

Texas State Board of Public Accountancy

November 15, 2018

The Texas State Board of Public Accountancy met from 10:00 a.m. until 11:15 a.m. on November 15, 2018 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 3:37 p.m. on November 7, 2018. (TRD #2018-009127).
(ATTACHMENT 1)

Board Members Present

Manuel Cavazos IV, Esq., CPA
Presiding Officer
Susan Fletcher
Executive Committee
Member-at-Large
Lisa A. Friel, CPA
Jamie D. Grant
Donna J. Hugly, CPA
James D. Ingram IV, CPA
Ross T. Johnson, CPA
Executive Committee
Member-at-Large
Timothy L. LaFrey, Esq., CPA
Assistant Presiding Officer
Robert M. McAdams, CPA
Treasurer
Roselyn E. Morris, Ph.D., CPA
Benjamin Peña, CFE, CPA
Secretary
Steve D. Peña, CPA

Members Absent

William Lawrence
excused
Debra S. Sharp
excused
Kimberly E. Wilkerson, Esq.
excused

Others Present

Frank McElroy, Esq.
John Sharbaugh
Mark Vane, Esq.

Staff Present

Paulette Beiter, Esq.
Sandra Bradshaw
Roel Cantu
Ismael Castillo
Ann Hallam
Alan Hermanson, CPA
J. Randel Hill, Esq.
Donna Hiller
Julie Prien
Marisa Rios
Margaret Sheehan
Tina Smith
William Treacy
Daniel Weaver

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

Mr. B. Peña moved to excuse Mr. Lawrence, Ms. Sharp and Ms. Wilkerson absence from the Board meeting. Mr. McAdams seconded the motion and it passed unanimously.

- II. Mr. Ingram moved to approve the September 20, 2018 Board meeting minutes as presented. Mr. Grant seconded the motion and it passed unanimously.

At the presiding officer's request, Agenda Item X Public Comment was presented at this time.

- III. Mr. Cavazos, Executive Committee Chair, reported on the November 14, 2018 committee meeting.

Members Present

Manuel Cavazos IV, Esq., CPA
Susan Fletcher
Ross T. Johnson, CPA
Timothy L. LaFrey, Esq., CPA
Robert M. McAdams, CPA
Benjamin Peña, CFE, CPA

Others Present

Frank McElroy, Esq.
John Sharbaugh

Staff Present

Paulette Beiter, Esq.
Ann Hallam
Alan Hermanson, CPA
J. Randel Hill, Esq.
Donna Hiller
William Treacy
Daniel Weaver

- A. Mr. McAdams moved to approve the Board's FY 2018 Annual Financial Report, end-of-year overview and September FY 2019 financial statements as presented. Mr. Ingram seconded the motion and it passed unanimously.

B. Fiscal matter:

- Mr. Treacy reported on the November 14, 2018 Sunset Advisory Commission Decision Hearing held at 9 a.m.

C. Mr. McAdams moved to accept the Peer Assistance grant report as presented. Ms. Fletcher seconded the motion and it passed unanimously.

D. Mr. Johnson reported that the Technical Standards Review Committee will discuss FASB's definition of materiality at its November 15, 2018 meeting and will report back to the Board when a recommendation is agreed upon.

E. The following was reported:

- Mr. Treacy reported on NASBA's 111th Annual Meeting – October 28-31, 2018 held in Scottsdale, AZ.

F. Mr. B. Peña moved to authorize the executive director to enter into the following contracts. Mr. McAdams seconded the motion and it passed unanimously. Following a presentation by the General Counsel, and a discussion regarding a formal, agency-wide contract development and solicitation process for its professional services contracts and a contracting improvement process for those professionals, Mr. B. Peña moved to approve the new process and the following contracts. Mr. McAdams seconded the motion and it passed unanimously.

1. Harper & Pearson, Co., PC	12/1/18 – 8/31/19	\$155,000
2. Peter DelVecchia, CPA	12/1/18 – 8/31/19	\$20,000

G. Following a presentation by the General Counsel, and a discussion regarding a formal, agency-wide contract development and solicitation process for its contracts with outside legal counsel and a contracting improvement process for outside legal counsel, Mr. B. Peña moved to authorize the executive director to approve the new process and the following contracts. Ms. Fletcher seconded the motion and it passed unanimously.

1. Dubois Bryant & Campbell	12/1/18 – 8/31/19	\$100,000
2. Mary Alice Boehm-McKaughan	12/1/18 – 8/31/19	\$125,000

H. Mr. McAdams moved to approve the FY 2019 contracts as presented. Ms. Friel seconded the motion and it passed unanimously.

1. Allen & Pinnix PA (Brie Allen)	11/1/18 – 8/31/19	\$5,000
2. Cantrell & Cantrell, PLLC (Patrick Cantrell)	11/1/18 – 8/31/19	\$15,000

I. Mr. Cavazos reviewed thank you letters from the public.

IV. Mr. B. Peña, Behavioral Enforcement Committee chair, reported on the following committee meeting.

October 18, 2018

Members Present

Bennett Allison, CPA
Patrick Durio, CPA
Donna J. Hugly, CPA
James D. Ingram IV, CPA
Karen W. Jones, CPA
Benjamin Peña, CFE, CPA
Debra Sharp

Member Absent

Steve D. Peña, CPA

Staff Present

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

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

1. **Investigation Nos. 18-02-16L¹ and 18-02-17L¹**
 2. **Investigation Nos. 18-08-09L¹ and 18-08-10L¹**
 3. **Investigation Nos. 18-07-04L¹ and 18-07-05L¹**
 4. **Investigation Nos. 18-08-01L¹ and 18-08-02L¹**
 5. **Investigation Nos. 18-06-14L¹ and 18-06-15L¹**
 6. **Investigation Nos. 18-08-07L¹ and 18-08-08L¹**
- B. The committee considered six other matters that do not require Board action at this time.
- C. The next committee meeting was scheduled for February 7, 2019 at 9:15 a.m.

- V. Mr. Johnson, Technical Standards Review Committee chair, reported on the following committee meeting.

September 20, 2018

Members Present

Lisa A. Friel, CPA
Pete M. Gonzales, CPA
Jamie D. Grant
Jeffrey L. Johanns, CPA
Ross Johnson, CPA
Dilliana Stewart, CPA

Member Absent

Robert M. McAdams, CPA

Staff Present

J. Randel Hill, Esq.
John Moore, Esq.
William Treacy

- A. Mr. B. Peña moved to dismiss **Investigation Nos. 18-05-09L² and 18-05-10L²** based on insufficient evidence of a violation of the *Act* or Board's *Rules*. Mr. S. Peña seconded the motion and it passed.
- B. The committee considered six other investigations that do not require Board action at this time.
- C. The next committee meeting was scheduled for November 15, 2018 at noon.
- VI. Mr. Hill, General Counsel, reported on the status of the Enforcement Division's probation monitoring docket.
- VII. 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.
- VIII. The Board took the following actions on the Agreed Consent Orders, Administrative Disciplinary Actions, and Proposals for Decision:

A. Agreed Consent Orders

Behavioral Enforcement Committee

Dr. Morris moved to approve the following ACOs as presented. Ms. Friel seconded the motion and it passed.

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|------------------------------|---|-------------------------|---------------------------|
| 1. Investigation No.: | 18-06-07L | Hometown: | Salt Lake City, UT |
| Respondent: | Roger Scott Fellows | Certificate No.: | 053757 |
| 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 was revoked.
Respondent pleaded guilty to a felony offense and three misdemeanors.

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| 2. Investigation No.: | 18-10-06L | Hometown: | Lewisville, TX |
| Respondent: | Carolyn Perkins Foster | Certificate No.: | 048101 |
| 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 was revoked.
Respondent pleaded guilty to stealing \$600,000 from the Grand Prairie Independent School district and was sentenced to three years and one month in prison.

3. **Investigation Nos.:** 17-05-24L & 17-05-25L
Respondents: Edward F. Guerrero & E.F. Guerrero P.C.
Rule Violations: 501.74(b), 501.90(12)
Act Violation: 901.502(6)

Hometown: San Antonio, TX
Certificate No.: 054184
Firm License No.: C06658

Respondents entered into an ACO with the Board whereby Respondents were reprimanded and ordered to pay \$278 in administrative costs, an administrative penalty of \$1,250 and \$790 in restitution to the client for fees paid within 30 days of the date of the Board Order. Respondents prepared tax returns incorrectly and failed to respond to a client's inquiry within a reasonable time.³
4. **Investigation Nos.:** 18-06-10L & 18-06-11L
Respondents: James Marc Hill & James Marc Hill (Firm)
Rule Violations: 501.80, 501.81, 501.74(b), 501.76, 501.90(12)
Act Violation: 901.502(6)

Hometown: Dallas, TX
Certificate No.: 023410
Firm License No.: S06882

Respondents entered into an ACO with the Board whereby Respondents were reprimanded and ordered to pay \$387.08 in administrative costs and \$500 in restitution to the client for fees paid within 30 days of the date of the Board Order. Finally, Respondents must not hold out as a CPA or practice public accountancy until the individual and firm licenses are current and issued. Respondents practiced accounting while the licenses were delinquent/expired. Respondents failed to provide a client with a copy of a tax return upon request and failed to electronically file a client's tax return.⁴
5. **Investigation Nos.:** 18-05-05L & 18-05-12L
Respondent: Alexis Marie Jankowski
Rule Violations: 501.74(b), 501.90(12), 501.93
Act Violation: 901.502(6)

Hometown: Farmers Branch, TX
Certificate No.: 107939

Respondent entered into an ACO with the Board whereby Respondent was reprimanded and ordered to pay \$968.49 in administrative costs and an administrative penalty of \$1,000 within 30 days of the date of the Board Order. Respondent failed to complete an engagement in a timely manner, failed to respond to clients' inquiries within a reasonable time, and failed to respond to Board communications in a timely manner.⁴
6. **Investigation Nos.:** 18-03-07L & 18-03-08L
Respondents: Walter Bonell Knebel & Walter B. Knebel (Firm)
Rule Violations: 501.90(7), 501.91, 501.93
Act Violation: 901.502(6)

Hometown: Livingston, TX
Certificate No.: 016905
Firm License No.: S00249

Respondents entered into an ACO with the Board whereby Respondents were reprimanded and ordered to pay \$541.22 in administrative costs and a \$500 administrative penalty within 30 days of the date of the Board Order. Finally, Respondents must not hold out as a CPA or practice public accountancy until the individual and firm licenses are current and issued. Respondent was suspended from practicing before the IRS for a minimum of 48 months from June 8, 2017. Respondent failed to notify the Board of the suspension within 30 days and Respondent failed to respond to Board communications in a timely manner.⁴
7. **Investigation No.:** 18-04-12L
Respondent: Julie Lynette Turner
Rule Violation: 501.80
Act Violation: 901.502(6)

Hometown: Austin, TX
Certificate No.: 095985

Respondent entered into an ACO with the Board whereby Respondent was reprimanded and ordered to pay \$501.04 in administrative costs and an administrative penalty of \$1,000 within 30 days of the date of the Board Order. Finally, Respondent must not hold out as a CPA, including removing website references to her CPA designation or practice public accountancy until the individual license is current and issued. Respondent practiced accounting while her license was delinquent/expired.⁴
8. **Investigation Nos.:** 18-09-04L & 18-09-05L
Respondents: Brian Christopher Perez & BP Consulting
Rule Violations: 501.90(4), 501.90(5)
Act Violations: 901.502(6), 901.502(10), 901.502(11)

Hometowns: Corpus Christi & Austin, TX
Certificate No.: 100467
Firm License No.: R00943

Respondents entered into an ACO with the Board whereby Respondent's and Respondent Firm's certificate and license were revoked. Respondents pleaded guilty to wire fraud and tax evasion.

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| 9. | Investigation Nos.:
Respondents:

Rule Violation:
Act Violations: | 18-09-06L & 18-09-07L
Arturo Vargas &
Vargas CPA, P.C.
501.90(4)
901.502(6), 901.502(10), 901.502(11) | Hometown:
Certificate No.:
Firm License No.: | El Paso, TX
047760
C06964 |
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Respondents entered into an ACO with the Board whereby Respondent's and Respondent Firm's certificate and license were revoked. Respondents pleaded guilty to conspiring to defraud the United States with respect to claims.

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| 10. | Investigation No.:
Respondent:
Rule Violation:
Act Violations: | 02-10-16L
Sondra Vialeton
501.90(18)
901.502(6), 901.502(11) | Hometown:
Certificate No.: | Denton, TX
071606 |
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Respondent entered into an ACO with the Board whereby Respondent's license was suspended pending the outcome of a criminal matter. Respondent was arrested for felony driving while intoxicated and failed to notify the Board in violation of a previous ACO.

Technical Standards Review Committee

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

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| 1. | Investigation Nos.:
Respondents:

Rule Violations:
Act Violations: | 18-05-01L & 18-05-02L
Catherine A. Storm &
C.A. Storm, P.C.
501.60, 501.61
901.502(6), 901.502(12) | Hometown:
Certificate No.:
Firm License No.: | Carrollton, TX
024649
C07824 |
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Respondents entered into an ACO with the Board whereby Respondents' certificate and licenses are subject to a scope limitation prohibiting Respondents from engaging in attest services without the requirement of a pre-issuance review until a petition for removal is approved by the TSR Committee and ratified by the Board. Respondent Firm issued an audit report for an employee benefit plan that failed to meet professional standards. Respondents were suspended from membership in the AICPA and the TSCPA for a period of two years. Respondent Storm was required to complete 53 hours of continuing professional education and to hire an outside party to perform a pre-issuance review of all attest services.²

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| 2. | Investigation No.:
Respondent:
Rule Violations:
Act Violations: | 12-11-18L
BDO USA, LLP
501.60, 501.90(2), 501.90(8)
901.502(2), 901.502(6) | Hometown:
Firm License No.: | Dallas, TX
P05552 |
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Respondent Firm entered into an ACO with the Board whereby Respondent Firm was reprimanded and ordered to pay an administrative penalty of \$85,000 and administrative costs of \$63,757 within 30 days of the date of the Board Order. Respondent Firm admitted and accepted that during the period from 1997 to 2003, Respondent Firm assisted high net worth United States citizens in evading approximately \$1.3 billion in individual income taxes on over \$6.5 billion in capital gain and ordinary income by participating in and implementing tax shelter transactions.⁵

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| 3. | Investigation No.:
Respondent:
Rule Violation:
Act Violations: | 18-10-13L
Cynthia Anne Holder
501.90(2)
901.502(6), 901.502(11) | Hometown:
Certificate No.: | Houston, TX
069401 |
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Respondent entered into an ACO with the Board whereby Respondent surrendered her certificate in lieu of further disciplinary action. Respondent pled guilty to one count of conspiracy to defraud the United States, one count of conspiracy to commit wire fraud, and two counts of wire fraud in federal court.

Unauthorized Practice of Public Accountancy

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

- **Investigation No.:** 18-04-138N **Hometown:** Ft. Meyers, FL
Respondents: Myers, Brettholtz & Company, PA,
Steven M. Brettholtz and Richard A. Myers
Act Violations: 901.351 and 901.451

Respondents entered into an ACO with the Board whereby Respondents agreed to cease from engaging in the practice of public accountancy including, but not limited to, the use of the terms "CPA," "accountant," "auditor," "accounting services," and "auditing services." This also includes the performance or offer to perform attest services. Respondents offered services to the public that involved the use of accounting, attest and auditing skills, including issuing two reports on financial statements for a Texas Condominium Owners Association without an individual license or firm license issued by this Board.

B. Administrative Disciplinary Actions

Mr. B. Peña moved to approve the following Disciplinary Actions as presented. Mr. S. 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. 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 2)

Investigation Numbers

18-06-10001 – 18-06-10053
18-07-10001 – 18-07-10052

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

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 3)

Investigation Numbers

18-06-10054 – 18-06-10219
18-07-10053 – 18-07-10197

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 4)

Investigation Numbers

18-06-10220 – 18-06-10233
18-07-10198 – 18-07-10207

C. Proposals for Decision

Mr. Ingram moved to approve the following Proposed Default Judgement Board Order as presented. Mr. B. Peña seconded the motion and it passed.

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| • Investigation Nos.: | 17-01-10L & 18-03-15L | Hometown: | Weslaco, TX |
| Respondents: | Deaver CPA Firm LLC &
Don Christopher Deaver | Certificate No.: | 075751 |
| Rule Violations: | 501.93, 527.4 | Firm License No.: | C07534 |
| Act Violations: | 901.502(6), 901.502(12) | | |

The Board ordered that Respondents' certificates and licenses be revoked and that they be assessed an administrative penalty of \$10,000 and \$764.80 in administrative costs. Respondent Firm was dropped from the AICPA Peer Review Program. Respondents failed to respond to Board communications. Respondents, although properly notified of the proposed disciplinary action and their right to a hearing on the matter, failed to request a hearing.⁶

- IX. Mr. Grant moved to adopt the following Board Rules. Mr. S. Peña seconded the motion and it passed unanimously.
1. *Section 501.76 (Records and Work Papers) (ATTACHMENT 5)*
 2. *Section 505.9 (Order of Business) (ATTACHMENT 6)*
 3. *Section 515.3 (License Renewals for Individuals and Firm Offices) (ATTACHMENT 7)*
 4. *Section 515.5 (Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct) (ATTACHMENT 8)*
 5. *Section 515.11 (Licensing for Military Service Members, Military Veterans, and Military Spouses) NEW (ATTACHMENT 9)*
 6. *Section 521.3 (Fee for Certification by Reciprocity) (ATTACHMENT 10)*
 7. *Section 521.7 (Fee for Transfer of Credits) (ATTACHMENT 11)*
 8. *Section 521.9 (Certificate Fee) (ATTACHMENT 12)*
 9. *Section 521.12 (Filing Fee) (ATTACHMENT 13)*
 10. *Section 521.14 (Eligibility Fee) (ATTACHMENT 14)*
 11. *Section 523.113 (Exemptions from CPE) (ATTACHMENT 15)*
- X. There were no comments from the public.
- XI. Mr. Cavazos reviewed the schedule of future Board meetings. Ms. Fletcher moved to change the May 2019 Committee and Board dates to May 15-16, 2019. Mr. B. Peña seconded the motion and it passed unanimously.
- XII. Mr. Cavazos adjourned the meeting at 11:15 a.m.

ATTEST:

Manuel Cavazos IV, Esq., CPA, Presiding Officer

Benjamin Peña, CFE, CPA, Secretary

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

² Ms. Friel, Mr. Grant, and Mr. Johnson recused themselves from participating in this matter.

³ Ms. Hugly and Mr. LaFrey recused themselves from participating in this matter.

⁴ Ms. Hugly, Mr. Ingram, Mr. B. Peña, Ms. S. Peña recused themselves from participating in this matter

⁵ Ms. Friel, Mr. Grant, Mr. Johnson, Mr. McAdams, and Mr. S. Peña recused themselves from participating in this matter.

⁶ Ms. Friel, Mr. Grant, Mr. Johnson, and Mr. McAdams recused themselves from participating in this matter.