

NEBRASKA BOARD OF PUBLIC ACCOUNTANCY
1526 K Street, Suite 4B, Lincoln, Nebraska

Minutes
November 16, 2018

Draft Minutes. Minutes are not approved until the next Board meeting on 01-04-19.

Friday, November 16, 2018

1. General

- A. Call to Order and Roll Call.** The Nebraska Board of Public Accountancy (Board) was called to order at 8:33 a.m. on Friday, November 16, 2018 with Chair Lori Druse presiding. The roll was called with the following members present: Lori Druse, Tom Purcell, Marcy Luth, Michele Stomp, Michael McClure, Glen Waltemath and Ken Brauer. Member Bernie Gutschewski was absent. Also present were Executive Director Dan Sweetwood and staff members Heather Myers and Kristen VanWinkle. Board Intern Riley Birdzell was available. The meeting was held at the Board Office, 1526 K Street, in Suite 4D, Lincoln, Nebraska. Chair Druse noted the location of the notebook containing the Public Open Meeting Act, and asked if anyone present needed an agenda or had any questions regarding the law. Also present were Joni Sundquist, Nebraska Society of CPAs President, Robert Gruit, Board Attorney, and Jeremy Vokt, CPA, Bland & Associates.
- B. Approval of Meeting Agenda for Friday, November 16, 2018.** Moved by McClure, seconded by Waltemath, to approve the agenda for the Friday, November 16, 2018 meeting. On a roll call vote, Members Druse, Purcell, Luth, Stomp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #1 carried.
- C. Approval of Minutes from September 14, 2018.** Moved by Purcell, seconded by Brauer, to approve the September 14, 2018 Board minutes. On a roll call vote, Members Druse, Purcell, Luth, Stomp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #2 carried.

2. Public Comment Period (15-minute period)

Jeremy Vokt, CPA, Bland & Associates – Mr. Vokt addressed the Board in regards to its handling of an enforcement/administrative matter. He expressed concern that the Board was not responsive to his firm's request for information to assist in a dispute with another CPA firm causing the firm to spend thousands of dollars on a lawsuit. He indicated several attempts were made to address the question, including the filing of a declaratory order to no avail. Mr. Vokt also expressed concern that the Board did not take any action regarding a complaint filed against the expert for the other CPA firm in the matter.

Joni Sundquist, President of Nebraska Society of CPAs – Joni confirmed that the society has approved the final draft of the ESOP bill to be introduced by Sen. Stinner at the start of the 2019 Legislative session. She doesn't foresee any opposition. She noted there is a Bill that could decrease state taxes for Nebraska business owners in 2019/2020. The society is planning to take action on this and has already discussed concerns with Tax Commissioner Tony Fulton. She also noted that Iowa recently addressed a similar issue. The society has 18 courses left on its CPE schedule for the year. Attendance is slightly down from previous years. She noted they are considering

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adding an industry conference next year. Also being considered is a new society leadership academy for 12 – 20 young CPAs. This will be a year-long program. Vice Chair Purcell offered to help with the new program. He stated we are losing the younger generation in the profession. Very few new certificate holders attended the society's annual conference to be acknowledged. Ms. Sundquist and Executive Director Sweetwood agreed to discuss possible options in the future to recognize new Certificate and Permit Holders.

Disciplinary Hearing for Jonathan Lemon – Hearing Officer Lori Druse opened the hearing at 9:56 am. Board Attorney Robert Grimit represented the Board. Jonathan Lemon was not present. The hearing closed at 10:08 am.

3. Consent Agenda

- A. **Published Notice of Meeting.** Moved by Stromp, seconded by Purcell, to approve the consent agenda. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #3 carried.
- B. **Review of Disbursements for September and October 2018.** Board Secretary Luth overviewed the disbursements for the Board.
- C. **Review of Board Budget Status Report.** The current budget status report was provided and reviewed by Board Secretary Luth. She stated the timing of travel expenses is causing the difference from last year to this year. We also had a large re-appropriation of funds roll-over from last year.

4. Report of the Chair

- A. **Report of the Chair.** Chair Druse gave the report.
- B. **NASBA Annual Meeting Report, October 28-31 in Scottsdale, AZ** – ED Sweetwood overviewed the items discussed during the NASBA Annual Meeting and provided a report on the meeting to the Board. Chair Druse and Member Waltemath overviewed the main topics of discussion including the overall response by State Boards a new pathway for licensure should not pursued and confirmed by NASBA leadership, a return to overview requirements to become a CPA, the 120 v. 150 debate and concern expressed with lower candidate numbers sitting for the examination, de-regulation national initiatives continue, and many other important topics. All expressed their appreciation to attend the meeting and thought it was very valuable to attend and participate.
- C. **Review Board Calendar.** Board members reviewed the calendars for 2018 & 2019. Dates for the 2019 NASBA Regional Meetings and 2019 NASBA Annual meeting were added.

Closed Session

Closed Session. Moved by Stromp, seconded by Luth, that the Board go into closed session at 10:16 a.m., on Friday, November 16, 2018, for the purpose of discussing disciplinary and

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enforcement matters. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #4 carried.

Return to Open Session. Moved by Purcell, seconded by Luth, that the Board return to open session at 11:38 a.m., on Friday, November 16, 2018. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #5 carried.

*****With approval of all members, moved agenda item 8 – Legislative Committee to engage with Board Attorney Gritmit.***

8. Report of the Legislative Committee

A. Report on Legislation: ED Sweetwood gave the report.

1. **LB867 – Index Updates/Policy Changes:** 2 new policies provided by staff were considered. Moved by Purcell, seconded by Luth to reject policy 18.03 and adopt policy 18.04 to be re-numbered as 18.03. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #6 carried. The adopted policy states: *Press releases regarding enforcement actions will remain on the home page of the Board's website for 6 months following publication date. After 6 months, the press release will be available in the news archive under "Enforcement Actions".*
2. **Update on Proposed Legislation to allow for ESOP Ownership of a CPA Firm** – See Joni Sundquist's update under the Public Comment Period. A copy of the final bill was provided to the Board.
3. **2019 Rule Package Discussion:** ED Sweetwood overviewed several possible rule updates for consideration including changes to the education subject areas in Chapter 9, allowing continuous testing in Chapter 6, including CPE reciprocity in Chapter 8, adding language regarding CPE Nano and Blended learning in Chapter 8, adding language regarding Inactive-Retired status in Chapter 7, and adding professional billing practices in Chapter 5. It was also suggested that the rule on contingency fees in Chapter 7 be reviewed. Board Committees will initially review and provide drafts of the proposed regulations to the Board for input. Later, a public hearing will be conducted to formally review and approve the regulations.

Closed Session

Closed Session. Moved by Purcell, seconded by Stromp, that the Board go into closed session at 12:30 p.m., on Friday, November 16, 2018, for the purpose of discussing enforcement matters. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #7 carried.

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Return to Open Session. Moved by Stromp, seconded by Purcell, that the Board return to open session at 12:50 p.m., on Friday, November 16, 2018. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #8 carried.

During Closed Session, the Board discussed comments provided by Mr. Vokt during the Public Comment Period and determined the Board will not respond.

5. Report of Enforcement of Professional Conduct Committee

- A. Open Case/LMCO Update.** Committee Chair Stromp gave the report. Following the hearing for Jonathan Lemon, moved by Stromp, seconded by Purcell, to reject voluntary surrender and to revoke certificate. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #13 carried.

BEFORE THE STATE BOARD OF
PUBLIC ACCOUNTANCY OF THE STATE OF NEBRASKA

STATE OF NEBRASKA, ex rel, STATE BOARD OF)	
PUBLIC ACCOUNTANCY OF THE STATE OF)	
NEBRASKA,)	
)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
Petitioner,)	DECISION AND ORDER
)	
vs.)	
)	
JONATHAN D. LEMON,)	
)	
Respondent.)	

On the 16th day of November, 2018, a formal hearing was held on Respondent's request for inactive status and on the Petition of the Nebraska State Board of Public Accountancy (Board) against Jonathan D. Lemon, Respondent, at the office of the Board. The hearing was conducted by the Board Chair, Lori J. Druse. The Board was represented by Robert T. Gruit; the Respondent did not appear. All Board members except Bernie Gutschewski were present and in attendance at the hearing and voted in favor of this Decision and Order.

Exhibits 1-6 were offered and received into evidence. No testimony was presented. Respondent, by email, submitted a voluntary surrender of his certificate. The records and exhibits properly reflect that notice and service were made on the Respondent for the date and time of the hearing.

Upon consideration of the matter, the Board finds as follows:

FINDINGS OF FACT

The Respondent was issued Nebraska Certificate No. 8391.

In 2017 the Respondent was charged with a felony. Respondent pled "guilty" and was convicted of a class 4 felony charge of enticement by electronic communications device.

Respondent has submitted a voluntary surrender of his certificate.

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CONCLUSIONS OF LAW

By reason of the conduct of Respondent as set forth above, Respondent has subjected himself to disciplinary action by the Board, under the provisions of §1-137 of the Public Accountancy Act which state that the Board may discipline a licensee for cause, which Act defines cause as:

(4) Violation of a rule of professional conduct adopted and promulgated by the board under the authority granted by the act;
and

(5) Conviction of a felony under the laws of any state or of the United States.

The rules of professional conduct adopted and promulgated by the Board under the authority granted by the Act which were violated by Respondent are as follows:

Title 288, Chapter 5-007.01

Acts discreditable. A licensee shall not commit an act that reflects adversely on his fitness to engage in the practice of public accountancy.

The Board has authority under §1-148 of the Public Accountancy Act to discipline the Respondent.

DECISION AND ORDER

The Board finds that the Respondent submitted a voluntary surrender of his certificate and Respondent did violate the provisions of the Public Accountancy Act, and further violated the Board's Rules and Regulations as set forth in the Findings of Fact and Conclusions of Law set forth above. The Board further finds that:

- 1) The Respondent's Nebraska Certificate No. 8391 should be revoked.
- 2) Since the Respondent's Certificate should be revoked, the Respondent's request for inactive status is moot and should be denied.

WHEREFORE, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

- 1) Voluntary surrender of his certificate is rejected in light of the pending disciplinary matter;
- 2) The Respondent's Nebraska Certificate No. 8391 is revoked; and
- 3) The Respondent's request for inactive status is denied.

IT IS SO ORDERED.

DATED this 16th day of November, 2018.

STATE BOARD OF PUBLIC
ACCOUNTANCY OF THE STATE OF
NEBRASKA, Petitioner,

BY:



Lori J. Druse, Chair

B. Ratification of LMCOs, if any - There were no LMCO's.

C. Recommended Cases to Close –

#17-03 - The complainant alleges the CPAs doing tax work for a company owned by him and his former partner, refused to communicate with him as an owner, prepared tax returns they did not sign, taking inconsistent tax positions as the prior CPA firm, and preparing returns in dispute by both partners. After a CPA expert reviewed the matter it was determined the complainant should follow up with the AICPA and the IRS. A letter was sent to the complainant with no further contact.

Motion out of committee to close case #17-03 without prejudice with the option to re-open if AICPA or IRS takes action. On a roll call vote, Members Druse, Purcell, Luth,

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Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #9 carried.

#17-06- The Board office was advised by the Kansas Board of Accountancy of an Order issued against the Nebraska licensed CPA. The Order involved a failure of a Peer Review and non-compliance with Kansas requirements. The CPA firm was disciplined and its professional practice restricted.

Motion out of committee to close case #17-06. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #10 carried.

#17-07- Upon review of PCAOB Disciplinary Orders, staff discovered the CPA firm was the subject of an order regarding various audit discrepancies while engaged with a broker/dealer. It was confirmed the Texas State Board of Accountancy had disciplined the CPA firm.

Motion out of committee to close case #17-07. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #11 carried.

#18-03- CPA assisted client with an offer of compromise with the IRS. Several years later the amount owed was satisfied with not much assistance from the CPA. Later, a large billing was received from the CPA. Complainant was surprised and contacted the CPA who was very rude and indicated payment was due. No further contact has been made with the complainant.

Motion out of committee to close case #18-03. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #12 carried.

6. Report of Continuing Professional Education (CPE) Committee

- A. Report of the Committee.** Committee Chair Purcell gave the report. Motion out of committee to ratify Board approval of 1 reinstatement application. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #16 carried. The committee will attempt to meet in person for their next meeting to review UAA regulations regarding CPE reciprocity, blended and nano learning, and other requirements to determine recommendations for the Board's 2019 rule package.
- B. Ratification of Staff Program Qualification Evaluations.** The committee reviewed a total of 83 courses from September 6 – October 31, 2018 with 83 courses recommended for Board approval and none denied. Motion out of committee to ratify Board approval of 83 courses. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #14 carried.
- C. Ratification of CPE Sponsor.** The committee reviewed 11 courses from Lutz & Company. Motion out of committee to approve 11 courses from Lutz & Company. On a roll call vote, Members Druse, Purcell, Luth, Stromp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #15 carried.

7. Report of Education & Exam (E&E) Committee

- A. Report of the Committee.** Committee Chair Luth gave the report.

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The committee was provided the candidate survey responses for Q3. They noted the uptick in negative responses, particularly regarding delays in the exam application process. ED Sweetwood visited NASBA last year over concerns and was assured some personnel and organizational changes were underway to address concerns. Pat Hartman will be invited to the next call if responses do not improve. The committee discussed one course to determine if it met the Accounting Information Systems requirement. They also provided additional guidance to NASBA on what type of course is acceptable to meet the Auditing and Accounting Information Systems requirements. The Board was provided a copy of the proposed changes to Chapter 9 that came out of the Fall EAC meeting. Also discussed was the continuous testing update. Staff is currently reviewing Title 288 to determine if continuous testing is allowed. Staff is pending updated UAA language regarding continuous testing.

- B. Approval of Exam Scores from July – September 10, 2018, if available** – The score report was not available for the committee meeting but was available by the Board meeting. Chair Luth noted scores ranged widely, however there were several very high scores of 90 or above. Number of candidates were up from last quarter, but down compared to Q3 of last year. Moved by Luth, seconded by Waltemath, to accept the July – September 10, 2018 exam scores. On a roll call vote, Members Druse, Purcell, Luth, Stomp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #17 carried.

9. Report of the Peer Review Committee

- A. Report of the Committee.** Committee Chair McClure gave the report. Chair McClure attended the NASBA Compliance Assurance Committee (CAC) with the AICPA Peer Review Board meeting in Durham, NC last month. He noted there are new PROC requirements. There are currently 55 administrating entities but only 4 or 5 have PROCs set up. One of the new requirements that caused concern was regarding state board members serving on a PROC. The new requirement stated this would be a conflict of interest. NASBA and the AICPA will address some of these concerns.

10. Report of the Licensing Committee

- A. Report of the Committee.** Committee Chair Druse gave the report. The committee discussed five Business, Governmental & Academia (BGA) experience applications. Motion out of committee to recommend approval of Emily Csik's application. On a roll call vote, Members Druse, Purcell, Luth, Stomp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #18 carried. Motion out of committee to recommend approval of Kevin Novak's application. On a roll call vote, Members Druse, Purcell, Luth, Stomp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #19 carried. The committee had questions on the three other BGA applications for staff to follow up on.
- B. Ratification of initial permits to practice issued, certificates issued, firm permits.**

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Motion out of committee to approve initial permits to practice issued, certificates issued, firm permits issued from September 14 – November 15, 2018. On a roll call vote, Members Druse, Purcell, Luth, Stomp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #20 carried.

C. Reinstatements to Active Permit, Inactive Retired Affidavits, Surrendered Certificates.

Motion out of committee to approve Reinstatements to Active Permit, Inactive Retired Affidavits, Surrendered Certificates from September 14 – November 15, 2018. On a roll call vote, Members Druse, Purcell, Luth, Stomp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #21 carried.

Reinstatements:

- Beau Redowl – Niobrara, NE

Inactive - Retired affidavits:

- Stanley Adamson – Destin, FL
- Robert Boyd – Birmingham, AL

Surrendered Certificates:

- none

11. Report of the Executive Director

- A. Budget Status.** Discussed under agenda item 3C.
- B. Staffing & General Office Issues.** ED Sweetwood stated there is no news from the Governor's office on the appointment of Board members. The executive committee will meet on December 7th to review licensing fees for the January Board meeting. Two new chairs were purchased for staff based on the chairs being over 10 years old. A standup desk was also purchased.

12. New Business

- A. NASBA Items:**
- B. Other Miscellaneous Items: FYI articles**

13. Adjournment

Moved by Purcell, seconded by Stomp, to adjourn the meeting at 2:16 p.m. on November 16, 2018. On a roll call vote, Members Druse, Purcell, Luth, Stomp, McClure, Waltemath and Brauer voted aye. Member Gutschewski was absent. Motion #22 carried.

Respectfully submitted by,

Board Secretary

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Marcy Luth