

**MINUTES OF THE KANSAS BOARD OF ACCOUNTANCY
DECEMBER 14, 2007
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 Kent Smoll, CPA. Also in attendance were Susan Somers, Executive Director; Darin Conklin, General Counsel to the Board; Derenda Mitchell, Disciplinary Counsel to the Board; Joyce Schartz and Janet St. Clair Hays, Public Accountants Association; Tony Scott, Kansas Society of CPAs; and Patrick Hubbell, Lobbyist for the Public Accountants Association.

B. 1-2 CONSENT CALENDAR:

The Board reviewed the minutes of the October 19, 2007 Board meeting; reciprocity certificates/permits to practice/practice by notification; firms; and the November 30, 2007 financials. Mr. Smoll moved and Ms. O'Sullivan seconded to approve. Upon a vote, the motion carried.

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

A. The Board reviewed a list of Peer Reviews that were due or "in process". Mr. Smoll 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 they 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 January 18, 2007 and the date after that to be April 18, 2007.

B. The Board reviewed the results of the 2007 CPE audit. Ms. Somers reported that 126 renewals were audited and that there were two permit holders that had not complied and were therefore issued Summary Orders of Suspension of Certificate and Permit. She reported that one had requested a hearing which would be held at the January 2008 meeting, and that the other one, Richard L.

Todd, had sent in a letter explaining his circumstances and the reason why he did not comply with the audit request. After review of the documents, Ms. Powell moved and Mr. Smoll seconded to vacate the Summary Order of Suspension of Certificate and Permit issued to Mr. Todd for failure to comply with the CPE audit. Upon a vote, the motion carried.

C. The Board reviewed a request from the firm of Smart and Associates, Devon, Pennsylvania, for a 60 day extension of their Peer Review due date. The firm's Peer Review expired November 30, 2007. Mr. Smoll moved and Mr. Leiserowitz seconded to extend the firm's Peer Review due date to January 31, 2008; however the firm is to be notified that this is a one time extension and that in the future they are to comply with the assigned Peer Review due date. Mr. Smoll is to review the letter prior to its dissemination. Upon a vote, the motion carried.

D. The Board reviewed a request from Carol Dickens for an extension of her Peer Review due date. Currently she is subject to Peer Review under the AICPA because she issues compilation reports with a due date of September 30, 2008; however, she will be issuing a Review report with a issuance date of no later than June 30, 2008, and to incorporate that Report into her Peer Review would require an extension of the due date. Mr. Leiserowitz moved and Ms. Powell seconded to extend the firm's Peer Review due date to December 31, 2008. Upon a vote, the motion carried.

E. The Board reviewed a request from Larry Douglas for an extension of his Peer Review due date. Mr. Douglas has a Peer Review due date of June 30, 2008; however, he is requesting an extension to December 31, 2008. It was noted by the Board that Mr. Douglas, as a follow-up requirement to his last Peer Review, agreed to have an accelerated Peer Review by June 30, 2008. Mr. Smoll moved and Ms. Powell seconded to deny Mr. Douglas' request. Upon a vote, the motion carried.

3. LEGISLATIVE MATTERS:

AT 9:30 AM, UPON MOTION OF MS. POWELL, SECONDED BY MR. SMOLL, THE REGULAR MEETING WAS 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. 74-1-2; 74-1-3; 74-1-6; 74-1-8; 74-2-7; 74-5-2; 74-5-101; 74-5-201; 74-5-202; revocation of 74-5-204; 74-5-405a; 74-5-406; 74-6-1; and 74-7-2.

Public attendees of the meeting were Darin Conklin, General Counsel to the Board; Tony Scott, Kansas Society of CPAs; Janet St. Clair Hays and Joyce Schartz, Public Accountants Association; Patrick Hubbell, Lobbyist for the Public Accountants Association; and Edward Gaschler, Office of Administrative Hearings/

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

Ms. Somers reported that there was a need to amend 74-5-405a to insert the word "certified" on the second line after the word "of" and before the word "public" as it was omitted when drafting the new regulation.

Mr. Allen then closed the public hearings.

MR. SMOLL 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 to include the amendment proposed by Ms. Somers. The Regulations were declared to be approved and adopted.

B. Discussion of the proposed Regulation amendments to the CPE requirements was postponed to the January 25, 2008 meeting.

4. COMPLAINT; DISCIPLINARY MATTERS:

A. The Board reviewed a request from Douglas Dutton to allow him to claim CPE credits awarded for the AICPA Comprehensive Ethics exam towards the ethics requirements for his next permit renewal. Mr. Dutton, under the terms of a Consent Order, had agreed to take the AICPA Ethics Exam and further agreed that he could not claim any credits for that course toward his permit renewal. Mr. Smoll moved and Mr. Leiserowitz seconded to deny his request. Upon a vote, the motion carried.

B. **9:45 AM JERILYN MAIN:** Ms. Main appeared before the Board for approval of a Consent Order entered into for failure to timely file her 2002, 2003, 2004 and 2005 federal and state income tax returns, which required her to pay a \$1,000 fine, and submit proof of completion of the AICPA Comprehensive Ethics exam with a score of 90% or higher. Mr. Bottenberg moved and Ms. O'Sullivan seconded to approve the Consent Order. Upon a vote, the motion carried.

C. **10:00 AM JAMES STEVEN CLINKINBEARD & GERRY F. CARLSON DISCIPLINARY HEARING:** Mr. Clinkinbeard and Mr. Carlson appeared with their counsel, Pete Smith of McDowell, Rice, Smith & Buchanan.

Mr. Conklin and Mr. Smoll recused themselves from this matter. After hearing the evidence, Mr. Bottenberg moved and Ms. O'Sullivan seconded for the Board to go into executive session for twenty minutes to deliberate the matter. Upon a vote, the motion carried.

When the Board reconvened, Mr. Bottenberg moved and Ms. O'Sullivan seconded to issue a Final Order based on the Board's findings as follows:

(1) After giving consideration to the evidence, the Board finds that Mr. Carlson and Mr. Clinkinbeard violated K.S.A. 1-311(8)(a), willful violation of a rule or professional conduct in the disclosure of confidential client information, in particular K.A.R. 74-5-301(a) and K.A.R. 74-5-401(a).

(2) The Board orders that Mr. Carlson be censured and pay a fine in the amount of \$500 within thirty days of the date of the Final Order. Said fine may not be paid by credit card.

(3) The Board orders that Mr. Clinkinbeard be censured and pay a fine in the amount of \$1,000 within thirty days of the date of the Final Order. Said fine may not be paid by credit card.

Upon a vote, the motion carried, with Mr. Smoll not voting. Mr. Allen noted that the original complaint filed in this matter requested that documents belonging to the client be returned, although the Petition did not incorporate that count as a violation. However, he strongly urged Mr. Carlson and Mr. Clinkinbeard to return the records to the client as soon as possible in compliance with K.A.R. 74-5-302.

5. OTHER

A. The Board had no need to go into executive session, other than as previously disclosed.

B. The Board discussed participation in NASBA's Accountancy Licensee Database. Ms. Somers reported that she had been in contact with NASBA, and had learned that in order to participate, the Board would have to provide the licensee's date of birth and the last four digits of their social security number, as well as other pertinent information, like address, employer, disciplinary actions, etc. Ms. Somers further reported that she had asked NASBA if they would be willing to sign a statement agreeing not to use the information to sell products or services, or sell the information to another party to be used for those purposes, in compliance with the Kansas Open Records Act, and had received an e-mail that was rather vague in answering the question. The Board instructed Mr. Conklin to draw up an agreement for NASBA to sign and report the results back to the Board at the January meeting.

C. The Board reviewed a request from the KSCPA to appoint a current Board member to serve as a liaison to the KSCPA's Board of Directors to coincide with the KSCPA's Board members term from November to the following November of each year. The Board of Accountancy member would serve in an ex-officio capacity, with no voting rights, but would merely to observe and interact with the KSCPA Board. Mr. Bottenberg moved and Ms. O'Sullivan seconded that the current and subsequent Board Chairs serve in that capacity and continue to serve until November of each year to coincide with the terms of KSCPA's Board. Upon a vote, the motion carried.

6. ADJOURN

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

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