

Texas State Board of Public Accountancy

July 13, 2017

The Texas State Board of Public Accountancy met from 10:00 a.m. until 11:25 a.m. on July 13, 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 4:41 p.m. on May 4, 2017. (TRD #2017-004942).
(ATTACHMENT 1)

Board Members Present

J. Coalter Baker, CPA
Presiding Officer
John R. Broaddus, CPA
Jonathan B. Cluck, Esq.
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

Members Absent

Rocky L. Duckworth, CPA
Executive Committee
Member-at-Large
William Lawrence
Executive Committee
Member-at-Large
(excused)

Others Present

Karen Davis
Matt Hunter
John Sharbaugh
Mark Vane, Esq.

Staff Present

Paulette Beiter, Esq.
Roel Cantu
Ismael Castillo
J. Randel Hill, Esq.
Donna Hiller
Betty Lackey
Kyle McGaw
Natalie Miller
John Moore, Esq.
Julie Prien
Marisa Rios
April Serrano
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.

At this time, Mr. Baker presented/acknowledged the following:

1. Service award to Betty Lackey – 15-year service award
 2. Resolution for Karen Davis who retired from the agency
- II. Mr. Cluck moved to approve the May 18, 2017 Board meeting minutes as presented. Ms. Fletcher seconded the motion and it passed unanimously.
- III. Mr. Baker, Executive Committee Chair, reported on the July 12, 2017 committee meeting.

Members Present

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

Members Absent

Rocky L. Duckworth, CPA
William Lawrence

Others Present

Lisa Collier, CPA, CFE,
CIDA
Michael Simon, MBA, CGAP
Justin Griffin, MS, CISA

Staff Present

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. Cluck seconded the motion and it passed unanimously.

- B. Mr. McAdams moved to postpone the Board's scheduled internal audit from FY 2017 to FY 2018. Dr. Morris seconded the motion and it passed unanimously.
- C. Mr. McAdams moved to approve the Board's FY 2018 Budget Plan as presented. Mr. S. Peña seconded the motion and it passed unanimously.
- D. The following was presented:
 - 1. Mr. Baker reported on NASBA dates of interest:
 - 110th Annual Meeting – October 29 – November 1, 2017 in New York, NY
 - 2. Mr. Baker, Mr. McAdams, Mr. S. Peña and Mr. Treacy reported on NASBA's Western Regional Meeting held on June 6-8, 2017 in Coeur d'Alene, ID.
- E. Mr. McAdams moved to approve the professional service contract and amendments as presented. Mr. Broadus seconded the motion and it passed unanimously.

FY 2017 contract:

Technical Standards Review Committee consultants:

- T. Wayne Owens Associates P.C. 5/1/2017 – 8/31/17 \$10,000
(increase by \$15,000 from \$30,000 to \$45,000)

FY 2017 amendments:

- 1. Harper Pearson, Co., P.C. 6/1/2017 – 8/31/17 \$30,000
(increase by \$30,000 from \$145,000 to \$175,000)
- 2. Virginia Moher 9/1/2016 – 8/31/17 \$6,000
(increase by \$6,000 from \$45,000 to \$51,000)
Note: Offset by reduction in cost for professional services contract approved May 18, 2017
Board meeting for temporary legal support for Technical Standards Review Committee

- F. Mr. Baker reviewed thank you letters from the University of Texas at El Paso regarding the 5th year scholarship.

- IV. Ms. Hugly, Rules Committee Chair, reported on the July 12, 2017 committee meeting.

Members Present

J. Coalter Baker, CPA
ex officio
Donna J. Hugly, CPA
Timothy L. LaFrey, Esq., CPA
Benjamin Peña, CFE, CPA
Steve D. Peña, CPA

Members Absent

Jonathan B. Cluck, Esq.
Rocky L. Duckworth, CPA

Others Present

Robert McAdams, CPA
John Sharbaugh

Staff Present

Paulette Beiter, Esq.
Roel Cantu
Karen Davis
Alan Hermanson, CPA
J. Randel Hill, Esq.
Donna Hiller
April Serrano
Marisa Rios
William Treacy
Daniel Weaver

- A. Ms. Hugly moved to authorize the executive director to have the proposed revision to Board *Rule 507.6 (Employee Training and Education Assistance Program)* published in the *Texas Register* for public comment. Mr. Broadus seconded the motion and it passed unanimously. **(ATTACHMENT 2)**
- B. Ms. Hugly moved to authorize the executive director to have the proposed revisions and the re-adoption of Board *Rules 525.1 (Application for the UCPAE, Issuance of the CPA Certificate, or a License)* and *525.2 (Application for or Renewal of a License for Applicants or Licensees with Criminal Backgrounds)* published in the *Texas Register* for public comment. Mr. S. Peña seconded the motion and it passed unanimously. **(ATTACHMENT 3)**

- C. Ms. Hugly reported on the committee discussion concerning the "Retired Status" for licensees and staff will present revisions to *Rule 515.8 (Retired or Disability Status)* to the next committee meeting.
- D. The next meeting was scheduled for September 20, 2017 at 1:30 p.m.
- V. Dr. Morris, Qualifications Committee Chair, reported on the July 12, 2017 committee meeting.

Members Present

J. Coalter Baker, CPA
ex officio
James Flagg, PhD, CPA
Robert McAdams, CPA
Roselyn Morris, PhD, CPA
Benjamin Peña, CFE, CPA
Melanie Thompson, CPA

Member Absent

J. Kamas, CPA

Others Present

Logan Mims

Staff Present

Gilbert Gutierrez
Jerry Hill, Esq.
Donna Hiller
Kyle McGaw
William Treacy

- A. Dr. Morris reported that the committee reviewed correspondence and Board rules related to the evaluation of the Abitur exams and determined that the policies and procedures that are currently in place are sufficient to evaluate academic courses.
- B. Dr. Morris informed the Board that the committee discussed and approved the proposal of exam candidate 0248092 to meet the work experience requirement using self-employment. Dr. Morris noted that the committee suggested that Board *Rule 511.124 (Acceptable Supervision)* be amended to require an affidavit attesting to the quality of work that the exam candidate performed while under a CPA's supervision.
- C. Dr. Morris reported that the committee reviewed and discussed a follow-up report relating to online accounting education and CPA exam success presented by John D. Morgan of Winona State University.
- D. Dr. Morris moved to approve an extension deadline of September 30, 2017 for exam candidates whose exam credits will expire on either August 4 or September 9, 2017 if they do not pass the exam. Ms. Fletcher seconded the motion and it passed unanimously.
- VI. Mr. Baker reported on the Board's June 17, 2017 swearing-in ceremony.
- VII. Mr. Broaddus, Behavioral Enforcement Committee Chair, reported on the following committee meetings.

January 11, 2017

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 Beiter, Esq.
J. Randel Hill, Esq.

- A. Mr. S. Peña moved to dismiss **Investigation Nos. 16-09-08L¹** and **16-09-09L¹** based on insufficient evidence of a violation of the *Rules* or the *Act*. Mr. McAdams seconded the motion and it passed.

March 29, 2017

Members Present

John R. Broaddus, CPA
Jonathan B. Cluck, Esq.
Donald W. Harcum, CPA
Donna J. Hugly, CPA
James D. Ingram IV, CPA
Timothy L. LaFrey, Esq., CPA
Benjamin Peña, CFE, CPA

Member Absent

Karen W. Jones, CPA

Staff Present

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

- Dr. Morris moved to dismiss **Investigation Nos. 16-12-05L¹** and **16-12-06L¹** based on insufficient evidence of a violation of the *Rules* or the *Act*. Mr. Worley seconded the motion and it passed.

June 28, 2017

Members Present

John R. Broadbuss, CPA
Donna J. Hugly, CPA
James D. Ingram IV, CPA
Karen W. Jones, CPA
Timothy L. LaFrey, Esq., CPA
Benjamin Peña, CFE, CPA

Members Absent

Jonathan B. Cluck, Esq.
Donald W. Harcum, CPA

Staff Present

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

- Ms. Fletcher moved to dismiss the following investigations based on insufficient evidence of a violation of the *Rules* or the *Act*. Mr. S. Peña seconded the motion and it passed.

1. **Investigation Nos. 17-01-27L¹ and 17-01-28L¹**
2. **Investigation Nos. 17-03-11L¹ and 17-03-12L¹**
3. **Investigation Nos. 17-03-13L¹ and 17-03-14L¹**
4. **Investigation Nos. 17-02-01L¹ and 17-02-02L¹**
5. **Investigation Nos. 17-03-03L¹ and 17-03-04L¹**
6. **Investigation Nos. 17-02-04L¹, 17-02-05L¹, and 17-02-06L¹**

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

C. The next committee meeting was scheduled for August 30, 2017 at 9:00 a.m.

- VIII. Mr. Johnson, Technical Standards Review Committee member, reported on the June 21, 2017 committee meeting.

Members Present

Rocky L. Duckworth, CPA
Jeffrey L. Johanns, CPA
Ross T. Johnson, CPA
David L. King, CPA
Steve D. Peña, CPA
Kimberly Wilkerson, Esq.

Member Absent

David W. Rook, CPA

Staff Present

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

A. Mr. Johnson reported that committee considered seven investigations which require no Board action at this time.

B. The next committee meeting is to be determined.

- IX. Ms. Hugly reported on the Board's Taskforce on Titles.

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

- XI. 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.

- XII. The Board took the following actions on the Agreed Consent Orders and Administrative Disciplinary Actions:

A. Agreed Consent Orders

Behavioral Enforcement Committee

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

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|-------------------------------|--|--------------------------|-------------------|
| 1. Investigation Nos.: | 16-01-07L & 16-01-08L | Hometown: | Austin, TX |
| Respondents: | Bradley Patton Blessing & Bradley P. Blessing CPA, PC | Certificate No.: | 043732 |
| | | Firm License No.: | C08572 |
| Rule Violations: | 501.76, 501.90(12), 501.93 | | |
| Act Violations: | 901.502(6), 901.502(11) | | |

Respondent entered into an ACO with the Board whereby Respondent's certificate and Respondent Firm's license were revoked; however, the revocation was stayed and Respondent and Respondent Firm were placed on probated revocation for a period of one year from the date of the Board Order. In addition, Respondents were ordered to pay an administrative penalty of \$7,500 and \$190.57 in administrative costs and return all client records in Respondents' possession. Respondents failed to respond to a client's inquiries about an engagement within a reasonable time without good cause. Respondents failed to provide copies of previous years' tax returns upon request. Respondents failed to respond to Board communications.²

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| 2. | Investigation Nos.: Respondents: Rule Violation: Act Violations: | 16-11-08L & 17-03-05L James Kenneth Huff & Ken Huff, P.C. 501.76 901.502(6), 901.502(11) | Hometown: Certificate No.: Firm License No.: | Austin, TX 035637 C03548 |
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Respondent entered into an ACO with the Board whereby Respondent and Respondent Firm were reprimanded. Respondents misplaced client records and were unable to return them in a timely manner.¹

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| 3. | Investigation No.: Respondent: Rule Violation: Act Violations: | 16-11-32L Divya Matai 501.90(6) 901.502(6), 901.502(11) | Hometown: Certificate No.: | Pearland, TX 092103 |
|----|---|--|---|--------------------------------------|

Respondent entered into an ACO with the Board whereby Respondent's certificate was revoked. Respondent agreed to the disciplinary resignation of her Oregon license in lieu of revocation for conduct constituting multiple and separate violations of Oregon laws and administrative rules applicable to the practice of public accountancy.¹

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| 4. | Investigation Nos.: Respondents: Rule Violations: Act Violations: | 16-09-04L & 16-09-05L Dan Alan Neff & James H. Cotter, Neff & Co., CPAS 501.80, 501.81, 501.94 901.351, 901.502(6), 901.502(11) | Hometown: Certificate No.: Firm License No.: | Albany, TX 016599 P04845 |
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Respondents entered into an ACO with the Board whereby Respondent and Respondent Firm were reprimanded. In addition, Respondent's certificate and Respondent Firm's license were revoked for a period of five (5) years and Respondent and Respondent Firm were ordered to pay an administrative penalty of \$10,000. However, this revocation and the associated administrative penalty were stayed and Respondents were placed on probation for five (5) years. Respondent practiced public accountancy and used his CPA designation while his license was suspended for failure to accrue sufficient continuing professional education. Respondent practiced public accountancy through an unlicensed entity. The firm license was expired.¹

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| 5. | Investigation No.: Respondent: Rule Violations: Act Violations: | 16-09-13L Loan Marie Nguyen 501.74(b), 501.90(12), 501.76, 501.93 901.502(6), 901.502(11) | Hometown: Certificate No.: | Sugar Land, TX 084301 |
|----|--|--|---|--|

Respondent entered into an ACO with the Board whereby Respondent's certificate was revoked. In addition, Respondent was ordered to pay an administrative penalty of \$10,000 and \$386.20 in administrative costs within 30 days of the date the Board ratifies this Order. Respondent failed to file 940 and 941 tax returns for a client and failed to respond to a client's inquiries about an engagement within a reasonable time without good cause. Respondent failed to return original records and failed to provide copies of tax returns upon request. Respondent failed to respond to Board communications.¹

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| 6. | Investigation Nos.: Respondents: Rule Violation: Act Violation: | 16-04-24L & 16-04-25L Michael Gordon Robideau & Michael G. Robideau, CPA 501.62(1)(D) 901.502(6) | Hometown: Certificate No.: Firm License No.: | Sugar Land, TX 036327 T08135 |
|----|--|---|---|---|

Respondent entered into an ACO with the Board whereby Respondent and Respondent Firm were reprimanded and ordered to pay an administrative penalty of \$500 and \$131.02 in administrative costs within 30 days of the date of the Board Order. Respondents prepared tax returns that did not comply with professional standards.²

Technical Standards Review Committee

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

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|----|-----------------------------|---|--------------------------|--------------------|
| 1. | Investigations Nos.: | 15-11-08L & 15-11-09L | Hometown: | Baytown, TX |
| | Respondents: | Michael R. Leathers & Edwards and Leathers, P.C. | Certificate No.: | 053004 |
| | Rule Violation: | 501.60 | Firm License No.: | C06525 |
| | Act Violation: | 901.502(6) | | |

Respondents entered into an ACO with the Board whereby Respondents were reprimanded and required to pay an administrative penalty of \$5,000 plus administrative costs of \$833.79. Respondents' certificate and firm license were placed on Limited Scope Status until a petition for removal is approved by the TSR Committee and ratified by the Board. The Department of Labor determined: (1) sufficient evidence of audit work was not obtained by Respondents to support the opinion rendered on a health plan's financial statements, (2) certain footnote disclosures to an employee benefit plan's financial statements were not made by Respondents, and (3) the Respondents' audit did not extend to a schedule of reportable transactions.³

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| 2. | Investigations Nos.: | 16-02-04L & 16-02-05L | Hometown: | Richards, TX |
| | Respondents: | Cindy Lynn Eaton & Cindy Eaton, CPA, LLC | Certificate No.: | 063749 |
| | Rule Violation: | 501.60 | Firm License No.: | C07239 |
| | Act Violations: | 901.502(6), 901.502(12) | | |

Respondents entered into an ACO with the Board whereby Respondents' certificate and firm license were placed on Limited Scope Status until a petition for removal is approved by the TSR Committee and ratified by the Board. The Department of Labor determined there was a sufficient basis to warrant a referral of the Respondents to the Board related to: (1) the IQPA report for a profit sharing plan was not presented in accordance with GAAS, (2) the statement of net assets of the plan was not GAAP conforming, (3) plan footnote disclosures did not include the required disclosure information regarding the plan's investment in a fully benefit-responsive investment contract, (4) footnote disclosure of fair value measurements was not made, (5) subsequent events footnote disclosure was not made, (6) risk and uncertainties disclosures were not made, and (7) related party disclosures were not made.⁴

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| 3. | Investigations Nos.: | 16-11-21L & 16-11-22L | Hometown: | Houston, TX |
| | Respondents: | Edwin A. Maxcy & Alan Maxcy, CPA (Firm) | Certificate No.: | 035783 |
| | Rule Violation: | 527.4 | Firm License No.: | S03326 |
| | Act Violations: | 901.502(6), 901.502(12) | | |

Respondents entered into an ACO with the Board whereby Respondents' certificate and firm license were placed on Limited Scope Status until a petition for removal is approved by the TSR Committee and ratified by the Board and Respondents must pay \$250 in administrative penalties within 60 days of the adoption of this ACO. Respondent Firm was terminated by the AICPA for consecutive deficient peer reviews.⁴

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| 4. | Investigation No.: | 13-11-05L | Hometown: | Dallas, TX |
| | Respondent: | Kevin W. McAleer | Certificate No.: | 016181 |
| | Rule Violation: | 501.90(7) | | |
| | Act Violations: | 901.502(6), 901.502(11) | | |

Respondent entered into an ACO with the Board whereby Respondent's license was suspended for a period of 30 days from the effective date of the order and Respondent will pay an administrative penalty of \$15,000. Respondent agreed to the imposition of a penalty by the Securities and Exchange Commission (SEC). The SEC found Respondent certified financial statements of an issuer that did not disclose the true financial condition of the issuer.³

Unauthorized Practice of Public Accountancy

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

- **Investigation No.:** 17-01-15N **Hometown:** Katy, TX
Respondent: Wayne L. Fairley
Act Violations: 901.453(b), 901.502(5) & (6)

Respondent entered into an ACO with the Board whereby Respondent agreed to cease engaging in the use of restricted terms "CPA" and "certified public accountant" unless and until Respondent complies with the *Act* by obtaining a license issued by the Board. Respondent was administratively revoked on July 14, 2014 and continued to use the title Certified Public Accountant without an individual license or firm license issued by the Board. No Board committee considered this action.

B. Administrative Disciplinary Actions

Dr. Morris moved to approve the following Disciplinary Actions as presented. Mr. Broadus 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. Respondents, although properly notified of the proposed disciplinary action and their right to a hearing on the matter, failed to request a hearing. Staff recommends 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 late fees and by otherwise coming into compliance with the *Act*. Respondents violated *Act Section 901.502(4) (failure to pay license fees for three consecutive years)*. **(ATTACHMENT 4)**

Investigation Numbers

17-02-10001 – 17-02-10031

17-03-10001 – 17-03-10043

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

Section 901.411 (Continuing Professional Education). The Respondents, although provided with a preliminary report dated November 15, 2016 and having been notified of the proposed disciplinary action and their right to a hearing on the matter, failed to request a hearing. Staff recommends 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, staff recommends a \$100 penalty be imposed for each year a Respondent is not in compliance with the Board's CPE requirements. Respondents violated Board *Rules 501.94 (Mandatory CPE)* and *523.111 (Required CPE Reporting)*, and *Act Section 901.411*. **(ATTACHMENT 5)**

Investigation Numbers

17-02-10032 – 17-02-10176

17-03-10044 – 17-03-10178

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 Board *Rule 515.3 (License Renewals for Individuals and Firm Offices)*. Respondents, although properly notified of the proposed disciplinary action and their right to a hearing on the matter, failed to request a hearing. Staff recommends 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*. Respondents violated *Act Section 901.502(12) (Violations of Board Rules)*. **(ATTACHMENT 6)**

Investigation Numbers

17-02-10177 – 17-02-10180

17-03-10179 – 17-03-10185

XIII. Mr. McAdams moved to adopt the following Board *Rules*. Mr. B. Peña seconded the motion and it passed unanimously.

1. *Section 507.2 (Staff)* (**ATTACHMENT 7**)
2. *Section 507.3 (Independent Contractors)* (**ATTACHMENT 8**)
3. *Section 507.4 (Confidentiality)* (**ATTACHMENT 9**)
4. *Section 507.7 (Eligibility)* (**ATTACHMENT 10**)
5. *Section 507.8 (Procedures)* (**ATTACHMENT 11**)
6. *Section 509.2 (Emergency Rulemaking)* (**ATTACHMENT 12**)
7. *Section 509.6 (Rulemaking Procedures)* (**ATTACHMENT 13**)
8. *Section 513.16 (Death or Incapacitation of a Sole Proprietor)* (**ATTACHMENT 14**)
9. *Section 521.1 (Annual Individual License Fees)* (**ATTACHMENT 15**)
10. *Section 521.3 (Fee for Certification by Reciprocity)* (**ATTACHMENT 16**)
11. *Section 521.4 (Registration Fee for Foreign Accountants)* [REPEAL]
12. *Section 521.6 (Duplication and Other Charges and Refund of Board Fees)* (**ATTACHMENT 17**)
13. *Section 521.11 (Fee for a Replacement Certificate)* (**ATTACHMENT 18**)
14. *Section 521.13 (Firm License Fees)* (**ATTACHMENT 19**)
15. *Section 523.140 (Program Standards)* (**ATTACHMENT 20**)
16. *Section 525.3 (Criminal Background Checks)* (**ATTACHMENT 21**)
17. *Section 526.1 (Issuance of Opinions)* (**ATTACHMENT 22**)

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

XV. Mr. Baker adjourned the meeting at 11:25 a.m.

ATTEST:

J. Coalter Baker, CPA, Presiding Officer

Steve D. Peña, CPA, Secretary

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

² Mr. Broaddus, Ms. Hugly, Mr. LaFrey, and Mr. B. Peña recused themselves from participating in this matter.

³ Mr. Johnson, Mr. S. Peña and Ms. Wilkerson recused themselves from participating in this matter.

⁴ Mr. Johnson recused himself from participating in this matter.