

Texas State Board of Public Accountancy

January 14, 2016

The Texas State Board of Public Accountancy met from 10:00 a.m. until 11:15 a.m. on January 14, 2016, 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 9:55 a.m. on January 4, 2016. (TRD #2016-000011).
(ATTACHMENT 1)

Board Members Present

J. Coalter Baker, CPA
Presiding Officer
John R. Broaddus, CPA
Jonathan B. Cluck, Esq.
Rocky L. Duckworth, CPA
Member-at-Large
Susan Fletcher
Donna J. Hugly, CPA
Assistant Presiding Officer
Ross T. Johnson, CPA
Timothy L. LaFrey, Esq. CPA
Robert M. McAdams, CPA
Treasurer
Roselyn E. Morris, Ph.D., CPA
Benjamin Peña, CFE, CPA
Steve D. Peña, CPA
Secretary
Kimberly E. Wilkerson, Esq.
Phillip W. Worley

Member Absent

William Lawrence
Member-at-Large
excused

Others Present

Charles Cooley, CPA
John Hernandez
Frank McElroy, Esq.

Staff Present

Paulette Beiter, Esq.
Roel Cantu
Ismael Castillo
Karen Davis
Alan Hermanson, CPA
J. Randel Hill, Esq.
Donna Hiller
Joseph Jaffe
Marissa Mahoney
Virginia Moher, Esq., CPA
Julie Prien
Marisa Rios
April Serrano
William Treacy
Dan Weaver

- I. Mr. Baker, Presiding Officer, called the meeting to order at 10:00 a.m. Mr. Treacy called roll and declared a quorum. Mr. Cluck moved to excuse the absence of Mr. Lawrence from the Board meeting. Ms. Fletcher seconded the motion and it passed unanimously.
- II. Mr. Cluck moved to approve the November 19, 2015 Board meeting minutes as presented. Mr. Worley seconded the motion and it passed unanimously.
- III. Mr. Baker, Executive Committee Chair, reported on the January 13, 2016 committee meeting.

Members Present

J. Coalter Baker, CPA
Rocky L. Duckworth, CPA
Donna J. Hugly, CPA
Robert M. McAdams, CPA
Steve D. Peña, CPA

Member Absent

William Lawrence

Others Present

Jonathan B. Cluck, Esq.
Charles Cooley, CPA
Robert Gonzales, CPA
Monday Rufus, CPA
John Sharbaugh

Staff Present

Karen Davis
Alan Hermanson, CPA
J. Randel Hill, Esq.
Donna Hiller
William Treacy
Dan Weaver

- A. Mr. McAdams moved to approve the Board's financial statements as presented. Mr. Broaddus seconded the motion and it passed unanimously.

B. The following was presented:

1. Mr. Cluck moved to accept the audit follow-up: *Internal Audit of the Information Systems – Logical and Physical Security (FY 2015)* as presented. Mr. McAdams seconded the motion and it passed unanimously.
2. Mr. S. Peña moved to accept the *Fiscal Year 2015 Internal Audit Annual Report* as presented. Ms. Hugly seconded the motion and it passed unanimously.
3. Mr. Broaddus moved to approve the following internal audit plan for FY 2016. Mr. McAdams seconded the motion and it passed unanimously.
 - a. Information Systems – Systems Development
 - b. Peer Review

C. Mr. Baker reviewed the following NASBA dates of interest.

1. 34th Annual Conference for Executive Directors and Board Staff – March 15-17, 2016 in Tucson, AZ.
2. 21st Annual Conference for Board of Accountancy Legal Counsel – March 15 – 17, 2016 in Tucson, AZ.
3. Western Regional Meeting – June 22-24, 2016 in Denver, CO.
4. 109th Annual Meeting – October 30 – November 2, 2016 in Austin, TX

D. Mr. Hill, General Counsel, discussed open records letter ruling OR2015-25090.

IV. Ms. Hugly, Rules Committee Chair, reported on the Rules Committee meeting held January 13, 2016.

Members Present

J. Coalter Baker, CPA
ex officio
Jonathan B. Cluck, Esq.
Rocky L. Duckworth, CPA
Donna J. Hugly, CPA
Timothy L. LaFrey, Esq.,
CPA
Steve D. Peña, CPA

Others Present

Charles Cooley, CPA
Robert McAdams, CPA
John Sharbaugh

Staff Present

Roel Cantu
Karen Davis
J. Randel Hill, Esq.
Donna Hiller
Julie Prien
Marisa Rios
William Treacy
April Serrano
Daniel Weaver

- A. Mr. S. Peña moved to authorize the executive director to publish the proposed amendments to Board Rules 513.10 (*Firm License*) and 513.11 (*Qualifications for Non-CPA Owners of Firm License Holders*) as presented, in the *Texas Register* for public comment. Ms. Fletcher seconded the motion and it passed unanimously. **(ATTACHMENT 2)**
- B. Mr. B. Peña moved to authorize the executive director to publish the proposed revisions to Board Rule 523.131 (*Board Approval of Ethics Course Content*) as presented, in the *Texas Register* for public comment. Mr. Broaddus seconded the motion and it passed unanimously. **(ATTACHMENT 3)**
- C. Mr. LaFrey moved that a letter be drafted and reviewed by Rules Committee members addressing the issues raised by the Rules Committee members concerning the Exposure Draft issued by the AICPA/NASBA regarding Retired Status for CPAs. Mr. Broaddus seconded the motion and it passed unanimously.
- D. Ms. Hugly reported that the committee discussed the initiation of a review of the Board's *Rules* pursuant to Section 2001.039 of the *Texas Government Code*.
- E. Ms. Hugly reported that the next committee meeting was scheduled for March 23, 2016 at 1:00 p.m.

- V. Mr. Broadus, Behavioral Enforcement Committee Chair, reported on the January 6, 2016 committee meeting.

Members Present

John R. Broadus, CPA
Jonathan B. Cluck, Esq.
Donald W. Harcum, CPA
Timothy L. LaFrey, Esq., CPA
Ben Peña, CFE, CPA

Members Absent

Donna J. Hugly, CPA
James D. Ingram, IV, CPA

Staff Present

Paulette P. Beiter, Esq.
J. Randel Hill, Esq.
Virginia Moher, Esq., CPA

- A. Mr. McAdams moved to dismiss the following investigations based on insufficient evidence of a violation of the *Rules* or *Act*. Mr. S. Peña seconded the motion and it passed. Mr. Johnson recused himself from voting on item number six at the Board meeting.

1. **Investigation Nos. 15-10-08L¹ and 15-10-09L¹**
2. **Investigation Nos. 15-10-17L¹ and 15-10-18L¹**
3. **Investigation Nos. 15-09-05L¹ and 15-09-06L¹**
4. **Investigation Nos. 15-10-01L¹ and 15-10-02L¹**
5. **Investigation Nos. 14-12-03L¹, 14-12-04L¹ and 14-12-05L¹**
6. **Investigation Nos. 15-04-04L¹ and 15-04-05L¹**
7. **Investigation Nos. 15-09-03L¹ and 15-09-04L¹**

- B. Other – The committee considered five other investigations, which require no Board action at this time.

- C. The next committee meeting was scheduled for February 24, 2016.

- VI. Mr. Duckworth, Technical Standards Review Committee Chair, reported on the December 8, 2015 committee meeting.

Members Present

J. Coalter Baker, CPA
ex officio
Rocky L. Duckworth, CPA
Ross T. Johnson, CPA
David L. King, CPA

Michael McConnell, CPA
Steve D. Peña, CPA
W. David Rook, CPA
Kimberly Wilkerson, Esq.

Staff Present

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

- A. Mr. Cluck moved to dismiss **Investigation Nos 15-01-28L² and 15-01-29L²** based on lack of evidence of a violation of the *Rules* or *Act*. Ms. Hugly seconded the motion and it passed.

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

- C. The next committee meeting was scheduled for February 9, 2016.

- 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, and a Proposed Default Judgment Board Order:

A. Agreed Consent Orders

Behavioral Enforcement Committee

Mr. Cluck moved to approve the following Agreed Consent Order (ACOs) as presented. Mr. Broadus seconded the motion and it passed.

- | | | | | |
|----|---|---|---|------------------------------------|
| 1. | Investigation No.:
Respondent:
Rule Violation:
Act Violations: | 15-11-01L
Charles Woodrow Fleming
501.90(4)
901.502(6), 901.502(10), 901.502(11) | Hometown:
Certificate No.: | Clovis, NM
061406 |
|----|---|---|---|------------------------------------|

Respondent entered into an ACO with the Board whereby Respondent's certificate was revoked. Respondent was convicted on two counts of embezzlement, a second degree felony, and one count of attempting to evade or defeat tax. Respondent was sentenced to 18 years in prison, eight years of the sentence to be suspended and Respondent placed on supervised probation for five years.

Mr. Worley moved to approve the following ACOs as presented. Ms. Fletcher seconded the motion and it passed.

- | | | | | |
|----|---|--|---|---|
| 2. | Investigation Nos.:
Respondents:
Rule Violation:
Act Violations: | 15-01-18L & 15-01-19L
Jason Lee Horton &
Jason L. Horton, CPA (Firm)
501.93
901.502(6), 901.502(11) | Hometown:
Certificate No.:
Firm License No.: | Quanah, TX
083987
T08157 |
|----|---|--|---|---|

Respondents entered into an ACO with the Board whereby Respondent's and Respondent's Firm licenses were suspended for six months from the effective date of the Board Order. In addition, Respondent's certificate will be revoked for two years from the end date of the suspension. However, the revocation was stayed and Respondent was placed on probation for two years and must pay \$125.06 in administrative costs within 30 days of the Board Order. Respondents failed to respond to Board communications.³

- | | | | | |
|----|--|---|---|---|
| 3. | Investigation Nos.:
Respondents:
Rule Violations:
Act Violations: | 15-02-08L, 15-02-09L,
15-05-09L & 15-05-10L
Johanna Elizabeth Kimball
& Johanna Kimball, CPA (Firm)
501.90(12), 501.93
901.502(6), 901.502(11) | Hometown:
Certificate No.:
Firm License: | Dallas, TX
089421
R00798 |
|----|--|---|---|---|

Respondents entered into an ACO with the Board whereby Respondent and Respondent Firm were reprimanded. In addition, Respondents must pay a \$1,000 administrative penalty and \$302.53 in administrative costs within 30 days of the date of the Board Order. Respondents failed to respond to clients' inquiries and failed to respond to Board communications.¹

- | | | | | |
|----|--|--|---|--|
| 4. | Investigation Nos.:
Respondents:
Rule Violations:
Act Violations: | 15-01-15L & 15-01-16L
Robert McLean &
Robert McLean (Firm)
501.90(12), 501.93
901.502(6), 901.502(11) | Hometown:
Certificate No.:
Firm License No.: | Houston, TX
078912
T08391 |
|----|--|--|---|--|

Respondents entered into an ACO with the Board whereby Respondent's and Respondent Firm's license were suspended for two years from the date of the Board Order. However, the suspension was stayed and the Respondents were placed on probation and must pay a \$5,000 administrative penalty and \$96.48 in administrative costs within one year of the date of the Board Order. Respondents failed to respond to a client's inquiries about an engagement within a reasonable time without good cause and failed to respond to Board communications.⁴

- | | | | | |
|----|--|--|---|--------------------------------------|
| 5. | Investigation No.:
Respondent:
Rule Violations:
Act Violations: | 15-05-05L
Charles Elliott Smith
501.90(7), 501.91
901.502(6), 901.502(11) | Hometown:
Certificate No.: | Rockwall, TX
028010 |
|----|--|--|---|--------------------------------------|

Respondent entered into an ACO with the Board whereby Respondent was reprimanded. In addition, Respondent's license was suspended from the effective date of the Board Order until November 14, 2019. However, the suspension was stayed and Respondent was placed on probation for the same period. During this period, Respondent must complete four hours of live ethics CPE annually. Finally, Respondent must pay a \$1,500 administrative penalty and \$160.81 in administrative costs within 30 days of the date of the Board Order. Respondent was suspended from practicing before the Securities and Exchange Commission as an accountant for at least five years. Respondent failed to report the suspension to the Board.¹

- | | | | | |
|----|---|--|---|-------------------------------------|
| 6. | Investigation No.:
Respondent:
Rule Violation:
Act Violations: | 15-06-03L
Michael M. Turner
501.90(5)
901.502(6), 901.502(11) | Hometown:
Certificate No.: | Roanoke, TX
050589 |
|----|---|--|---|-------------------------------------|

Respondent entered into an ACO with the Board whereby Respondent's certificate was revoked for four years from the effective date of the Board Order. However, the revocation was stayed and Respondent was placed on probation and must pay \$107.19 in administrative costs within 30 days of the effective date of the Board Order. In addition, Respondent must complete and remain in compliance with the requirements of the Tarrant County Felony Alcohol Intervention Program. Respondent pleaded guilty to felony DWI.¹

Technical Standards Review Committee

Ms. Fletcher moved to approve the following ACOs as presented. Ms. Hugly seconded the motion and it passed.

- | | | | |
|-------------------------------|---|--------------------------|-----------------|
| 1. Investigation Nos.: | 15-07-01L and 15-07-02L | Hometown: | Waco, TX |
| Respondents: | Tracy Jennifer Dulock & Tracy Dulock, CPA (Firm) | Certificate No.: | 066596 |
| Rule Violations: | 501.60, 501.61, 501.78, 527.5 | Firm License No.: | C07409 |
| Act Violations: | 901.502(6), 901.502(12) | | |

Respondent entered into an ACO with the Board whereby Respondent voluntarily surrendered her certificate, consistent with her medical situation and in lieu of further disciplinary proceedings, paid \$250 in administrative costs, and agreed to additional conditions that will apply in the event that she later seeks reinstatement. Respondent firm issued an audit report of a 401(k) plan's financial statements that the Department of Labor determined was not based on sufficient, competent evidential matter to support the audit opinion rendered. Respondent firm also received two successive deficient peer review ratings.⁵

- | | | | |
|-------------------------------|---|--------------------------|---------------------|
| 2. Investigation Nos.: | 15-06-06L & 15-06-07L | Hometown: | Longview, TX |
| Respondents: | Mark Edward Dulweber & Mark E. Dulweber, P.C. (Firm) | Certificate No.: | 048442 |
| Rule Violations: | 501.93, 527.4, 527.5 | Firm License No.: | C05473 |
| Act Violations: | 901.502(6), 901.502(11), 901.502(12) | | |

Respondents entered into an ACO with the Board whereby Respondents were reprimanded; must pay an administrative penalty of \$2,000 plus administrative costs of \$1,286.52; and Respondents' certificate and firm licenses were placed on limited scope status until a petition for removal is approved. Respondents are prohibited from performing audits, reviews and compilations and other engagements required by the Board to be performed in accordance with the standards for auditing, accounting, and review services adopted by the American Institute of Certified Public Accountants or another national accounting organization recognized by the Board. Respondent firm has had two successive deficient peer reviews and failed to complete a mandated accelerated peer review. Respondents also did not substantively respond to Board correspondence.⁵

B. Mass Hearings

Mr. S. Peña moved to approve the following Proposals for Decision as presented. Mr. B. Peña 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 recommended that the certificate of each respondent 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*. (**ATTACHMENT 4**)

Docket	Investigation Numbers	Scheduled Hearing
457-15-4621	15-08-10001 – 15-08-10031	September 29, 2015
457-15-4179	15-09-10001 – 15-09-10035	October 27, 2015

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 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. (**ATTACHMENT 5**)

Docket
457-15-4622
457-15-5118

Investigation Numbers
15-08-10032 – 15-08-10192
15-09-10036 – 15-09-10198

Scheduled Hearing
September 29, 2015
October 27, 2015

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*. **(ATTACHMENT 6)**

Docket
457-15-4623
457-15-5119

Investigation Numbers
15-08-10193 – 15-08-10203
15-09-10199 – 15-09-10216

Scheduled Hearing
September 29, 2015
October 27, 2015

C. **Proposed Default Judgment Board Order**

Mr. Cluck moved to approve the following Proposed Default Judgment Board Order as presented. Mr. S. Peña seconded the motion and it passed unanimously.

- **Investigation No.:** 15-03-35L
SOAH Docket No.: 457-16-0460
Respondent: Jacqueline R. Morrison
Rule Violations: 501.90(4), 501.90(5)
Act Violations: 901.502(6), 901.502(10), 901.502(11)
Hometown: Cedar Hill, TX
Certificate No.: 064187

On April 8, 2015, staff initiated a complaint against Respondent based upon Respondent's felony conviction of one count of conspiracy to aid and assist in the preparation and presentation of false and fraudulent tax returns, 13 counts of aiding and assisting in the preparation and presentation of false and fraudulent tax returns, and three counts of wire fraud resulting in Respondent being sentenced to 187 months in prison and ordered to pay over \$17 million dollars in restitution. Staff offered Respondent an ACO ordering her certificate be revoked, in lieu of further disciplinary action. Respondent did not respond to the ACO offer. Pleadings were filed with the State Office of Administrative Hearings and after notice of hearing, Respondent failed to appear. The SOAH Administrative Law Judge granted staff's Motion for Default, pursuant to Board *Rule 519.42(d)*, and dismissed the case from the SOAH docket. The Board granted a default Order finding that: 1) Respondent violated Board *Rules 501.90(4)* and *501.90(5)*, as well as *Sections 901.502(6), 901.502(10), and 901.502(11)* of the *Act*; 2) Respondent's individual certificate be revoked; and, 3) Respondent be assessed \$25,000 in administrative penalties.

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

XI. Mr. Baker adjourned the meeting at 11:15 a.m.

ATTEST:

J. Coalter Baker, CPA, Presiding Officer

Steve D. Peña, CPA, Secretary

¹ Mr. Broaddus, Mr. Cluck, Mr. LaFrey, and Mr. B. Peña recused themselves from participating in this matter.

² Mr. Baker, Mr. Duckworth, Mr. Johnson, Mr. S. Peña and Ms. Wilkerson recused themselves from participating in this matter.

³ Mr. Baker, Mr. Broaddus, Mr. Cluck, Ms. Hugly, and Mr. B. Peña recused themselves from participating in this matter.

⁴ Mr. Baker, Mr. Broaddus, Ms. Hugly, and Mr. B. Peña recused themselves from participating in this matter.

⁵ Mr. Duckworth and Mr. S. Peña recused themselves from participating in this matter.