

Texas State Board of Public Accountancy

January 19, 2017

The Texas State Board of Public Accountancy met from 10:00 a.m. until 11:04 a.m. on January 19, 2017 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 8:22 a.m. on January 10, 2017. (TRD #2017-000211).
(ATTACHMENT 1)

Board Members Present

J. Coalter Baker, CPA
Presiding Officer
John R. Broaddus, CPA
Rocky L. Duckworth, CPA
Member-at-Large
Susan Fletcher
Donna J. Hugly, CPA
Assistant Presiding Officer
Ross T. Johnson, CPA
William Lawrence
Member-at-Large
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

Board Members Absent

Jonathan B. Cluck, Esq.
Timothy L. LaFrey, Esq., CPA
excused

Others Present

Felicia Farrar, CPA
Steve McConnel
Frank McElroy, Esq.
John Sharbaugh
Mark Vane, Esq.

Staff Present

Paulette Beiter, Esq.
Roel Cantu
Ismael Castillo
Karen Davis
Lance Fitzgerald, Esq.
Alan Hermanson, CPA
J. Randel Hill, Esq.
Donna Hiller
Joseph Jaffe
Natalie Miller
Kenny Pettitte
Julie Prien
Marisa Rios
William Treacy
Daniel 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. Worley moved to excuse Mr. LaFrey from the Board meeting. Mr. McAdams seconded the motion and it passed unanimously.

- II. Mr. S. Peña moved to approve the November 17, 2016 Board meeting minutes as presented. Ms. Fletcher seconded the motion and it passed unanimously.

- III. Mr. Baker, Executive Committee Chair, reported on the January 18, 2017 committee meeting.

Members Present

J. Coalter Baker, CPA
Rocky L. Duckworth, CPA
Donna J. Hugly, CPA

William Lawrence
Robert M. McAdams, CPA
Steve D. Peña, CPA

Staff Present

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

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

- B. Mr. S. Peña moved to approve the Board's Affirmative Action Plan – CY 2016 as presented. Mr. Broadus seconded the motion and it passed unanimously.
- C. No action was taken on the Board's internal audit status report.
- D. The following was presented:
 - 1. Mr. Baker reported on NASBA dates of interest:
 - a. 35th Annual Conference for Executive Directors and Board Staff March 14-16, 2017 in New Orleans, LA
 - b. 22nd Annual Conference for Board of Accountancy Legal Counsel March 14-16, 2017 in New Orleans, LA
 - c. Western Regional Meeting - June 6-8, 2017 in Coeur d'Alene, ID
 - d. 110th Annual Meeting – October 29 – November 1, 2017 in New York, NY
 - 2. Mr. Duckworth moved to allow the Board to gather bids engaging a pollster to conduct a survey to determine the public's concept of the use of the terms "accounting" and "accounting services." Ms. Fletcher seconded the motion and it passed unanimously.
- E. Mr. McAdams moved to approve the professional service contract amendment as presented. Ms. Hugly seconded the motion and it passed unanimously.

FY 2017 amendment:

Independent consultant contract (SOAH litigation):

- Mary Alice Boehm-McKaughan 9/1/16 – 8/31/17 \$73,500
(Increase contract by \$73,500 from \$76,500 to \$150,000)

- F. Mr. Baker reviewed thank you letters from the public.

- IV. Ms. Hugly, Rules Committee Chair, reported on the January 18, 2017 committee meeting.

Members Present

J. Coalter Baker, CPA
ex officio
Rocky L. Duckworth, CPA
Donna J. Hugly, CPA
Benjamin Peña, CFE, CPA
Steve D. Peña, CPA

Members Absent

Jonathan B. Cluck, Esq.
Timothy L. LaFrey, Esq.,
CPA

Others Present

William Lawrence
Robert M. McAdams
John Sharbaugh, CPA

Staff Present

Bryce Beasley
Roel Cantu
Karen Davis
Alan Hermanson, CPA
J. Randel Hill, Esq.
Donna Hiller
Marisa Rios
William Treacy
Daniel Weaver

- A. Ms. Hugly moved to authorize the executive director to have the proposed revisions and the re-adoption of *Rules 511.123 (Reporting Work Experience)* and *511.163 (Board-Approved Ethics Requirement and Examination on the Rules of Professional Conduct)*, published in the *Texas Register* for public comment. Mr. McAdams seconded the motion and it passed unanimously. **(ATTACHMENT 2)**
- B. Mr. S. Peña moved to authorize the executive director to have the proposed revisions and the re-adoption of *Chapter 523 – Continuing Professional Education* published in the *Texas Register* for public comment. Ms. Fletcher seconded the motion and it passed unanimously. **(ATTACHMENT 3)**
- C. Mr. McAdams moved that the Board adopt the proposed rule amendments to *Rules 511.52 (Recognized Institutions of Higher Education)* and *511.58 (Definitions of Related Business Subjects and Ethics Courses)* published in the *Texas Register* for public comment. Mr. Worley seconded the motion and it passed unanimously. **(ATTACHMENT 4)**

D. Ms. Hugly informed the Board that the next committee meeting was scheduled for March 8, 2017 at 1:30 p.m.

V. Mr. Broaddus, Behavioral Enforcement Committee Chair, reported on the January 11, 2017 committee meeting.

Members Present

John R. Broaddus, CPA
Donald W. Harcum, CPA
Karen W. Jones, CPA
Timothy L. LaFrey, Esq., CPA
Benjamin Peña, CFE, CPA

Members Absent

Jonathan B. Cluck, Esq.
Donna J. Hugly, CPA
James D. Ingram, IV, CPA

Staff Present

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

A. Ms. Fletcher 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.

1. Investigation Nos. 16-09-06L¹ and 16-09-07L¹
2. Investigation Nos. 09-07-03L¹, 09-07-04L¹, 09-10-05L¹, 09-11-03L¹, 09-11-13L¹, 10-01-07L¹, 10-01-08L¹, 10-04-04L¹, 10-04-05L¹, 10-04-13L¹, 10-05-01L¹, 10-07-14L¹, 10-08-01L¹, 10-09-07L¹, 10-10-13L¹, 10-10-14L¹, 10-11-01L¹, 12-03-05L¹, and 12-03-07L¹
3. Investigation Nos. 16-12-01L¹ and 16-12-02L¹
4. Investigation Nos. 16-08-04L¹ and 16-08-05L¹
5. Investigation No. 16-11-23L¹
6. Investigation Nos. 16-10-03L¹, 16-10-04L¹, 16-10-05L¹, 16-11-01L¹, 16-11-02L¹, and 16-11-03L¹
7. Investigation No. 16-09-04T¹

B. Mr. McAdams moved to dismiss Investigation Nos. 16-11-09L and 16-11-10L based on voluntary compliance with the *Rules* or *Act*. Ms. Fletcher seconded the motion and it passed.

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

D. The next committee meeting was scheduled for March 29, 2017.

VI. Mr. Duckworth, Technical Standards Review Committee Chair, reported on the December 14, 2016 committee meeting.

Members Present

Rocky L. Duckworth, CPA
Jeffrey L. Johanns, CPA
Ross T. Johnson, CPA
David L. King, CPA

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

Staff Present

J. Randel Hill, Esq.
Lance Fitzgerald, Esq.

A. Mr. Broaddus moved to dismiss the following investigations based on insufficient evidence of a violation of the *Rules* or *Act*. Dr. Morris seconded the motion and it passed.

1. Investigation No. 16-04-19L²
2. Investigation No. 16-04-21L²
3. Investigation No. 16-09-03L²

B. Other – The committee considered 10 other investigations, which require no Board action at this time.

C. The next committee meeting was scheduled for February 22, 2017.

VII. Ms. Beiter, 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 the Agreed Consent Orders and Proposals for Decisions:

A. **Agreed Consent Orders**

Behavioral Enforcement Committee

Dr. Morris moved to approve the following Agreed Consent Order (ACO) as presented. Ms. Fletcher seconded the motion and it passed.

- | | | | |
|-----------------------------|-----------------------------------|-------------------------|-------------------|
| 1. Investigation No: | 11-08-07L | Hometown: | Irving, TX |
| Respondent: | Donald Warren Davis | Certificate No.: | 006435 |
| Rule Violations: | 501.73, 501.90(10), 501.93 | | |
| Act Violations: | 901.502(6), 901.502(11) | | |

After numerous continuances, Respondent, although properly notified, failed to appear in person and was not represented at a scheduled public hearing. Following the scheduled public hearing, an Administrative Law Judge (ALJ) of the State Office of Administrative Hearings (SOAH) entered a default judgment, and remanded the case to the Board for informal disposition under Texas Government Code § 2001.056. The Board approved Staff's recommendation that Respondent's certificate be revoked, Respondent be assessed \$20,000 in administrative costs as well as all direct administrative costs incurred in this matter. Respondent had power of attorney for his mother and managed her financial affairs. Respondent breached his fiduciary duty to his mother and engaged in a fiscally dishonest act when he commingled between \$400,000 and \$500,000 of her money with his own. Respondent failed to timely respond to Board communications and repeatedly failed to respond to clients in a separate complaint.³

Mr. McAdams moved to approve the following ACO as presented. Mr. Worley seconded the motion and it passed.

- | | | | |
|------------------------------|-------------------------|-------------------------|--------------------|
| 2. Investigation No.: | 10-04-10L | Hometown: | Houston, TX |
| Respondent: | Gerald Lee Jones | Certificate No.: | 045640 |

Respondent entered into an ACO with the Board whereby Respondent's certificate was conditionally reinstated. The scope of Applicant's practice is limited. Applicant shall not perform any attest services including audits, reviews, compilations, forecasts, projections, or other special reports until given permission by the Board to resume this practice. In addition, for a period of three years from the date his certificate is reinstated, Applicant is placed on probated revocation. Respondent must complete four hours of live continuing professional education (CPE) in the area of ethics annually during the probationary period and Respondent shall not provide any assurances on any documents to be used for extending credit to or from third parties until given permission by the Board to resume this practice. The Board accepted Respondent's involuntary surrender of his certificate after he pleaded guilty to conspiracy to commit wire fraud on December 14, 2009.¹

Mr. Lawrence moved to approve the following ACOs as presented. Mr. S. Peña seconded the motion and it passed.

- | | | | |
|------------------------------|--|-------------------------|--------------------|
| 3. Investigation No.: | 16-11-26L | Hometown: | Shawnee, KS |
| Respondent: | Jonathan McIntyre
Josendale | Certificate No.: | 090927 |
| Rule Violations: | 501.90(4), 501.90(5) | | |
| Act Violations: | 901.502(6), 901.502(11) | | |

Respondent entered into an ACO with the Board whereby Respondent's certificate was revoked. Respondent was convicted of two counts of felony Aggravated Battery while driving under the influence. On June 22, 2016, Respondent was sentenced to serve 34 months in Kansas State Prison.

- | | | | |
|------------------------------|----------------------------|-------------------------|-------------------------|
| 4. Investigation No.: | 16-08-07L | Hometown: | China Spring, TX |
| Respondent: | Michael Duane Lucas | Certificate No.: | 076811 |
| Rule Violation: | 501.73 | | |
| Act Violation: | 901.502(6) | | |

Respondent entered into an ACO with the Board whereby Respondent was reprimanded and ordered to pay \$128.40 in administrative costs within 30 days of the date of the Board Order. Respondent failed to disclose a conflict of interest to a client.¹

5. **Investigation Nos.:** 16-08-09L and 16-08-10L **Hometown:** Houston, TX
Respondents: Joe Mastriano and Joe Mastriano P.C. **Certificate No.:** 026553
Firm License No.: C05159
Rule Violation: 501.82
Act Violation: 901.502(6)

Respondents entered into an ACO with the Board whereby Respondents was reprimanded and ordered to pay a \$7,500 administrative penalty within 30 days of the date of the Board Order. Respondent must also complete and submit proof of completion of four hours of live CPE in the area of ethics annually for three consecutive years. This requirement is in addition to Respondent's annual CPE requirement. Respondents used misleading or deceptive statements in advertising and on Respondent Firm's website.¹

6. **Investigation No.:** 16-08-01L **Hometown:** Garland, TX
Respondent: Ken Chee-Kin Mok **Certificate No.:** 023919
Rule Violations: 501.90(5), 501.90(4)
Act Violations: 901.502(6), 901.502(10), 901.502(11)

Respondent entered into an ACO with the Board whereby Respondent were reprimanded. In addition, Respondent's certificate was revoked for a period of five years from the date of the Board Order. However, this revocation was stayed and Respondent was placed on probation for five years. On July 19, 2016, Respondent was sentenced to five year's probation after pleading guilty to Misprision of a Felony. Respondent, as chairman of a bank, allowed a customer of the bank to use a collateralized line of credit for a purpose other than the one approved by the bank's loan committee.¹

7. **Investigation No.:** 16-08-08L **Hometown:** Waco, TX
Respondent: Pattillo, Brown & Hill, L.L.P. **Firm License No.:** P04520
Rule Violation: 501.73
Act Violation: 901.502(6)

Respondent entered into an ACO with the Board whereby Respondent was reprimanded and ordered to pay \$128.40 in administrative costs within 30 days of the date of the Board Order. Respondent failed to disclose a conflict of interest to a client.¹

Technical Standards Review Committee

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

- **Investigation Nos:** 16-06-11L and 16-06-12L **Hometown:** The Woodlands, TX
Respondents: Vie Mixon and Vie Mixon **Certificate No.:** 067918
CPA PLLC **Firm License No.:** C07571
Rule Violation: 527.5
Act Violation: 901.502(12)

Respondents entered into an ACO with the Board whereby Respondents are subject to a scope limitation. Respondents are prohibited from performing audits, review services or other engagements that require expressing an assurance on financial statements from the effective date of the Board Order until an application for removal of the limitation is found acceptable to the TSR Committee and ratified by the Board. Respondents shall undergo an accelerated peer review to be completed within six months of the effective date of the Board Order. If Respondent Firm does not receive a rating of pass, Respondents will be prohibited from providing any attest services for a period of at least three years from the review date and may not petition the Board for removal of the scope limitation during the three year period. Respondent Firm received three successive deficient peer reviews as defined under Board Rule 527.5. Respondent is responsible for the supervision of attest services in Respondent Firm.²

Mr. S. Peña moved to approve the following ACO as presented. Mr. B. Peña seconded the motion and it passed

Unauthorized Practice of Public Accountancy

- **Investigation No.:** 16-10-18N **Hometown:** Plano, TX
Respondent: BVA Group and Jeffrey Balcombe
Rule Violation: 501.81
Act Violations: 901.453, 901.502(5) & (6)

Respondents entered into an ACO with the Board whereby Respondents agreed to discontinue use of terms regulated by the Act including, but not limited to, "forensic accounting," "accountant," "auditor,"

“accounting services,” and “auditing services,” and the performance or offer to perform attest services. In addition, Respondents agreed to discontinue use of the abbreviation CPA with an unlicensed entity without using the disclaimer “This firm is not a CPA firm.” Respondents used terms restricted by the Act on web-based profiles after providing correspondence to the Board in 2011 indicating the agreement to discontinue using terms regulated by the Board. Respondent also failed to include the Board’s required disclaimer in web-based marketing and advertising material.

B. Mass Hearings

Mr. B. Peña moved to approve the following Proposals for Decision as presented. Dr. Morris 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 5)

Docket	Investigation Numbers	Scheduled Hearing
457-16-4959	16-08-10001 – 16-08-10026	September 27, 2016
457-16-5512	16-09-10001 – 16-09-10038	October 25, 2016

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 6)

Docket	Investigation Numbers	Scheduled Hearing
457-16-4960	16-08-10027 – 16-08-10175	September 27, 2016
457-16-5513	16-09-10039 – 16-09-10193	October 25, 2016

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 7)

Docket	Investigation Numbers	Scheduled Hearing
457-16-4961	16-08-10176 – 16-08-10187	September 27, 2016
457-16-5514	16-09-10194 – 16-09-10204	October 25, 2016

X. Dr. Morris moved to adopt the following Board *Rules*. Mr. Worley seconded the motion and it passed unanimously.

1. *Section 511.11. Definitions* (ATTACHMENT 8)
2. *Section 511.21. Examination Application* (ATTACHMENT 9)
3. *Section 511.22. Initial Filing of the Application of Intent* (ATTACHMENT 10)
4. *Section 511.27. Good Moral Character Evidence from Foreign Residents* (ATTACHMENT 11)
5. *Section 511.51. Educational Definitions* (ATTACHMENT 12)
6. *Section 511.52. Recognized Institutions of Higher Education* (ATTACHMENT 13)
7. *Section 511.53. Evaluation of Foreign Education Documents* (ATTACHMENT 14)
8. *Section 511.54. Recognized Texas Community Colleges* (ATTACHMENT 15)
9. *Section 511.56. Educational Qualifications under the Act* (ATTACHMENT 16)
10. *Section 511.57. Qualified Accounting Courses* (ATTACHMENT 17)

11. *Section 511.58. Definitions of Related Business Subjects and Ethics Courses (ATTACHMENT 18)*
12. *Section 511.59. Definition of 150 Semester Hours (ATTACHMENT 19)*
13. *Section 511.70. Grounds for Disciplinary Action of Applicants (ATTACHMENT 20)*
14. *Section 511.72. Uniform Examination (ATTACHMENT 21)*
15. *Section 511.77. Scoring (ATTACHMENT 22)*
16. *Section 511.96. Appeal from Denial of Request (ATTACHMENT 23)*
17. *Section 511.97. Examination of Applicant Approved with Accommodation (ATTACHMENT 24)*
18. *Section 511.102. CPA Examination Availability (ATTACHMENT 25)*
19. *Section 511.104. Test Center Locations (ATTACHMENT 26)*
20. *Section 511.121. Application for Approval of Experience (ATTACHMENT 27)*
21. *Section 511.122. Acceptable Work Experience (ATTACHMENT 28)*
22. *Section 511.162. Application for Issuance of the Certificate by Exam After Completion of the CPA Examination (ATTACHMENT 29)*
23. *Section 520.1. Authority and Purpose (ATTACHMENT 30)*
24. *Section 520.2. Definitions (ATTACHMENT 31)*
25. *Section 520.3. Institutions (ATTACHMENT 32)*
26. *Section 520.4. Eligible Students (ATTACHMENT 33)*
27. *Section 520.5. Award Amounts and Uses (ATTACHMENT 34)*
28. *Section 520.6. Allocations and Reallocations (ATTACHMENT 35)*
29. *Section 520.9. Advisory Committee (ATTACHMENT 36)*

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

XII. Mr. Baker adjourned the meeting at 11:04 a.m.

ATTEST:

J. Coalter Baker, CPA, Presiding Officer

Steve D. Peña, CPA, Secretary

¹ Mr. Broaddus, Ms. Hugly, and Mr. B. Peña recused themselves from participating in this matter.

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

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