

**MINUTES OF THE KANSAS BOARD OF ACCOUNTANCY
JANUARY 19, 2007
9:00 AM, LANDON STATE OFFICE BUILDING, ROOM 106
TOPEKA, KS**

1. ADMINISTRATIVE MATTERS:

A. CALL TO ORDER:

Adley Johnson, CPA, Chair, called the meeting to order. Board members in attendance were Mr. Johnson; Paul Allen, CPA; Jeff Bottenberg, Public Member; Patricia O'Sullivan, Public Member; Ginger Powell, CPA; and Rodney Van Norden, CPA. Also in attendance were Susan Somers, Executive Director; Mary Feighny, Assistant Attorney General, General Counsel to the Board; Derenda Mitchell, Assistant Attorney General, Disciplinary Counsel to the Board; Victor Barbo, CPA and Joyce Schartz, Public Accountants Association; and Tony Scott, Kansas Society of CPAs.

B. 1-2 CONSENT CALENDAR:

The Board reviewed the minutes of the December 8, 2006 meeting; reciprocity certificates/permits to practice/ practice by notification; firms; and the December 31, 2006 financials. Ms. O'Sullivan moved and Mr. Van Norden seconded to approve. Upon a vote, the motion carried.

2. CPA EXAM:

A. The Board reviewed the grades from the October/November 2006 testing window previously approved by Ms. Powell.

B. After review of the grades, Mr. Van Norden moved and Mr. Allen seconded to ratify the approval of the grades. Upon a vote, the motion carried.

3. CPE/PERMIT TO PRACTICE/PEER REVIEW/FIRM REGISTRATIONS:

A. The Board reviewed a list of Peer Reviews due and "in process". Mr. Bottenberg moved and Ms. O'Sullivan seconded that any firm or individual who did not comply with their Peer Review due date would be issued a Summary Order of Suspension of firm registration and/or permit (whichever is applicable), imposing a \$250 fine (or in the case of repeat violations, double the previous fine) with the suspension being stayed for thirty days from the date of issuance of the Summary Order, provided the fine was paid and a Peer Review letter of completion or "in process" letter was provided to the Board. Upon a vote, the motion carried.

B. The Board reviewed a list of firms who had not registered with the Board by the December 31, 2006 due date. Ms. Powell moved and Ms. O'Sullivan seconded to issue a Cease and Desist Order to those firms who had not registered by January 31, 2007 informing them that in order to register their firm, they would have to pay the late fee of \$60.00, appear before the Board, and pay a fine to be determined by the Board and that the fine may not be paid by credit card. Upon a vote, the motion carried.

C. The Board reviewed an application for certificate by reciprocity and a permit to practice for Janet Wilkenson. Ms. Somers had brought this before the Board for the reason that the person verifying the experience had a previous felony conviction against him for bank fraud, and that the Colorado Board of Accountancy had placed certain conditions upon his permit to practice. Because of the unusual circumstances surrounding the verifying CPA, although he had a current permit to practice, she felt it necessary to bring it to the Board's attention. After discussion, Mr. Bottenberg moved and Ms. O'Sullivan seconded to approve the application for certificate and permit. Upon a vote, the motion carried.

4. LEGISLATIVE MATTERS:

A. The Board reviewed the proposed legislation for the 2007 legislative session. After discussion, the Board decided to strike the new legislation which would impose a statute of limitations on matters for discipline. Mr. Allen indicated that he would call Representative Brunk, who is the Chair of the House Commerce and Labor Committee to determine the procedure that should be followed in presenting the proposed legislation to the Committee. Upon motion of Ms. Powell and seconded by Mr. Van Norden, the Board approved the proposed legislation and requested that it be presented to the legislature. Upon a vote, the motion carried.

5. REGULATION MATTERS:

AT 9:30 AM, UPON MOTION OF MS. POWELL, SECONDED BY MR. VAN NORDEN, THE REGULAR MEETING WAS RECESSED IN ORDER TO HOLD A PUBLIC HEARING ON REGULATION CHANGES. UPON A VOTE, THE MOTION CARRIED.

Mr. Johnson convened the public hearing to consider amendments to K.A.R. 74-4-1a; 74-5-2; 74-5-101; 74-5-105; 74-5-202; 74-5-403; 74-5-408; and 74-11-6.

Public attendees of the meeting were Tony Scott, Kansas Society of CPAs; and Victor Barbo and Joyce Schartz, Public Accountants Association.

No one testified for or against the adoption of these Regulations.

Mr. Johnson then closed the public hearings.

MR. VAN NORDEN MOVED AND MS. O’SULLIVAN SECONDED TO RECONVENE THE REGULAR BOARD MEETING. UPON A VOTE, THE MOTION CARRIED.

Ms. Somers was instructed to take a roll-call vote of the Board members for the adoption of the Regulations. All Board members in attendance voted in favor of the amendments. The Regulations were declared to be approved and adopted.

6. COMPLAINT/DISCIPLINARY MATTERS:

A. DEBORAH WARNER: Mr. Johnson recused himself from participating in this matter. Ms. Warner appeared before the Board with her attorney, Jana Elszner-Olson for approval of a Consent Order for failure to file her own income tax returns and failure to pay taxes collected on behalf of others. The terms of the Consent Order are censure; payment of a \$250 fine to be paid within 90 days of her appearance before the Board; and completion of the AICPA Comprehensive Ethics Exam with a score of 90% or higher to be completed within 90 days of her appearance before the Board, and that she may not claim any CPE derived from the ethics exam for her Kansas permit renewal. Ms. Powell moved and Mr. Van Norden seconded to approve the Consent Order. Upon a vote, the motion carried.

B. RICHARD BOWLES: Mr. Bowles appeared before the Board for practicing without a permit. Mr. Bowles renewed his 2006 permit late on December 6, 2006. The permit was issued conditionally upon his appearing before the Board and the Board imposing a fine to be determined at the hearing. Ms. Somers also reported that a complaint had been filed against Mr. Bowles, pertaining to the return of client documents, to which he had not responded within the thirty day time frame required in K.A.R. 74-5-407. Mr. Bottenberg moved and Ms. O’Sullivan seconded for the Board to go into executive session for five minutes to deliberate the matter. Upon a vote, the motion carried, with public attendees, Ms. Mitchell and Ms. Somers leaving the room during deliberation.

When the Board reconvened, Mr. Bottenberg moved and Ms. O’Sullivan seconded that Mr. Bowles pay a fine of \$500.00 within thirty days of the date of the certificate of service on the Board’s Final Order, which cannot be paid by credit card. Upon a vote, the motion carried. Mr. Bowles also was requested to respond to the Board’s inquiry concerning the complaint that was filed against him.

C. ROBERT HOWELL: Mr. Howell appeared via telephone for reinstatement of his permit to practice. Mr. Howell failed to comply with Peer

Review by his prescribed due date, and as a result, his firm registration and permit to practice were suspended. Mr. Howell had already paid the fine imposed against him and had provided his Peer Review letter of completion. Mr. Allen moved and Mr. Van Norden seconded to reinstate his permit. Upon a vote, the motion carried. Mr. Howell was informed that he would immediately be sent a firm registration for his 2007 renewal and that he should complete it and return it to the Board office before January 31, 2007 in order to avoid any fine or appearance before the Board.

C. **MURRAY VENDETTI:** Mr. Vendetti appeared before the Board with his attorney, Joel Krieger, at the Board's request to explain why his Peer Review had been in process for such a long period of time. Mr. Vendetti presented his Peer Review documents which indicated that his Report was an adverse report with several follow up requirements. Ms. Somers reported that Mr. Vendetti had also not yet filed his firm registration for 2007. Mr. Vendetti was reprimanded about his continued late filings with the Board and failure to comply with due dates. Mr. Allen moved and Mr. Van Norden seconded to instruct Mr. Vendetti to register his firm and to provide a current Peer Review "in process" letter, at which time his firm registration would be renewed conditionally until April 13, 2007, by which time he was to provide the Board with a Peer Review letter of completion, or an "in process" letter that had an April 2007 date. Upon a vote, the motion carried.

D. **DALE RAMSEY:** Ms. Powell recused herself from this matter. Mr. Ramsey appeared in person and with his attorney, Walter P. Robertson for approval of a Consent Order for failure to pay taxes on behalf of others. The terms of the Consent Order were to appear before the Board, and public censure. Mr. Allen moved and Mr. Van Norden seconded to approve the Consent Order. Upon a vote, the motion carried.

Mr. Bottenberg moved and Mr. Van Norden seconded for the Board to go into executive session for fifteen minutes to discuss attorney/client privilege matters in relation to the DeBerry matter. Upon a vote, the motion carried. Ms. Somers, Ms. Mitchell, Mr. Allen and public attendees at the meeting left the room during deliberation.

When the Board reconvened, the matter of Thomas DeBerry was heard.

E. **THOMAS DEBERRY:** Mr. Allen recused himself from participating in this matter. Both sides presented their cases and the hearing was closed.

Ms. Powell moved and Mr. Bottenberg seconded that the Board break for lunch for thirty minutes and that the DeBerry matter would be deliberated after lunch. Upon a vote, the motion carried.

After lunch, the Board decided to hear the Laubinger matter prior to deliberating the DeBerry matter.

F: DUANE LAUBINGER: Mr. Laubinger appeared before the Board with his attorney, Clint Patty, for denial of his application for practice by notification. Mr. Laubinger had applied for licensure under the notification provision; however, he could not provide a letter of completion of Peer Review which is required if a person would be providing attest services in Kansas. The application also was denied for practicing without a permit in Kansas as he had issued a Review report for a company located in Kansas. Mr. Laubinger stated that he had an office in Missouri, but lived in Olathe, KS where he also worked out of his home. He had issued the Review report in 2003, but had never undergone a Peer Review. Mr. Allen moved and Mr. Bottenberg seconded that Mr. Laubinger be required to submit the proper forms for a Kansas certificate and permit to practice, and at the time of issuance, the permit would be issued conditionally until June 22, 2007, at which time he was to provide proof of having had a Peer Review, to include the 2003 Review report issued on the Kansas client, either by providing the Peer Review letter of completion, or a letter from the Missouri Society of CPAs stating that the Peer Review was in "in process". If he submitted an "in process" letter, it could only be issued if the Peer Review had been performed and all documents were provided to the Missouri Society of CPAs, and that the "in process" letter must bear a June 2007 date. Upon a vote, the motion was approved. Mr. Laubinger was advised that the due date required by the Kansas Board of Accountancy would supercede any Peer Review due date given him by the AICPA or the Missouri Society of CPAs. Mr. Laubinger's attorney asked that the forms be e-mailed to him and he would see that his client received them.

7. OTHER:

A. The Board reviewed a proposed draft of a request for proposal for professional and consulting services. Ms. Somers reported that there were conflicting interpretations on whether or not the Board could hire its own outside attorney, or whether the Attorney General would have to give his permission. Mr. Van Norden moved and Mr. Bottenberg seconded to authorize the issuance of the request for proposal and to appoint the Chair, the Vice-Chair, Ms. Powell and Ms. Somers to handle the negotiations and procurement, upon affirmation that the Board could hire its own attorney to assist with the services currently being provided the Attorney General's office. Upon a vote, the motion carried.

Mr. Allen left the meeting and did not return.

Mr. Bottenberg then moved and Mr. Van Norden seconded for the Board to go into executive session for fifteen minutes to deliberate the DeBerry matter. Upon a vote, the motion carried. Ms. Somers, Ms. Mitchell and public members attending the meeting left the room.

When the Board reconvened, Mr. Bottenberg moved and Ms. Powell seconded to censure Mr. DeBerry and to impose a fine of \$2,000 to be paid within thirty days of the date reflected in the Final Order. Upon a vote, the motion carried with a vote of 3 to 1.

B. Tony Scott addressed the Board relative to the Board's request to consider a program for those who have issues of depression, substance abuse, etc. He stated that AON, CNA and Camico insurance companies all indicated that these were significant factors in claims and that the Kansas Society of CPAs was interested in pursuing the issue further. He indicated that he would report back to the Board in the future on this matter.

8. ADJOURN

There being no further business to come before the Board, Mr. Van Norden moved and Mr. Bottenberg seconded to adjourn. Upon a vote, the motion carried.

/s/ Susan L. Somers
Susan L. Somers, Executive Director