prepared her own individual income tax return.

GC requested that Stacy prepare 1999 through 2002 income tax returns. Stacy billed GC \$4,400 and delivered one of the four income tax returns.

Stacy and his employee Nancy Anderson (Anderson) agreed to perform work for the complainants. Each complainant received a bill for the requested work. The complainants did not receive the work promised or any value for the fees Stacy charged.

Stacy billed each client for the requested work regardless of whether it was delivered to the client. Client accounts that were not paid were sent to a collection service.

Stacy's acts or conduct in billing clients for services that did not result in the services agreed to and billing clients for services the client did not request indicate a pattern of conduct that would cause a reasonable person to have substantial doubts about Stacy's honesty, fairness and respect for the rights of others.

**INVESTIGATOR RECOMMENDATION(S):**

OAR 801-030-0020(1) – Professional Misconduct

Violation of Professional Misconduct

Civil Penalty of \$5,000 each

(\$5,000 x 6):

\$30,000

**COMMITTEE DISCUSSION:** Robert Stacy was present at the meeting to respond to questions.

Stacy stated the key issue is whether or not he is fair to his clients. He believes he is. He relies on PPC's guide to managing an accounting practice and stated that he follows the recommendations of the standard hourly rate for chargeable amounts. He offered several examples how he felt he demonstrated fairness and honesty. He warrants the work he performs.

Stacy stated that some of the work prepared for SD involved consulting and tax research and was not evidenced by a work product.

The Committee asked Stacy if his practice was focused to higher risk clientele. Stacy replied that he has a department that works with clients in arrears or collections with the IRS. He felt SD was not high-risk. Stacy claimed he remained professional during the course of the relationship. The Committee asked what percent of Stacy's clients are delinquent or having payment problems with the IRS. Stacy believed it to be 25% and 75% traditional clients. Stacy felt that each of the complaints before the Committee was traditional except for one.

Stacy reported that NK settled with the seller and that Stacy asked for a copy of the settlement document. It was a stipulated agreement, where NK acknowledged that he willfully and fraudulently misled the seller. Stacy has a copy of that agreement and stated that if he had known this, he would not have accepted the job.

Stacy stated that he charges a retainer of \$300. Nancy Anderson, an enrolled agent, meets with the client initially and has been working in that capacity for thirty years. She is familiar with the IRS. She prepares federal and state powers of attorney. She orders transcripts of statement of accounts of clients. The response time to the client is dependent upon the IRS, and the clients are kept informed. Once the IRS provides the required documents, Stacy meets with the client and develops a work plan.

The Committee asked Stacy what generated these complaints. Stacy replied there was no common thread. The clients were slow payers. There were agreements, either verbal or written about the charges. When it became evident the clients were not willing

to resolve the billing disputes, Stacy referred the accounts for collection. When he became aware of the complaints, he stopped referring the accounts because he wanted to resolve the complaints first. To try and minimize complaints, he took a three-day course in representing tax clients. He developed a document, disclosure of estimated fees. He has his client review and sign it before initiating professional services. He cannot always determine what services will ultimately be rendered until all information is complete. The retainer covers the majority of his fees. The Committee asked if Stacy has ever used binding arbitration. Stacy replied that his attorney advised him to take his clients to court and did not want to use arbitration.

A seventh complaint was added to the agenda as an addition and is similar in nature to the other six. The Committee discussed how these complaints may have been avoided. A compromise may have helped prevent complaints. The client could be solicited to pay what he or she thought was fair and if no resolution could be made, Stacy might consider writing off the account. It may have been wiser to waive the fee rather than undergo the complaint process.

Stacy left the meeting at 11:30.

The investigator recommends civil penalties of \$5,000 per case, a total of \$35,000. The Committee suggested the conduct may have been bad management or unethical. If Stacy billed clients for services which were not performed or not requested, then it may become a professional misconduct issue. There is evidence of a disconnect between client and CPA. Although a CPA cannot deny a client what they need, it is not mandatory in rule that unfinished or unfiled returns be provided. There may be some billing disputes, and there is nothing in rule about billing practices. Multiple fee disputes could indicate an underlying problem. Stacy charged clients for explaining his billing practices. The Committee believed it is dishonest not to disclose those charges in the engagement letter. Censure and CPE were discussed as options. The investigator offered to conduct further research to provide specific examples of conduct that demonstrates lack of fairness or honesty and bring it back to the Committee for further review.

#### COMMITTEE RECOMMENDATION(S):

Defer the case until further research is conducted by the investigator to provide specific examples of conduct that reflects professional misconduct.

**Board Discussion:** *Stacy was present at the meeting and stated his position in a memo to the Board, which was provided to the members. He stated the complaint is a difficult one for him to respond to. He stated he has cooperated with the investigator and the Board and that he has strived to resolve the issues. Stacy explained processes he has initiated in his practice to avoid these types of complaints. He uses an engagement letter and keeps it separate from the billing information. He believes many of these issues resulted from using a collection agency and he did not use this to put clients under duress, but to assist them by providing an intermediary. Arbitration is included in the collection service agreement. He felt the type of client base he maintains has an impact because many of the people he serves are in arrears and are predisposed to be adversarial, 30% of which are delinquent. Tax authorities refuse to discuss the clients' returns unless they are in compliance; he, therefore must file the returns before this communication can occur. He negotiates for extensions, which is time-consuming and sometimes he feels he must make a judgment call to file the extension, which he estimates has a 50% approval rate. He now requires a retainer of 50% before he accepts an*

*engagement. He has hired additional staff. He withdrew approximately fifty accounts from the collection agency to prevent similar complaints. He stated that there is an agreement that the collection agency will not report to credit bureaus without his permission to do so to prevent financial harm to clients. He has changed his advertisement. He explained that he delivered work that never was paid. If clients request that he stop working for them, he asks the clients to pay the balance incurred on an hourly rate. Stacy stated that the nature of his work is to reach resolution, not to create additional problems for his clients. He negotiates offers in compromise and in general, 15% of the offers submitted are processable. He has not had the opportunity to respond to the two most recent complaints. Stacy left the meeting at 9:39 a.m.*

*The Committee felt it could be argued that Stacy accepted engagements from clients who had no monetary resources and were already in arrears. Stacy seems to have worked towards improving his practice to avoid the pitfalls of these complaints. On the other hand, nine complaints would seem to indicate that there is an underlying problem. The Board suggested that more work is required on each case to determine specific examples. On the surface, it appears Stacy handled his practice poorly and might benefit from CPE in practice management. Klimowicz and Kitterman will re-visit these cases for additional findings. The Board noted that CPAs with this type of client base are needed in the profession, although it is not always the most desirable work. Legal Counsel suggested the Board may want to consider a letter of concern and require additional CPE. The Board felt it important to include the two most recent complaints before the case could be considered as a whole.*

**BOARD ACTION:** The Board directed Klimowicz and Kitterman to conduct further research and provide the Complaints Committee with a revised recommendation at the Committee's meeting in June.

**1. b. Theresa Wilcox, CPA**

- 1. 02-10-064 JB**
- 2. 04-03-010 HC**
- 3. 04-03-041 Soccer Club**
- 4. 04-03-042 RM**
- 5. 04-04-048 JS**
- 6. 04-04-049 KE**
- 7. 04-04-050 JW**

**ALLEGED VIOLATIONS:**

ORS 673.170(2)(b) – Dishonesty, fraud or gross negligence in the practice of public accountancy.

ORS 673.170(2)(c)(A) – Lack of ability or fitness.

ORS 673.320(3) – Permit required

OAR 801-030-0010(1) – Competence

OAR 801-030-0015(2) – Client records and working papers

OAR 801-030-0020(7) – Board communications and investigations

OAR 801-030-0020(1)(a) and (b) – Professional misconduct

**CASE SUMMARY:**

The Board received seven complaints against Theresa Wilcox (Wilcox). The complaints include allegations of misappropriation of funds, failure to complete the work, failure to return records and professional misconduct.

Wilcox either misappropriated funds or grossly misrepresented funds available to Soccer Club. Wilcox reported to Soccer Club that the organization has approximately \$30,000 to \$50,000 in a checking account and a money market account. Soccer Club subsequently determined that the checking account balance was about \$500 and the money market account appears to be non-existent.

Wilcox either misappropriated funds or was grossly negligent in paying bills for RM. Nursing home and pharmacy bills remain unpaid. Records for RM have not been given to the executor of the estate and missing funds have not been accounted for.

Wilcox engaged in the following conduct:

1. Failed to perform services that JB, HC, RM, Soccer Club, JS, JW KE relied upon her professional knowledge to complete;
2. Breach of fiduciary responsibility by failure to accurately account for funds placed in her trust by HC, Soccer Club and RM;
3. Converted Soccer Club and RM funds for her personal use; and
4. Failed to meet appropriate reporting requirements or to make payments on behalf of HC, Soccer Club, RM, JB, JS and KE.

Wilcox held out as a certified public accountant after permit 7262 lapsed on July 1, 2002. Wilcox admits that she used the title "certified public accountant" or the abbreviation "CPA" during the five months that her license was lapsed.

Between the years 2000 and 2003, Wilcox undertook engagements for the performance of professional services for HC, Soccer Club, RM, JB, JS and KE, which she could not reasonably expect to complete and did not complete with due professional competence as follows:

Internal Revenue Service, Department of Revenue and Idaho Department of Labor payroll reports for JB and HC were either not filed timely or were never filed. Payroll tax deposits were not made. Employee payroll withholding and Oregon Health Plan payments were not paid for Soccer Club.

Wilcox did not prepare financial statements or financial reports for HC, Soccer Club or RM as agreed or as required. The last financial statement issued for HC overstated inventory.

Tax returns for KE and JS were prepared only after the client sent Wilcox a letter (that was copied to the Board) with a deadline for Wilcox to comply with their request. Wilcox never prepared amended tax returns for JW.

Wilcox failed to furnish clients or former clients with accounting or other records belonging to or obtained from or on behalf of the client the licensee received for the client's account or removed from the client's premises as follows:

HC requested accounting records from Wilcox. When Wilcox failed or refused to return records, HC incurred attorney costs to write demand letters to Wilcox for records. Wilcox did not return bank records, which forced HC to obtain duplicates from their bank. HC hired a new CPA to comply with payroll tax reporting requirements which they previously paid Wilcox to complete.

Soccer Club requested documents from Wilcox to locate a \$35,000 money market account that Wilcox described and to date this account has not been identified. Expected Soccer Club field improvements and equipment purchases cannot be made due to lack of funds.

The executor of the RM estate requested records from Wilcox. When the executor did not receive the requested records, he hired an attorney to serve Wilcox with a demand letter. Wilcox did not provide the executor with records after the demand letter, causing the executor to subpoena Wilcox to a deposition. RM debts to the nursing home and the pharmacy remain outstanding until the executor can verify payments made by Wilcox.

Wilcox did not return client records to KE, JS or JW until a demand was made by the client, with a copy to the Board. KE and JS did not receive their tax returns until after the October 15, 2003 filing deadline.

Wilcox's conduct described below reflects adversely on her fitness to practice public accountancy:

Wilcox either misappropriated funds or grossly misrepresented funds available to RM and Soccer Club.

Wilcox failed to respond to requests and to perform work she agreed to do which caused clients to incur penalties and interest. Failure to return client records and to perform accounting and tax services would cause a reasonable person to have substantial doubts about Wilcox's honesty, fairness and respect for the rights of others or for the laws of the state and the nation.

Wilcox did not return client documents to HC, Soccer Club or the executor of RM's estate. Wilcox failed to timely prepare payroll reports, tax returns, or to pay payroll taxes, Oregon Health Plan, nursing home and pharmacy bills.

Wilcox did not return phone calls to KE, JS or JW.

The Board mailed letters to Wilcox requesting a written response to the allegations of the complaints filed with the Board as follows:

<u>Complainant</u>	<u>Date of Letter</u>
JB	October 14, 2002
HC	March 5, 2004
Soccer Club	March 24, 2004
RM	March 25, 2004
JW, KE and JS	April 2, 2004

Wilcox failed to respond to any written request. Wilcox is in violation of the requirements to respond to Board communications.

Wilcox did not cooperate with the Board during this investigation, and did not respond to any Board communication.

**2. a. 02-10-064 – JB**

**ALLEGED VIOLATIONS:**

ORS 673.170(2)(c)(A) – Lack of ability or fitness

OAR 801-030-0010(1) – Competence

JB hired Theresa Wilcox to provide payroll services for their business. JB received late notices from Internal Revenue Service (IRS), Department of Revenue (DOR) and Idaho Department of Labor (DOL). JB left phone messages for Wilcox. Wilcox did not return calls to JB.

**2. b. 04-03-010 – HC**

ALLEGED VIOLATIONS:

ORS 673.170(2)(c)(A) – Lack of ability or fitness

OAR 801-030-0010(1) – Competence

OAR 801-030-0015(2) – Client records and working papers

Wilcox served on the Board of Trustees (Board) for HC and provided accounting and tax compliance services for seven years. Wilcox resigned from the Board in June 2003. The Board requested that Wilcox return accounting and tax records to HC. Wilcox did not comply with this request.

**2. c. 04-03-041 – Soccer Club**

ALLEGED VIOLATIONS:

ORS 673.170(2)(b) – Dishonesty, fraud or gross negligence

ORS 673.170(2)(c)(A) – Lack of ability or fitness

OAR 801-030-0010(1) – Competence

OAR 801-030-0015(2) – Client records and working papers

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

Wilcox volunteered in 1995 to serve as treasurer for Soccer Club. As treasurer, Wilcox was responsible for Soccer Club's accounting and tax reporting. Successor LB is unable to account for approximately \$30,000 to \$50,000 of Soccer Club funds while Wilcox served as treasurer.

**2. d. 04-03-042 – RM**

ALLEGED VIOLATIONS:

ORS 673.170(2)(b) – Dishonesty, fraud or gross negligence in the practice of public accountancy

OAR 801-030-0010(1) – Competence

OAR 801-030-0015(2) – Client records and working papers

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

Wilcox obtained a power of attorney to provide financial assistance to RM. RS was appointed executor of the estate when RM passed away. RS discovered that large withdrawals of funds occurred from time to time while Wilcox held the power of attorney. RS requested that Wilcox provide him with RM's financial records. Wilcox did not give RM's financial records to RS as requested.

**2. e. 04-04-048 JS**

**f. 04-04-049 KE**

**g. 04-04-050 JW**

ALLEGED VIOLATIONS:

ORS 673.170(2)(b) – Dishonesty, fraud or gross negligence in the practice of public accountancy

OAR 801-030-0010(1) – Competence

OAR 801-030-0015(2) – Client records and working papers

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

JW, KE, and JS (complainants) were Wilcox's tax clients. Wilcox did not return phone calls to complainants who were concerned about their respective tax returns.

JS delivered documents to Wilcox who agreed to prepare a 2002 income tax return. JS made several attempts to contact Wilcox. Wilcox did not return JS's calls. JS requested that the original documents and/or tax return be delivered to her within five days from the date of the notice. A copy was faxed to the Board. Wilcox delivered both the original documents and tax return to JS. Wilcox faxed a note to the Board to document compliance with JS's request.

KE delivered documents to Wilcox who agreed to prepare a 2002 income tax return. KE left telephone messages requesting that Wilcox return her calls. Wilcox did not return KE's calls. KE requested that Wilcox return all the original documents, with a copy directed to the Board. KE called the Board and stated that Wilcox returned all KE's original documents and a completed 2002 income tax return.

JW delivered documents to Wilcox who agreed to prepare amended tax returns for 1987 through 1991. JW did not receive the amended tax returns from Wilcox. JW left several telephone messages requesting that Wilcox return the calls. Wilcox did not return JW's calls. JW requested that Wilcox return all documents to her. JW sent a co-worker to Wilcox's office to pick up the documents. Wilcox gave the co-worker JW's original documents. JW stated that the documents appeared to be "untouched".

INVESTIGATOR RECOMMENDATION(S):

ORS 673.170(2)(b) – Dishonesty, fraud or gross negligence  
in the practice of public accounting (Soccer Club, RM)

ORS 673.170(2)(c)(A) – Lack of ability or fitness (JB, HC, RM, Soccer Club, JS, JW, KE)  
OAR 801-030-0020(1)(a) and (b) – Professional misconduct (RM, Soccer Club, KE, JS, JW)

Revocation for professional misconduct:

REVOCATION

OAR 673.320(3) – Permit required

Civil penalty for holding out as a Certified  
Public Accountant while permit was lapsed  
(\$250 x 5 months):

\$1,250

OAR 801-030-0010(1) – Competence (JB, Soccer Club, HC, RM, JW, JS, KE)  
Responsibilities to Clients

\$5,000 civil penalty each for undertaking engagements  
for the performance of professional services which  
Wilcox could not reasonably expect to complete with  
due professional competence (3 at \$5,000):

\$15,000

OAR 801-030-0015(2) – Client records and working papers  
(b) Requested records (HC, Soccer Club, RM, KE, JS, JW)

\$5,000 civil penalty each for failing to provide requested  
client records (7 at \$5,000):

\$35,000

ORAR 801-030-0020(7) – Board communications and investigations (JB, HC, Soccer Club, RM, JW, KE, JS)  
\$1,000 civil penalty each for failure to respond to Board communications (7 at \$1,000): \$ 7,000

SUMMARY OF INVESTIGATOR RECOMMENDATIONS:

Total Civil Penalties: REVOCAATION  
\$58,250

COMMITTEE DISCUSSION: The investigator reported that Wilcox was subpoenaed to appear at a deposition on Monday, April 19 regarding the RM complaint. She did not appear. Wilcox has been given until May 5 to provide records and answer questions in response to the subpoena.

Wilcox is not currently in public practice. She sold her practice to a local CPA and is now working for Eastwood Homes, a construction company located in Grants Pass. Evidence indicates misappropriation of funds from several clients. Misappropriated funds were used to purchase a new vehicle, an office building, extensive travel and real estate in Rogue River.

COMMITTEE RECOMMENDATION(S):

Accept the investigator's recommendations of revocation and civil penalties of \$58,250.

**Board Discussion:** *The Board discussed enforcement through liens. Wilcox appears to have paid off some assets, although there is no concrete evidence. The investigator has not talked to her tenant yet. Wilcox is her tenant's controller and might be embezzling there as well. Wilcox has failed to respond to Board requests and communications. She maintains that her records are in storage and cannot be accessed. She makes no comments, reasons or excuses for her behavior.*

**MOTION:** Steiger moved and it was carried to accept the investigator's recommendation of revocation and civil penalties of \$58,250. Further, turn the Board's investigation records over to the appropriate law enforcement authorities. Upon final order by default, send copy of notice to complainants and Wilcox's current employer of Board action, publish and file a lien against real property held in Wilcox name.

**Further Board Discussion:** *The civil penalty is insufficient. An additional civil penalty should be assessed for dishonesty and fraud, which is particularly egregious. An additional civil penalty of \$200,000 was suggested (\$5,000 for each of 40 checks embezzled).*

**BOARD ACTION:** Klimowicz moved and it was carried to amend the first motion to include the assessment of civil penalties of \$200,000 in addition to the recommended \$58,250 as follows:

ORS 673.170(2)(b) – Dishonesty, fraud or gross negligence  
in the practice of public accounting (Soccer Club, RM)  
ORS 673.170(2)(c)(A) – Lack of ability or fitness (JB,  
HC, RM, Soccer Club, JS, JW, KE)  
ORAR 801-030-0020(1)(a) and (b) – Professional misconduct  
(RM, Soccer Club, KE, JS, JW)  
Revocation for professional misconduct:

REVOCAATION

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Civil Penalties (\$5,000 for each embezzled check) \$5,000 x 40 checks:	\$200,000
OAR 673.320(3) – Permit required Civil penalty for holding out as a Certified Public Accountant while permit was lapsed (\$250 x 5 months):	\$1,250
OAR 801-030-0010(1) – Competence (JB, Soccer Club, HC, RM, JW, JS, KE) Responsibilities to Clients \$5,000 civil penalty each for undertaking engagements for the performance of professional services which Wilcox could not reasonably expect to complete with due professional competence (3 at \$5,000):	\$15,000
OAR 801-030-0015(2) – Client records and working papers (b) Requested records (HC, Soccer Club, RM, KE, JS, JW) \$5,000 civil penalty each for failing to provide requested client records (7 at \$5,000):	\$35,000
OAR 801-030-0020(7) – Board communications and investigations (JB, HC, Soccer Club, RM, JW, KE, JS) \$1,000 civil penalty each for failure to respond to Board communications (7 at \$1,000):	<u>\$ 7,000</u>

SUMMARY OF INVESTIGATOR RECOMMENDATIONS:

Total Civil Penalties:  
Vote: 6 ayes, 1 excused (Andersen)

REVOCATION  
\$258,250

**1. d. Donald J. Sherry, CPA**

1. 02-10-064
2. 04-03-010
3. 04-03-041
4. 04-03-042
5. 04-04-048
6. 04-04-049
7. 04-04-050

*Board Discussion: Sherry requested the Board to reschedule discussion of this case because he was unable to attend. He stated he was in disagreement with the minutes of the April 23, 2004 Complaints Committee.*

**BOARD ACTION:** The case is deferred, allowing Sherry an opportunity to address the specific areas of the minutes with which he disagrees.

**1. f. Harry Kylo**

**1. 04-01-001 RM, DJ, LB**

**2. 04-05-054 JC (not reviewed by the Committee)**

**ALLEGED VIOLATIONS:**

ORS 673.170(2)(b) – Dishonesty, fraud or gross negligence in the practice of public accountancy.

ORS 673.170(2)(c) – Incompetence in the practice of public accountancy

OAR 801-030-0020(8)(b)(B) – Respond fully and truthfully to inquiries from and comply with all Board requests

ORS 673.170(2)(n) – Disciplinary actions; grounds

**CASE SUMMARY:**

RM, DJ and LB received notices from Internal Revenue Service (IRS) and/or Department of Revenue (DOR) which stated that tax returns were not filed and estimated tax payments were not made. DJ reviewed his bank account and discovered checks issued to taxing authorities did not clear. RM and LB reviewed checks issued for tax liabilities and discovered that checks were endorsed by and deposited to Harry Kylo (Kyllo).

Kyllo was dishonest, grossly negligent or incompetent when Kyllo failed to deliver signed tax returns and tax payments to taxing authorities for RM, DJ and LB. Kyllo represented to RM, DJ and LB that he would deliver the tax returns and tax payments as promised. RM, DJ and LB relied upon and trusted Kyllo as a Certified Public Accountant to fulfill that commitment.

Kyllo misrepresented to the Board that he had not misappropriated any client funds or property other than the St. Pierre funds described in Notice N-02-056. Kyllo misappropriated funds from RM and LB during the time period the Board negotiated a consent order with Kyllo.

Kyllo claims he made payments from his business account to taxing authorities for tax liabilities due for RM and LB. Kyllo does not have copies of cancelled checks to prove this claim.

If clients and the Board cannot rely on statements made by Kyllo, or made by Kyllo's attorney while negotiating a consent order, then the Board has no assurance that Kyllo will act honestly with clients.

Kyllo made false representations to the Board in the St. Pierre complaint for his own benefit. Kyllo's conduct was self serving and may have changed the ultimate conclusion determined by the Board to settle the case.

**INVESTIGATOR RECOMMENDATION(S):**

The Board revoked Kyllo's license on September 30, 2003. The Board does not have sufficient resources to continue investigations regarding clients who may have lost money due to Kyllo's scheme.

Report information pertaining to misappropriated funds to Portland Police for further investigation and prosecution.

COMMITTEE DISCUSSION: Kylo sold 533 client records to Rostad and English. DOR reported that 185 of the clients sold by Kylo have one or more unfiled tax returns for tax years 1999 through 2002. These clients could be potential victims of Kylo's scam.

COMMITTEE RECOMMENDATION(S):

Amend the investigator's recommendation to impose civil penalties of \$5,000 for each violation found, for a total civil penalty of \$140,000.

**Board Discussion:** *Kylo violated the terms of a consent order, which included a stayed civil penalty. The Board believed an order should now be issued lifting the stay and that the case be referred to the police. Legal Counsel advised the Board to initiate action against Kylo to preserve its options and suggested that restitution would probably be included in any criminal sentence imposed. OSCPA inquired if the Board routinely informs AICPA of the results of such complaints. The Board does not routinely forward this information to AICPA.*

**BOARD ACTION:** Steiger moved and it was carried to lift the stay on the civil penalty of \$25,000, rendering it payable immediately. Further, refer the file to the appropriate enforcement authority. Vote: 6 ayes; 1 excused (Andersen)

**D. Old Business**

**1. Jerold Eugene Egner**

**a. 03-10-036**

ALLEGED VIOLATIONS:

ORS 673.320(3) – Permit or registration required

OAR 801-030-0020(9)(a) – Business transactions with clients

OAR 801-030-0020(1)(a) and (b) – Professional misconduct

CASE SUMMARY:

This complaint case was presented to the Complaints Committee at the January 30, 2004 meeting and presented to the Board at the February 17, 2004 meeting. Legal Counsel requested the Board to postpone action on the case pending further review.

Jerold Eugene Egner (Egner) prepared income tax returns for individuals after his license lapsed. In 2002, Egner borrowed money from a client, RW. RW filed a complaint when Egner failed to repay the borrowed funds.

Egner held out as a certified public accountant when he used permit 1870 on tax returns prepared after 1992. Egner did not disclose to RW that he has not held an active CPA permit since 1992, and that he is not currently licensed to practice as a CPA. RW believed that Egner was licensed as a Certified Public Accountant and believed Egner was qualified to prepare his individual income tax returns.

The personal loan of \$7,500 from RW to Egner was evidenced by a promissory note stating the terms of repayment. The promissory note did not state that Egner would not be bound by the Professional Code of Conduct for CPAs, or that Egner may place his own interests above those of RW regarding payment of the promissory note. It is reasonable to assume that RW would believe that Egner would exercise professional judgment with regard to the terms of the promissory note. The

note did not fully disclose the conflict of interest existing because RW was Egner's client and Egner owed him money, thereby jeopardizing the professional relationship.

The promissory note, standing alone, was not sufficient to provide the disclosure that the CPA and the client have differing interests which may present a conflict with regard to payment of the promissory note.

Egner did not pay the promissory note when the real property was sold, as agreed. Failure to pay the note according to its terms is a breach of contract which demonstrates a disregard for the rights of RW, the holder of the promissory note. RW loaned the funds to Egner in good faith, fully expecting that Egner would honor the promissory note. Egner's failure to pay the money to RW as promised would cause a reasonable person to have substantial doubts about Egner's honesty, fairness and respect for the rights of others.

INVESTIGATOR RECOMMENDATION(S):

ORS 673.320(3) – Permit or registration required

For the use of the designation "certified public accountant,  
CPA or permit 1870":

7 years at \$1,000 each: \$ 7,000

3 years at \$5,000 each: 15,000

OAR 801-030-0020(1)(a) and (b) – Professional misconduct

For failure to respect the rights of others: 5,000

OAR 801-030-0020(9)(a) – Business transactions with clients

Failure of full disclosure in writing of differing interests: 5,000

Total Civil Penalties: \$32,000

COMMITTEE DISCUSSION: The administrator noted that this is the first case in which this violation has been alleged. It is a new rule that requires full disclosure in writing.

The number of tax returns prepared while holding out is uncertain. The matter could be deferred to the Tax Board. Licensee does not hold a Licensed Tax Preparer permit.

The licensee is bankrupt. The Board could revoke his license for failure to pay the civil penalty. Licensee is lapsed.

The Committee suggested an article in the Board newsletter, emphasizing the differences between license statuses. It might be beneficial to those licensees who prepare tax returns while in lapsed status.

COMMITTEE RECOMMENDATION(S):

Accept the investigator's recommendation to assess total civil penalties of \$32,000.

**Board Discussion:** Legal Counsel wanted an opportunity to look at earlier cases to determine what the Board's position has been in the past on the imposition of civil penalties based on similar violations.

**BOARD ACTION:** Steiger moved and it was carried to amend the Committee's recommendation as follows: Assess total civil penalties of \$32,000 and revoke licensee's certificate and permit to practice public accountancy.

**12. LEGAL**

**A. Report of Legal Items**

See Item 3.B.(1-3)

**B. Other**

**1. DOJ and Hearing Fees, 2003-05**

For information.

**13. QUALIFICATIONS COMMITTEE**

**A. Report of Qualifications Committee**

**1. Acceptance of Minutes**

**a. April 21, 2004**

**BOARD ACTION:** Moved by Bailey and carried to approve the minutes as written for the April 21, 2004 Qualifications Committee.

Vote: 6 ayes, 1 excused (Andersen)

**B. Consent Agenda**

**BOARD ACTION:** Moved by Bailey and carried to approve the consent agenda with the removal of Patrick LB.

Vote: 6 ayes, 1 excused (Andersen)

**1. Recommendations**

**\*a. Patrick Brown**

**04-02-0002**

Mr. Brown gained experience with the following employer:

Regence Blue Cross      55 mos.      Equiv. Experience

Mr. Brown passed the CPA Examination in May 2000. Mr. Emery reviewed the application and supporting documentation and reported that the supervisor licensee provided sufficient information to recommend approval. The applicant's supervisor was on inactive status from July 1998 through June 2000, however, the applicant has ample experience.

The committee recommends approval, however, would like to ask the Board to discuss the question of continued active license status for supervisor licensees.

COMMITTEE RECOMMENDATION: Approve

**b. James Fortner**

**04-02-0004**

Mr. Fortner gained experience with the following employer:

Premier JW Bank      36.5 mos.      Equiv. Experience

Mr. Fortner passed the CPA Examination in May 1999. Mr. Fortner has worked in the banking industry for twelve years. The reviewer reported that the evaluation worksheets and backup were very thorough and recommends approval.

COMMITTEE RECOMMENDATION: Approve.

**c. Kevin Ness 04-02-0001**

Mr. Ness gained experience with the following employers:

Fog Cutter Capital	47.5 mos.	Equiv. Experience
Mackey Porth & Co	Short Employment Period	

Mr. Ness passed the CPA Examination in May 2002. Mr. Ness works as a Senior Financial Accountant at Fog Cutter Capital. Ms. Simpson reviewed the file and recommends approval.

COMMITTEE RECOMMENDATION: Approve.

**d. LaVern Wilson 04-02-0003**

Ms. Wilson gained experience with the following employers:

Scoville & Reiber PC	34.5 mos.	Competency A & B
Frontier Resources	40 mos.	Equiv. Experience

Ms. Wilson passed the CPA Examination in May 2000. Ms. Wilson worked for a public accounting firm for 34.5 months where she performed basic accounting skills such as bookkeeping and simple tax preparation. She then went to work for Frontier Resources where she gained the competencies needed for certification. The reviewer recommends approval.

COMMITTEE RECOMMENDATION: Approve.

**2. Other**

None

**3. Approval of Applications**

**a. CPA Certificates/Permits**

69 Certificates

**b. PA Licenses/Permits**

None

**c. Firm Registrations**

21 registrations

**d. Substantial Equivalency Authorizations**

*\*Items moved to 13.C. for discussion*

**C. Items Removed from Consent Agenda**

**1. Patrick Brown**

Patrick Brown's file was removed because the committee wanted the Board to discuss the requirement of active status for supervisor licensees. The Board discussed clarifying the administrative rules to indicate that a supervisor licensee must hold an active license for five consecutive years and that active status may not be interrupted during that time. The Board voted to amend Division 010 to clarify.

**BOARD ACTION:** Moved by Klimowicz and carried to approve Patrick Brown's application.

Vote: 6 ayes, 1 excused (Andersen)

**14. CPA EXAM**

**A. Memo – David Costello**

The Board reviewed a letter from NASBA regarding the processing fee for candidates who do not provide social security numbers. It was proposed that candidates would be charged

\$67.50 if they did not provide their social security number; however Ms. Rives negotiated the contract with NASBA to avoid this cost by implementing a \$3.00 fee to every candidate who applies for the exam.

#### **B. Pao – Shan Hou**

Ms. Hou applied for the CPA examination and reported that she had not previously sat for the examination. When the candidate information was entered into the NASBA Gateway system, it reported that she was previously a Delaware candidate. The Board requested that staff obtain further information on this candidate to determine if she did in fact sit, or just applied. Staff will contact the candidate and Delaware.

#### **C. South Dakota Letter**

The Board reviewed a letter sent from South Dakota to NASBA regarding the \$67.50 charge for not providing candidate social security numbers. It is the position of the South Dakota Board to pay the fee rather than candidates when and if NASBA provides a compelling argument to support the charge.

#### **D. CBT Exam Section Statistics**

NASBA provided information regarding the number of exam sections scheduled at each Oregon Prometric testing center.

#### **E. Prometric Holidays**

Information only on days that the testing centers will be closed.

#### **F. CBT Application Statistics**

Statistics are sent each week to NASBA regarding the status of examination candidates in Oregon.

#### **G. Exam Revenue Projections**

Projected revenue for the CBT exam will be less than total collected under the traditional examination.

#### **H. Education Statistics**

A report of accounting degrees earned and the university attended was provided for information only.

#### **I. Candidate Cheating and Misconduct Policy**

Oregon Administrative Rules adopt the candidate cheating and misconduct policy, the Board received the revised policy for CBT.

**BOARD ACTION:** Moved by Steiger and carried to accept the candidate cheating and misconduct policy.

Vote: 6 ayes, 1 excused (Andersen)

### **15. INDEPENDENCE COMMITTEE**

#### **A. Acceptance of Minutes, April 30, 2004**

Steiger reported there are some corrections to the minutes as follows: Alan Steiger is listed as a "member". Correct his position to "Board Liaison". In the "Preliminary

Business” section, Item C “Committee Terms”: Correct member terms to reflect 2 and 3-year staggered terms. In the “Committee Functions” section, Item E, the scope will be broader and the Committee wished not to limit itself to the AICPA interpretations. In “Meeting Schedule and Format”, Item F, note the last meeting is scheduled in November, at which time recommendations will be prepared to be presented to the Board.

**16. OLD BUSINESS**

**A. Jim Pike Co., PA**

The Board reviewed Mr. Pike’s annual report of his Ontario operations.

**B. “Of Counsel” Designation**

The Board discussed this concept previously and the policy reflects their discussion.

**Board Discussion:** Include “*continuing professional relationship*” in policy verbiage.

**BOARD ACTION:** Moved by Steiger and carried to accept as revised.

Vote: 6 ayes, 1 excused (Andersen)

**17. NEW BUSINESS**

None

**18. PROCESS OBSERVER REPORT**

Gaffney reported that Chair Morris kept us on track. Mr. Gaffney commended Ms. Meisner for her input and added that she will make a great new member. Mr. Gaffney also thanked Mr. Aldrich for the photos taken at dinner on Sunday evening.

**19. NEXT MEETING**

Date: August 23, 2004  
Location: Board of Accountancy  
3218 Pringle Road SE #110  
Salem OR 97302  
Time: 8:00 a.m.

**20. ADJOURNED**

There being no further business, the meeting adjourned at 3:20 p.m.