

MINUTES OF THE KANSAS BOARD OF ACCOUNTANCY
APRIL 22, 2005
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; Jeff Bottenberg, Public Member; Adley Johnson, CPA; Ginger Powell, CPA; Patricia O'Sullivan, Public Member; Kent Smoll, CPA; and Rodney Van Norden, CPA. Also in attendance were Susan Somers, Executive Director; Derenda Mitchell, Assistant Attorney General, Disciplinary Counsel to the Board; Mary Feighny, Assistant Attorney General, General Counsel to the Board; John Jarvis and Joyce Schartz, Public Accountants Association.

The Board welcomed Patricia O'Sullivan and Rodney Van Norden, who were appointed by the Governor to replace Lois Loucks and Tim Mitchell. Ms. O'Sullivan is a Trust Officer with Bank of America in Wichita and Mr. Van Norden is a CPA with Lewis Hooper & Dick, Garden City.

B. 1-4 CONSENT CALENDAR:

The Board reviewed the minutes of the January 21, 2005 meeting; reciprocity certificates/permits to practice/practice by notification; registrations of new/reorganized firms and the third quarter financials. Mr. Smoll moved and Mr. Johnson seconded to approve the consent calendar. Upon a vote, the motion carried.

2. CPA EXAM MATTERS:

A. The Board reviewed the grades from the January/February 2005 exam window previously approved by Mr. Johnson. Ms. Powell moved and Mr. Van Norden seconded to ratify the grades. Upon a vote, the motion carried.

B. The Board reviewed a joint letter from the AICPA, Prometric and NASBA relative to an increase in exam fees. Prometric's seat charge will increase from \$17.00 per hour to \$22.50 per hour effective July 1, 2005. The AICPA's per section fee will increase from \$45.00 to \$65.00 as of January 1, 2007. NASBA's per section fee will increase from \$10.00 to \$15.00 as of January 1, 2007. No action was required to be taken on this matter.

C. The Board reviewed the proposed amendments to the Uniform Accountancy Act (UAA) relative to the educational requirements requiring the colleges to be accredited and to establish two new ethics course requirements in business and accounting. The Board had sought input from the seven 4-year colleges in Kansas. The overall consensus from them was that requiring a college to be accredited does not ensure that the program is meeting the appropriate course requirements, and could be taking the authority away from the Board to determine whether a particular institution provides the appropriate courses necessary to sit for the CPA exam. Kansas has very specific course requirements, which were established by collaborating with the Kansas colleges when adopting the 150 hour education requirement, and either meet or exceed the proposed course components contained in the UAA revisions. Further, to require six hours of ethics, outside of the ethics components already contained in the business and accounting courses, might be perceived merely as a reaction of what has occurred on the national level; would be time consuming and difficult to devise; and would be costly to the institutions.

Kansas has 35 colleges, not all of which are accredited. The passing scores of Kansas exam candidates equal, if not surpass, the national statistics. The Board, in its law, requires a “college or university recognized by the Board”, to allow the Board the leeway of accepting or not accepting a college. To establish a blanket requirement that a college be accredited would be unfair to the colleges and to the students. The Board also believed that ethics is better woven into courses, as it is now, rather than require stand alone course requirements.

Upon a motion of Mr. Smoll, seconded by Ms. Powell, the Board declined the adoption of the revisions to the UAA educational requirements. Upon a unanimous vote, the motion carried.

3. FIRM MATTERS/CPE/CERTIFICATE/PERMIT/RECIPROCITY/PRACTICE BY NOTIFICATION/PEER REVIEW MATTERS:

A. The Board reviewed the list of three firms that had failed to register, or failed to notify the Board that they were no longer subject to registration, with the Board. The Board decided that if anything came to their attention that indicated these firms were still in business, they would act accordingly at that time.

B. The Board reviewed information concerning a course provided by Thomson RIA, the 2004 Federal Tax Quizzer, that was disqualified by NASBA's QAS Service for failure to comply with the CPE Standards. Thomson RIA had appealed NASBA's decision to NASBA's CPE Advisory Committee. The appeal was denied. On April 20, 2005, it came to the Board's attention, via a licensee by the name of Randy Freed, that a letter was sent to him indicating that the course had been denied and offered other courses as a substitution. (The Board had

previously requested RIA to inform all Kansas participants that the course had been disqualified, with a copy of the information being provided to the Board; however, no response was made by RIA to that request. After viewing the letter sent to Mr. Freed, the Board presumed that the other Kansas participants received the same letter as Mr. Freed.) After discussion, Mr. Smoll moved and Ms. Powell seconded not to accept the disqualified course and that in the case of Mr. Freed, he be notified that he will have to obtain other CPE to substitute for this disqualified course on or before June 30, 2005 in order to renew his permit. For others who attempt to renew their permit who are deficient because of the disqualified course, their permits will be issued conditionally for sixty (60) days from the date they are notified by the Board that the course was disqualified to complete satisfactory CPE to substitute for the course. Upon a vote, the motion carried. The Board instructed Ms. Somers to construct an article for insertion in the KSCPA's Newsletter stating that the Board will not accept the course and to attach a copy of the denial letters from NASBA.

C. The Board reviewed a request for refund of a certificate fee from Dylan Rassier who, at the time of application, was employed by the University of Kansas, but had since left the state. Mr. Rassier requested a refund since he was no longer in Kansas and didn't need the Kansas CPA certificate. Mr. Smoll moved and Mr. Johnson seconded to deny the request for a refund as the application form specifically states that the fee is not refundable and at the time of application Mr. Rassier was in the State. Upon a vote, the motion carried.

D. The Board reviewed a list of Peer Reviews due and in process. Ms. Somers reported that there were several firms who needed another extension date. Ms. Powell moved and Ms. O'Sullivan seconded to extend the due date for those firms who had complied with the April 15, 2005 due date, with the exception of Charles and Charlene Harrison, to June 15, 2005. Upon a vote, the motion carried.

Mr. Smoll moved and Ms. O'Sullivan seconded that for those firms who did not comply with their due dates between this Board meeting date and the Board's next meeting date, a Summary Order of Suspension of the firm registration or permit (whichever is applicable) would be issued imposing a \$250.00 fine for each, with the suspension being stayed for thirty (30) days from the date of the Certificate of Service of the Summary Order if a Peer Review letter of completion or an "in process" letter is received and the fine paid. Upon a vote, the motion carried.

Ms. Somers reported that there was a firm registration and a permit renewal that had not complied with their due dates. Mr. Smoll moved and Mr. Johnson seconded to issue a Summary Order of Suspension suspending the firm registration of Jon McKay, and the permit of Beverly Smith, plus a \$250.00 fine for each, with the suspensions being stayed for thirty (30) days from the date of the certificate of service of the Summary Order, if a Peer Review letter of

completion or "in process" letter was provided and the was fine paid. Upon a vote, the motion carried.

E. The Board reviewed an Oversight Report from Jay Cooper, the Board's Peer Review Oversight Liaison. After discussion, the Board accepted the report.

4. REGULATION/LEGISLATIVE MATTERS:

AT 9:30 AM, UPON MOTION OF MR. JOHNSON, SECONDED BY MR. BOTTENBERG, THE REGULAR MEETING IS RECESSED IN ORDER TO HOLD A PUBLIC HEARING ON REGULATION CHANGES. UPON A VOTE, THE MOTION CARRIED.

Mr. Allen convened the public hearing to consider amendments to K.A.R. 74-4-1a; 74-4-8; 74-5-2; 74-5-101; 74-5-102; 74-5-103; 74-5-104; 74-5-201; 74-5-202; 74-5-203; 74-5-205; 74-5-301; 74-5-401; 74-5-403; 74-11-6; and 74-11-15.

Public attendees of the meeting were John Jarvis and Joyce Schartz, Public Accountants Association.

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

Ms. Somers and Ms. Feighny reported that the Joint Committee on Administrative Rules and Regulations had no comments on the proposed amendments.

Ms. Somers reported that the proposed amendments had been sent to the AICPA for their review and that they had responded with a few minor changes as outlined in the attached revisions.

There being no further amendments, Mr. Allen closed the public hearing.

MR. JOHNSON MOVED AND MR. SMOLL SECONDED TO RECONVENE THE REGULAR BOARD MEETING AND APPROVE THE REGULATIONS, AS AMENDED BY THE AICPA.

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, as amended by the AICPA.

5. COMPLAINT/DISCIPLINARY MATTERS:

A. 10:00 MICHAEL MCINERNEY—Request to vacate Summary Order and abatement of fine.

Mr. McInerney appeared before the Board to request that the Board vacate a Summary Order of Suspension and abatement of a fine issued for failure to timely comply with Peer Review. After discussion, upon motion of Mr. Smoll, seconded by Mr. Johnson, the Board went into executive session for five minutes to deliberate the matter. Upon a vote, the motion carried.

After five minutes, the Board reconvened, whereupon Mr. Johnson moved and Ms. O'Sullivan seconded to uphold the Summary Order and Fine, but that the Summary Order would not be published on the Board's website as discipline. This matter is, however, considered to be discipline that Mr. McInerney and the Board office must disclose when an inquiry is made. Upon a vote, the motion carried.

B. 10:30 AM JAMES IRELAND DISCIPLINARY HEARING—Mr. Ireland appeared before the Board for receiving an adverse Peer Review. Mr. Ireland had been offered a Consent Order, but had not complied with the terms of the Order; i.e., signing and returning it to the Board office by a specified date; however, Mr. Ireland testified that he was confused by thinking he was to bring the Order with him to the meeting rather than signing the Order and returning it to the Board office as specified in the Order. Mr. Ireland told the Board that he had brought the signed Consent Order to the hearing with him. The Board inquired as to the types of audits Mr. Ireland performed, how many and what types of audits he had issued since his last Peer Review was closed out, and how many and what types of audits he was in the process of performing. The terms of the Consent Order require Mr. Ireland to undergo a preissuance review, by a person acceptable to the Board, of any audits he will be issuing between this hearing and his next Peer Review, with the report of the preissuance review being provided to the Board, and to comply with his next Peer Review due date of April 30, 2006 with no extensions being granted by the Board. Mr. Bottenberg moved and Mr. Van Norden seconded to accept the Consent Order and designated Ms. Powell to approve the preissuance reviewer on behalf of the Board. Upon a vote, the motion carried, with Ms. O'Sullivan recusing herself from the vote.

C. 11:00 WILLIAM B. SCHMIDT DISCIPLINARY HEARING—This matter was continued to the Board's June 24, 2005 meeting.

D. Mr. Bottenberg moved and Mr. Johnson seconded for the Board to go into execution session for fifteen minutes for the purposes of attorney/client privilege. Upon a vote, the motion carried.

After fifteen minutes, the Board reconvened, whereupon Ms. Powell moved and Mr. Johnson seconded for the Board to go back into executive session for an additional ten minutes. Upon a vote, the motion carried.

After ten minutes, the Board reconvened its regular meeting. Ms. O'Sullivan moved and Ms. Powell seconded to instruct Ms. Mitchell, in the first case of suspension of Thomas DeBerry, to cross appeal if Mr. DeBerry appealed the Judge's recent decision to uphold the agency action and to subpoena copies of the tax returns issued by Mr. DeBerry during the time of his first suspension, and also to subpoena the tax returns from the Department of Revenue, if necessary, for evaluation of whether Mr. DeBerry is complying with either the first or second suspension. Upon a vote, the motion carried with Mr. Allen and Mr. Smoll abstaining.

The Board discussed the conditional permits of Charlene and Charles Harrison, issued in 2002 and 2003, respectively. Their permits were issued conditionally upon proof of completion of Peer Review; however, the Board was concerned that the Peer Review process had taken 3 years and was still not completed. Ms. Powell moved, and Mr. Johnson seconded, to suspend the permits of Charles and Charlene Harrison to June 24, 2005, to stay the suspension if they appeared before the Board at its June 24, 2005 meeting. If they do not appear at the meeting, the stay will be lifted and their permits suspended. Upon a vote, the motion carried.

6. OTHER:

A. The Board discussed the request from NASBA to supply social security numbers of its licensees to establish a national licensee database. The Board had requested an opinion from general counsel on this issue, and was told that the Board only had the authority to request social security numbers for Department of Revenue and child support purposes. The Board could request from each individual licensee whether or not they wanted to provide their social security number for the database. The Board, after discussion, and upon a motion of Mr. Smoll and seconded by Ms. O'Sullivan, determined that they would decline participation in the database. Upon a unanimous vote, the motion carried.

B. The Board reviewed a proposal for leasing an additional 340 square feet on the fifth floor to be used as the agency's conference room. After discussion, Mr. Smoll moved and Mr. Van Norden seconded to authorize Ms. Somers to lease the additional space. Upon a vote, the motion carried.

C. The Board discussed submitting a nomination for NASBA Director-At-Large or Regional Director. Ms. Powell moved and Ms. O'Sullivan seconded to submit the name of E. Kent Smoll. Upon a vote, the motion carried.

7. ADJOURN

There being no further business to come before the Board, the meeting as adjourned.

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