

<p style="text-align: center;">MINUTES</p> <p style="text-align: center;">Texas State Board of Public Accountancy</p> <p style="text-align: center;">January 28, 2015</p>
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The Texas State Board of Public Accountancy met from 10:00 a.m. until 10:55 a.m. on January 28, 2015, at 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900. A notice of this meeting containing all items on the agenda was filed with the Office of the Secretary of State at 9:13 a.m. on January 16, 2015. (TRD #2015-000326)
(ATTACHMENT 1)

Board Members Present

J. Coalter Baker, CPA
Assistant Presiding Officer
John R. Broadbuss, CPA
Jonathan B. Cluck, Esq.
Rocky L. Duckworth, CPA
Member-at-Large
Everett R. Ferguson, CPA
Treasurer
James C. Flagg, PhD, CPA
Susan Fletcher
Donna J. Hugly, CPA
Jon R. Keeney,
Member-at-Large
Robert M. McAdams, CPA
Maribess L. Miller, CPA
Secretary
Steve D. Peña, CPA
Thomas G. Prothro, CPA
Presiding Officer
Phillip W. Worley

Board Member Absent

William Lawrence

Others Present

Frank McElroy, Esq.
Sean McVey
Mark Vane, Esq.
Tammy Velasquez

Staff Present

Paulette Beiter, Esq.
Roel Cantú
Ismael Castillo
Karen Davis
Tiffney Duncan
Gilbert Gutierrez
Alan Hermanson, CPA
J. Randel Hill, Esq.
Donna Hiller
Joseph Jaffe
Marissa Mahoney
Virginia Moher, Esq., CPA
Shadia Omar
Julie Prien
Marisa Rios
April Serrano
Tina Smith
William Treacy
Daniel L. Weaver

- I. Mr. Prothro, Presiding Officer, called the meeting to order at 10:00 a.m. Mr. Treacy called roll and declared a quorum.

Mr. Prothro presented Gilbert Gutierrez with a service award plaque for 20 years of service.

- II. Mr. McAdams moved to approve the November 20, 2014 Board meeting minutes as presented. Mr. Broadbuss seconded the motion and it passed unanimously.

- III. Mr. Prothro, Executive Committee Chair, reported on the January 27, 2015 committee meeting.

Members Present

J. Coalter Baker, CPA
Rocky L. Duckworth, CPA
Everett R. Ferguson, CPA
Maribess L. Miller, CPA
Thomas G. Prothro, CPA

Member Absent

Jon R. Keeney

Others Present

Jonathan B. Cluck, Esq.
Donna J. Hugly, CPA
Monday Rufus, CPA
Robert Gonzales, CPA

Staff Present

Alan Hermanson, CPA
J. Randel Hill, Esq.
William Treacy

- A. Mr. Ferguson moved to approve the Board's financial statements as presented. Ms. Hugly seconded the motion and it passed unanimously.
- B. Mr. Cluck moved to approve the Board's Affirmative Action Report – CY 2014 as presented. Mr. Baker seconded the motion and it passed unanimously.
- C. Mr. Cluck moved to accept the Board's internal audit of the Qualifications Department issued by Monday Rufus, P.C. Ms. Fletcher seconded the motion and it passed unanimously.
- D. Mr. Treacy reported on the Sunset Staff Study on Self-Directed Semi-Independent Status of State Agencies, December 10, 2014.
- E. Mr. Prothro reported on the following NASBA dates of interest:

1. 33rd Annual Conference for Executive Directors and Board Staff	March 24-26, 2015
2. 20 th Annual Conference for Board of Accountancy Legal Counsel	March 24-26, 2015
3. Western Regional Meeting	June 17-19, 2015
4. 108 th Annual Meeting	October 25-28, 2015
- F. Mr. Ferguson moved to approve an amendment to a professional service contract listed. Mr. Broadus seconded the motion and it passed unanimously. It was also noted that Board members are now required to complete a one-hour course in contract management.

FY 2014:

Technical Standards Review Committee consultant:

Harper & Pearson, Co., P.C.	09/1/13 – 8/31/14	\$4,537
(increase by \$4,537 from \$275,000 to \$279,537)		

- G. Mr. Prothro reported on thank you notes from the public for:
 - 1. Tiffney Duncan
 - 2. The Board's Fifth Year Scholarship Fund program
 - 3. Tina Smith
 - 4. William Treacy
 - 5. Daniel Weaver

IV. Mr. Peña, Peer Review Committee Chair, reported on the January 7, 2015 committee meeting.

Members Present

Jerrel Cross, CPA
Rocky L. Duckworth, CPA
Larry H. Henderson, CPA
Robert M. McAdams, CPA
Steve D. Peña, CPA
W. David Rook, CPA

Members Absent

John W. Anderson, III, CPA
Jonathan B. Cluck, Esq.
Dan H. Hanke, CPA

Others Present

J. Coalter Baker, CPA
Rebecca Teague, CPA
John Michael Waters, CPA

Staff Present

Karen Davis
Tiffney Duncan
J. Randel Hill, Esq.
Virginia Moher, Esq., CPA
Julie Prien
April Serrano
William Treacy
Daniel L. Weaver

- 1. Mr. Peña reported that the committee had an informative discussion on the current peer review process with representatives from the Texas Society of CPAs and the Peer Review Oversight Board. The committee discussed at length the proposed AICPA standard concerning unaudited preparation of financial statements, which are also referred to as preparation engagements. Since the standards are not finalized, it was agreed that no action should be taken on this item. Staff have been directed to advise licensees who provide preparation engagements to enroll in Peer Review, for the time being, until the Board is able to address the issue based on the AICPA's final action.

2. Mr. Peña moved to approve that the Texas Society of CPAs and the National Peer Review Committee continue as peer review sponsoring organizations for the Board. Mr. Broaddus seconded the motion and it passed unanimously.

V. Ms. Miller, Behavioral Enforcement Committee Chair, reported on the January 8, 2015 committee meeting.

Members Present

J. Coalter Baker, CPA
John R. Broaddus, CPA
Jonathan B. Cluck, Esq.
Donald W. Harcum, CPA
Donna J. Hugly, CPA
Maribess L. Miller, CPA
Ben Peña, CPA, CFE

Member Absent

James D. Ingram, IV, CPA

Staff Present

Paulette Beiter, Esq.
J. Randel Hill, Esq.

- A. Mr. Peña moved to dismiss the following investigations based on insufficient evidence of a violation of the *Act or Rules of Professional Conduct*. Mr. Keeney seconded the motion and it passed.

1. Investigation Nos. 14-10-05L¹, 14-10-06L¹, 14-10-07L¹, and 14-10-18L¹
2. Investigation Nos. 14-10-16L¹ and 14-10-17L¹
3. Investigation Nos. 14-09-11L¹ and 14-09-12L¹
4. Investigation Nos. 14-10-01L¹ and 14-10-02L¹
5. Investigation Nos. 14-10-13L¹ and 14-10-14L¹
6. Investigation Nos. 14-11-01L¹ and 14-11-02L¹
7. Investigation Nos. 14-10-11L¹ and 14-10-12L¹

- B. Mr. Peña moved to dismiss the following investigation due to voluntary compliance. Mr. Keeney seconded the motion and it passed.

- Investigation Nos. 14-10-09L¹ and 14-10-10L¹

- C. Other – The committee considered eight other investigations which require no Board action at this time.

- D. The next committee meeting was scheduled for March 11, 2015 at 9:15 a.m.

VI. Mr. Duckworth, Technical Standards Review Committee Chair, reported on the December 3, 2014 committee meeting.

Members Present

Rocky L. Duckworth, CPA
Everett R. Ferguson, CPA
Jon R. Keeney, CPA
David L. King, CPA
Michael McConnell, CPA
W. David Rook, CPA

Member Absent

Steve D. Peña, CPA

Staff Present

J. Randel Hill, Esq.
Virginia Moher, Esq., CPA

- A. Mr. Baker moved to dismiss the following investigations based on insufficient evidence of a violation of the *Act or Rules of Professional Conduct*. Ms. Miller seconded the motion and it passed.

1. Investigation No. 14-09-15L²
2. Investigation Nos. 14-05-07L² and 14-05-08L²
3. Investigation No. 14-07-09L²

- B. Mr. Broaddus moved to have **Agreed Consent Order 97-07-17L²** removed from scope limitations. Ms. Hugly seconded the motion and it passed.

- C. Other – The committee considered six other investigations which require no Board action at this time.

- D. The next committee meeting was scheduled for February 10, 2015 at 11:00 a.m.

VII. Ms. Moher, Staff Attorney, reported on the status of the Enforcement Division's probation monitoring docket.

- VIII. Mr. Hill, General Counsel, reported on the status of investigations into alleged violations of *Subchapter J* of the *Public Accountancy Act*, regarding the unauthorized practice of public accountancy.
- IX. The Board took the following actions on Agreed Consent Orders, Proposals for Decisions, Cease and Desist Order and Proposed Default Judgment Board Order:

A. Agreed Consent Orders

Behavioral Enforcement Committee

Mr. Peña moved to approve the following Agreed Consent Orders (ACOs) as presented. Mr. Worley seconded the motion and it passed.

1. **Investigation Nos.:** 14-06-11L & 14-06-12L **Hometown:** Dallas, TX
Respondents: Rick Baumeister & Sanford, Baumeister & Frazier, LLC **Certificate No.:** 043704
Firm License No.: P05381
Rule Violation: 501.71

Respondents entered into an ACO with the Board whereby Respondent and Respondent Firm were reprimanded. In addition, Respondents must pay an administrative penalty of \$7,959 and \$289.87 in administrative costs within 30 days of the date of the Board Order. Respondent inadvertently failed to disclose in writing to clients the nature, source and amount or an estimate of the amount of other compensation received by Respondent upon the sale of investment property to clients.¹
2. **Investigation No.:** 14-07-19L **Hometown:** Kingwood, TX
Respondent: John Patrick Fojtik **Certificate No.:** 043148
Rule Violations: 501.90(17), 501.90(18)
Act Violations: 901.502(6), 901.502(11)

Respondent entered into an ACO with the Board whereby Respondent's certificate was revoked in lieu of further disciplinary proceedings. Respondent voluntarily disclosed confidential information communicated to him by his employer. Respondent violated the terms of his ACO by repeatedly voluntarily disclosing confidential information communicated to him by his employer.¹
3. **Investigation Nos.:** 14-09-06L & 14-10-18L **Hometown:** Addison, TX
Respondents: John Franklin Howard & J. Frank Howard, CPA **Certificate No.:** 042443
Firm License No.: T08894
Rule Violation: 501.90(4)
Act Violations: 901.502(6), 901.502(10), 901.502(11)

Respondent entered into an ACO with the Board whereby Respondent's certificate and firm license were revoked in lieu of further disciplinary action. Respondent was convicted of the felony offense of Attempted Capital Murder on August 21, 2014 and was sentenced to life in prison.
4. **Investigation Nos.:** 13-11-12L & 13-11-13L **Hometown:** Whitehouse, TX
Respondents: Shelley D. Poole & S.D. Poole CPA, Inc. **Certificate No.:** 085797
Firm License No.: C06564
Rule Violations: 501.76, 501.90(11), 501.93
Act Violations: 901.502(6), 901.502(11)

Respondents entered into an ACO with the Board whereby Respondent agreed to not engage in the practice of public accountancy until Respondent has demonstrated to the Board that Respondent is capable of doing so. Respondent failed to return client records within a reasonable time; did not respond to a client's repeated phone calls, text and emails regarding the preparation of the client's tax return, and did not respond to Board communications.¹

B. Mass Hearings

Ms. Fletcher moved to approve the following Proposals for Decision as presented. Mr. McAdams seconded the motion and it passed unanimously.

1. **Respondents:** **In The Matter of Disciplinary Action Against Certain Licensees for Nonpayment of Professional Fees for Three Consecutive License Periods**

The respondents failed to pay their licensing fees for three consecutive license periods. Following the public hearing, an Administrative Law Judge (ALJ) of the State Office of Administrative Hearings rec-

ommended that the certificate of each respondent still not in compliance be revoked without prejudice. Each respondent may regain his or her certificate by paying all license fees and penalties and by otherwise coming into compliance with the *Act*. The ALJ found that the respondents violated *Section 901.502(4)* (failure to pay license fees for three consecutive years) of the *Act*. The respondents, although properly notified, failed to appear, and were not represented at the hearing. No Board Committee considered these actions. (**ATTACHMENT 2**)

Docket	Investigation Numbers	Scheduled Hearing
457-14-4332	14-08-10001 - 14-08-10021	September 30, 2014
457-14-4740	14-09-10001 - 14-09-10025	October 28, 2014

2. Respondents: In the Matter of Disciplinary Action Against Certain License Holders for CPE Delinquencies

The respondents failed to comply with CPE reporting requirements found in *Chapter 523* of the *Rules* and *Section 901.411* of the *Act*. Following the scheduled public hearing, an Administrative Law Judge (ALJ) of the State Office of Administrative Hearings recommended that the license of each respondent still not in compliance be suspended for a period of three years, or until he or she complies with the licensing requirements of the *Act*, whichever is sooner. Additionally, the ALJ recommended a \$100 penalty be imposed for each year a respondent is not in compliance with the Board's CPE requirements. The ALJ found that the respondents violated *Sections 501.94* (mandatory CPE) and *523.111* (mandatory CPE reporting) of the Board's *Rules*, and *901.411* (CPE) of the *Act*. The respondents, although properly notified, failed to appear, and were not represented at the hearing. No Board Committee considered these actions. (**ATTACHMENT 3**)

Docket	Investigation Numbers	Scheduled Hearing
457-14-4333	14-08-10022 - 14-08-10171	September 30, 2014
457-14-4741	14-09-10026 - 14-09-10193	October 28, 2014

3. Respondents: In The Matter of Disciplinary Action Against Certain Certificate Holders for Failure to Complete License Notice

The respondents failed to complete their license renewal notices in accordance with *Section 515.3* of the Board's *Rules*. Following a public hearing, an Administrative Law Judge (ALJ) of the State Office of Administrative Hearings recommended that the certificate of each respondent not in compliance be revoked without prejudice until such time as the respondent complies with the requirements of the *Rules* and the *Act*. The ALJ found that the respondents violated *Section 901.502(12)* of the *Act* (regarding violations of Board *Rules*). Although properly notified, the respondents failed to appear in person or by authorized representative. No Board Committee considered these actions. (**ATTACHMENT 4**)

Docket	Investigation Numbers	Scheduled Hearing
457-14-4334	14-08-10172 - 14-08-10186	September 30, 2014
457-14-4742	14-09-10194 - 14-09-10207	October 28, 2014

C. Cease and Desist Orders

Mr. Broaddus moved to approve the following Cease and Desist Orders (ACDOs) as presented. Mr. Ferguson seconded the motion and it passed unanimously.

- Investigation No.:** 14-07-13N **Hometown:** Tomball, TX
Respondent: Dennis Green d/b/a Dennis Green Accounting Services
Act Violations: 901.451, 901.456

Staff initiated an investigation of this matter based on evidence that Respondent was using terms and performing services reserved by the *Act* for individuals and entities holding licenses issued by the Board. Staff determined that Respondent has not held individual or firm licenses issued by the Board during all relevant times. During the relevant times, Respondent used the designation "CPA," the term "accountant" and offered to provide "accounting" services. These actions constitute a violation of *Act Sections 901.451* and *901.453*. Respondent provided services to the public that involve the use of accounting, attest or auditing skills. Offering these services while representing to the public that he is licensed by the Board is the practice of public accountancy under *Section 901.003* of the *Act*. Respondent repeatedly failed to respond to the Board's attempts to gain Respondent's compliance. It was therefore necessary for the Board to immediately issue a Cease and Desist Order against Respondent.

D. Proposed Default Judgment Board Order

Ms. Fletcher moved to approve the following Proposed Default Judgment Board Order as presented. Mr. Keeney seconded the motion and it passed unanimously.

- | | | | |
|---------------------------|------------------------------------|-------------------------|---------------------|
| Investigation No.: | 14-01-03L | Hometown: | McKinney, TX |
| SOAH Docket No.: | 457-15-0006 | Certificate No.: | 099439 |
| Respondent: | Saleh Abdel-Rahim Al-Shaikh | | |
| Rule Violations: | 501.90(2), 501.90(9) | | |
| Act Violations: | 901.502(6), 901.502(11) | | |

On March 18, 2014, the BEC found that Saleh Abdel-Rahim Al-Shaikh admitted under oath to stealing at least \$200,000.00 from his employer. The BEC offered Respondent an ACO ordering his certificate be revoked, and would require Respondent to pay the Board \$25,000 in administrative penalties and pay the Board's direct administrative costs incurred in the investigation and prosecution of this matter. Respondent did not accept this offer. Pleadings were filed with the State Office of Administrative Hearings (SOAH) and after notice of hearing, Respondent failed to appear. The SOAH Administrative Law Judge (ALJ) granted staff's Motion for Default, pursuant to Board *Rule 519.42(d)*, resulting in the Board granting a default Order finding that: 1) Respondent violated Board *Rules 501.90(2)* and *501.90(9)*, as well as *Sections 901.502(6)* and *901.502(11)* of the *Public Accountancy Act*; 2) Respondent's individual certificate be revoked; and, 3) Respondent be assessed \$25,000 in administrative penalties; and \$326.11 in administrative costs.

X. Mr. Prothro reviewed the schedule of future Board meetings.

XI. Mr. Prothro adjourned the meeting at 10:55 a.m.

ATTEST:

Thomas G. Prothro, CPA, Presiding Officer

J. Coalter Baker, CPA, Assistant Presiding Officer

¹ Mr. Baker, Mr. Broadus, Mr. Cluck, Ms. Hugly, and Ms. Miller recused themselves from participating in this matter.

² Mr. Duckworth, Mr. Ferguson, and Mr. Keeney recused themselves from participating in this matter.