

**MINUTES OF THE KANSAS BOARD OF ACCOUNTANCY
JANUARY 25, 2008
9:00 AM, LANDON STATE OFFICE BUILDING, ROOM 106
TOPEKA, KS**

1. ADMINISTRATIVE MATTERS:

A. CALL TO ORDER:

Paul Allen, CPA, Chair, called the meeting to order. Board members in attendance were Mr. Allen; Jeffery Bottenberg, Public Member; Jeffrey Leiserowitz, CPA; Patricia O'Sullivan, Public Member; Ginger Powell, CPA; and Rodney Van Norden, CPA. Also in attendance were Susan Somers, Executive Director; Darin Conklin, General Counsel to the Board; Derenda Mitchell, Assistant Attorney General, Disciplinary Counsel to the Board; Gary Schlappe and Tony Scott, Kansas Society of CPAs; and Joyce Schartz and Janet St. Clair Hays, Public Accountants Association.

B. 1-2 CONSENT CALENDAR:

The Board reviewed the minutes of the December 14, 2007 Board meeting; reciprocity certificates/permits to practice/practice by notification; firms, December 31, 2007 financials; and authorization for travel and attendance at all Board related and NASBA meetings for Board members, General Counsel and Executive Director for calendar year 2008. Mr. Leiserowitz moved and Ms. O'Sullivan seconded to approve. Upon a vote, the motion carried.

2. CPA EXAM:

A. The Board reviewed the October/November testing window exam scores previously approved by Mr. Van Norden. Ms. Powell moved and Mr. Leiserowitz seconded to ratify the approval of the grades. Upon a vote, the motion carried.

B. Ms. Somers informed the Board that although the Board had previously determined what types of courses would and wouldn't qualify for the 11 hours of written and oral communications required to sit for the CPA exam, there was still a lot of confusion as to what types of courses would qualify. The Board expressly affirmed its position that communications courses relate directly to improve communication skills (graded on presentation and written skills, not content of the topic) taught by professors whose expertise was in the field of improving communication skills. The Board determined that it would be best if there was a written policy developed that would be published on the Board's

webpage and provided to the various Kansas colleges. Ms. O'Sullivan indicated that she would draft a proposed policy for the Board's review.

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

A. The Board reviewed a list of Peer Reviews that were due or "in process". Mr. Van Norden moved and Mr. Leiserowitz seconded that in the case of firms not timely complying with Peer Review, a letter would be sent notifying them that if they did not provide the Peer Review letter of completion or "in process" letter within thirty days from the date of the letter, a Summary Order of Suspension and imposition of a fine of up to \$2,000 would be issued, with a draft copy of the Summary Order being attached to the letter. If the firm complied within the thirty days, no disciplinary action would be taken. If the firm did not comply within the thirty days, the Summary Order of Suspension and Fine would be issued. Upon a vote, the motion carried. The Board also set the next due date for Peer Review letters of completion or additional "in process" letters to be April 18, 2008 and the date after that to be June 18, 2008. Upon a vote, the motion carried.

B. Ms. Somers provided the Board with a list of firms that had not renewed. She indicated that, in compliance with the Board's policy, cease and desist notices would be mailed on February 1, 2008 to those firms that had not registered indicating that if they registered within 30 days from the date of the cease and desist notice, they would only be subject to a late fee. Firms registering after that date, however, could be subject to a late fee, appearance before the Board and a fine for practicing without a firm registration.

C. The Board reviewed a request from the Wellington Group relative to an ethics component included in a CPE presentation sponsored by Edward Jones. Ms. Somers reported that she had been in contact with them on several occasions regarding a previous presentation which was comprised mostly of Circular 230, a topic that the Board had determined did not qualify for ethics in Kansas. The subject matter had been somewhat revised; however the revised presentation was given prior to knowing if it would qualify for ethics. After review, the Board determined that the presentation would not qualify for ethics, given that it focused on risk management, spoke of attorney/client privilege and Circular 230. The Board did determine, however, that the presentation could qualify for overall CPE. Mr. Leiserowitz moved and Ms. O'Sullivan seconded to deny approval of this presentation for the Kansas ethics CPE requirement. Upon a vote, the motion carried.

D. The Board reviewed a request for extension of Peer Review from McCraw & Company, CPAs, PC of Raytown, Missouri. Mr. McCraw was not present, but appeared through his attorney, Clint Patty. Mr. McCraw's 2008 firm renewal registration was denied for the reason that the firm's Peer Review

expired November 30, 2007 and he did not have either a current letter of completion of an acceptable "in process" letter from the administering entity. After discussion, Mr. Van Norden moved and Ms. Powell seconded to approve the firm renewal registration conditionally until February 29, 2008, by which date the firm is to provide a letter of completion or an acceptable "in process" letter from the administering entity. Upon a vote, the motion carried. Mr. Patty was instructed to advise Mr. McCraw that he is to adhere to his Peer Review due date and that any appearance before the Board in the future relative to non-compliance with Peer Review would not be received favorably.

4. LEGISLATIVE MATTERS:

A. The Board reviewed the proposed amendments to K.A.R. 74-4-7, 74-4-8, 74-4-9 and 74-4-10 relative to changes made to continuing professional education reporting for permit renewal purposes to accommodate the upcoming online renewal process. After discussion, the proposed language in K.A.R. 74-4-8(a)(7) should be amended to read "Personal development courses, which are courses dealing with self-management and self-improvement both inside and outside of the business environment, shall be limited to (rather than shall include) courses on communication, leadership, character development, dealing effectively with others, interviewing, counseling, career planning, emotional growth and learning and social interactions and relationships." In addition, the proposed amendment to K.A.R. 74-4-9 eliminated what information is required should an applicant be required to provide proof of CPE claimed, and after discussion, it was determined that the stricken language remain in tact and that the Regulation be re-written to set forth what is required should an applicant be chosen for audit. Ms. Powell moved and Mr. Bottenberg seconded to approve the amendments to the Regulations, to include the further amendments made to K.A.R. 74-4-8 and 74-4-9. Upon a vote, the motion carried.

The Board also reviewed proposed amendments to Article V, the Code of Professional Conduct. Ms. Somers reported that over the years the Board had adopted the AICPA Code of Professional Conduct which results in individual Rules being adopted by reference. The Board's current Regulations adopt the individual AICPA Rules, Definitions and Interpretations, but do not include the Rulings. Mr. Allen reminded the Board that in a recent hearing before the Board, the defense had attempted to argue that a ruling, not adopted by reference by the Board, applied to their particular case. The Board agreed that Rules and Interpretations had essentially the same weight, but that Rulings were scenarios presented to the AICPA Ethics Committee specific to one particular situation, which may or may not relate to what is before the Board. In addition, the Board should have the authority to interpret its own Rules without having to rely on the rulings of the AICPA Ethics Committee. However, so that it would be clear as to the Board's position, it was determined that the various Rules and Interpretations currently adopted by reference in Article V include specific language that

indicates that the Rulings are excluded. Ms. Somers indicated that the Rules in place carry a 2007 date, and that it wouldn't be too long before amendments would be made for a 2008 date and suggested that the amendment process be delayed until the dates could be changed to reflect the 2008 date. After discussion, Ms. Powell moved and Mr. Bottenberg seconded to approve the proposed amendments and authorize Ms. Somers to commence the hearing process for the proposed amendments when the dates could be changed to reflect a June 2008 date. Upon a vote, the motion carried.

5. COMPLAINT/DISCIPLINARY MATTERS:

A. 9:30 AM MARK GERHARDT: Ms. Powell recused herself from this matter. Mr. Gerhardt appeared before the Board for approval of a Consent Order entered into for failure to timely file and failure to timely pay withholding taxes, which required him to pay a \$500 fine, and submit proof of completion of the AICPA Comprehensive Ethics exam with a score of 90% or higher. Mr. Van Norden moved and Mr. Bottenberg seconded to approve the Consent Order. Upon a vote, the motion carried, with Ms. Powell not voting.

B. 9:45 AM MICHAEL HAIST: Mr. Haist requested to appear before the Board to appeal a Summary Order of Suspension of Certificate and Permit for failure to comply with a CPE audit. Mr. Haist testified that he thought he had mailed the requested information timely, but later learned that he had placed them in an international mailing envelope, rather than a domestic mailing envelope, and as such, the packet never left his employer's mail room. Ms. Somers reported that upon receiving his proof of completion of CPE claimed for his permit renewal, she learned that 8 hours of his CPE hours claimed did not meet the Board's CPE requirements and therefore were disqualified. After discussion, Mr. Bottenberg moved for the Board to go into executive session for fifteen minutes to deliberate the matter, seconded by Mr. Leiserowitz. Upon a vote, the motion carried.

When the Board reconvened, Ms. Powell moved and Mr. Leiserowitz seconded to offer Mr. Haist his choice of one of two options: (1) voluntarily surrender his permit, or (2) obtain 8 hours of qualifying CPE with proof provided to the Board within sixty days of the date of the Final Order. Upon a vote, the motion carried.

C. 10:00 AM SARA JENKINS: Ms. Powell recused herself from this matter. Ms. Jenkins was not present. Ms. Jenkins was requested to appear before the Board for practicing in Kansas without a Kansas certificate and valid permit to practice; failure to comply with previous Board orders; and failure to cooperate with an investigation of the Board. After presentation of the evidence, Ms. O'Sullivan moved and Mr. Bottenberg seconded for the Board to go into

executive session for ten minutes to deliberate the matter. Upon a vote, the motion carried.

When the Board reconvened, Mr. Bottenberg moved and Ms. O'Sullivan seconded to revoke the certificate and permit of Sara Jenkins, impose a fine of \$2,000 to be paid within thirty days of the date of the Final Order, which cannot be paid by credit card; and require that she return her certificate and permit within ten days of the date of the Final Order. Upon a vote, the motion carried, with Ms. Powell not voting.

D. 10:30 AM JAMES STEELE: Ms. O'Sullivan recused herself from this matter. Mr. Steele appeared before the Board for failure to file his personal income taxes for 2001, 2002, 2003, 2004 and 2005. After discussion Mr. Leiserowitz moved and Ms. O'Sullivan seconded for the Board to go into executive session for ten minutes to deliberate the matter. Upon a vote, the motion carried.

When the Board reconvened, Ms. Powell moved and Mr. Leiserowitz seconded that Mr. Steele be fined in the amount of \$500, to be paid within thirty days of the date of the Final Order, which cannot be paid by credit card, and that if Mr. Steele were to ever apply for reinstatement of his permit, he would have to appear before the Board and be required to obtain additional CPE as the Board deems appropriate. Upon a vote, the motion carried, with Ms. O'Sullivan not voting.

E. 11:00 AM MITCHELL FISER, FISER GROUP, P.A.: Mr. Allen recused himself from this matter. Ms. Powell was chosen to preside over the matter. Mr. Fiser did not appear, but was represented by counsel, Kevin Case. Mr. Fiser and Fiser Group, P.A. were requested to appear before the Board for advertising a CPA firm that was not a CPA firm; practicing without a valid permit to practice; practicing under a misleading firm name; practicing without a valid firm registration; violation of a Board order; failure to notify the Board of a change of ownership of a firm; and conduct reflecting adversely on his fitness to practice. Ms. Mitchell advised the Board that Mr. Case had stipulated to Counts IV, V and VI of the Petition. After presentation of the evidence, Mr. Leiserowitz moved and Mr. Bottenberg seconded for the Board to go into executive session for fifteen minutes to deliberate the matter. Upon a vote, the motion carried.

When the Board reconvened, Mr. Bottenberg moved and Ms. O'Sullivan moved for the Board to go back into executive session to continue deliberation on the matter for an additional fifteen minutes. Upon a vote, the motion carried.

When the Board reconvened, Mr. Bottenberg moved and Mr. Van Norden seconded that there was clear and convincing evidence of violations of Counts I, II, and III (Counts IV, V and VI were previously stipulated to) the Board finds Count VII in favor of the Respondent. Therefore Mr. Fiser is fined in the amount

of \$1,000 and Fiser Group, P.A. is fined in the amount of \$1,000; said fines to be paid within thirty days of the date of the Final Order and cannot be paid by credit card. Upon a vote, the motion carried, with Mr. Allen not voting.

6. OTHER:

A. At the Board's last meeting, Mr. Conklin was directed to prepare a certification for NASBA to sign in order for the Board to release the information necessary to participate in the Accountancy Licensee Database. Ms. Somers reported that the certification had been prepared and sent to NASBA, but that there had been no response as the date of the meeting.

B. Mr. Scott briefly addressed the Board indicating that it was the KSCPA's desire to bring forth legislation in the 2009 session to allow CPAs from other states deemed to be substantially equivalent, to come into to Kansas to practice without notification, payment of a fee, or proof of peer review. The Board indicated that it would be necessary when discussing the issue, that the legislation be revenue neutral, and that other states would have to treat Kansas CPAs exactly as Kansas treats them. Ms. Somers also pointed out that under the UAA, the no notification and no fee provision doesn't pertain to firms that perform audits in the State. If a firm is performing an audit, they must notify the Board and register as a firm.

7. ADJOURN:

There being no further business to come before the Board, upon motion of Mr. Bottenberg, seconded by Ms. O'Sullivan, the meeting was adjourned. Upon a vote, the motion carried.

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