

NEBRASKA BOARD OF PUBLIC ACCOUNTANCY

140 N. 8th Street, Suite 290, Lincoln, Nebraska

Minutes

May 4, 2009

Draft Minutes. Minutes are not approved until the next Board meeting.

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 Monday, May 4, 2009 with Chair Jim Titus, presiding. The roll was called with the following members present: Jim Titus, Anne Fuhrman, Doug Skiles, Kate King-Wu, Michael Wassinger, Richard Zacharia, and Jim Rieker. Member Tom Obrist was absent. Also present were Executive Director Dan Sweetwood and Staff members Kelly Ebert, Jo Lowe and Board Intern Richard Christensen. The meeting was held at the Board Office at 140 N. 8th Street, Suite 290, Lincoln, Nebraska. Chair Titus noted the location of the notebook containing the Public Open Meeting Act, along with it being posted on the wall, and asked if anyone present needed an agenda or had any questions regarding the law.
- B. Approval of Meeting Agenda for May 4, 2009.** Moved by Skiles, seconded by Fuhrman to approve the agenda for the May 4, 2009 meeting. On a roll call vote, Members Titus, Fuhrman, King Wu, Skiles, Rieker, Wassinger, and Zacharia voted aye. Member Obrist was absent. Motion #1 carried. Member Obrist arrived at 8:36.
- C. Approval of Minutes from March 20, 2009.** Moved by King Wu, seconded by Rieker, to approve the Board minutes from the March 20, 2009 meeting. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Obrist and Zacharia voted aye. Motion #2 carried.

2. Public Comment Period (15 minute period)

Mr. Dan Vodvarka, President of the Nebraska Society of CPAs, appeared and thanked the members of the CPE Committee for their review and approval of 85 Society sponsored courses for 2009. He also indicated the Society is prepared again to work with the State Board in the development and review of regulations to compliment the new Mobility law.

- 9:00 Agenda Item 5. B. Public Hearing for Stacy Funk Complaint #08-08.** Hearing Officer Jim Titus opened the hearing. Ms. Funk was not present. Exhibits were offered into the record by Executive Director Sweetwood on behalf of the Board. The exhibits were received by the Chair.
- 9:30 Agenda Item 5. C. Public Hearing for Joyce Borchert Complaint #08-09.** Hearing Officer Jim Titus opened the hearing. Ms. Borchert was not present. Exhibits were offered into the record by Executive Director Sweetwood on behalf of the Board. The exhibits were received by the Chair.
- 9:45 Agenda Item 5.D Public Hearing for Michael Harrington.** Hearing Officer Jim Titus opened the hearing. Mr. Harrington was not present. Exhibits were offered into the record by Executive Director Sweetwood on behalf of the Board. The exhibits were received by the Chair.

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10:00 Agenda Item 10.D. Public Hearing for Kenneth Stauffer. Hearing Officer Jim Titus opened the hearing. Mr. Stauffer was present via telephone. Exhibits were offered into the record by Executive Director Sweetwood on behalf of the Board. The exhibits were received by the Chair.

Moved by Wassinger, seconded by King Wu, upon receipt of Stacy Funk's signed consent order and return of her original surrendered certificate and permit to practice, to accept Stacy Funk's original certificate which is hereby revoked. On a roll call vote, Members Titus, Skiles, King Wu, Obrist, Rieker, and Wassinger voted aye. Members Fuhrman and Zacharia abstained. Motion #4 carried.

State of Nebraska, ex. Rel., State)	
Board of Public Accountancy of the State of)	
Nebraska.)	
)	<u>CONSENT ORDER</u>
Complainant,)	
)	
VS.)	
)	
Stacy L. Funk)	
)	
Respondent		

This matter came before the Nebraska State Board of Public Accountancy of the State of Nebraska (Board) upon the Consent Agreement of Stacy L. Funk (Respondent) and upon written surrender of her Board Certificate and Active Permit to Practice. The Board is aware Ms. Funk is the subject of a felony criminal conviction for theft in Douglas County, Nebraska. In lieu of a hearing in this matter and in lieu of further Board action, the Respondent has voluntarily surrendered her CPA Certificate no. #6743 and her current Active Permit to Practice #23439. The Board does accept the surrender of said Certificate and Active Permit to Practice.

Wherefore, it is ordered that pursuant to the surrender of the Certificate and the Active Permit to Practice, the Respondent's Nebraska CPA certificate no. #6743 and Active Permit to Practice #23439 in the State of Nebraska is hereby revoked effective as of the date of this Order.

Moved by Rieker, seconded by King Wu, to accept Michael Harrington's signed consent order and his original surrendered certificate, and hereby revoke his certificate. On a roll call vote, Members Titus, Skiles, Fuhrman, King Wu, Obrist, Rieker, and Wassinger voted aye. Member Zacharia abstained. Motion #5 carried.

State of Nebraska, ex. Rel., State)	
Board of Public Accountancy of the State of)	
Nebraska.)	
)	<u>CONSENT ORDER</u>
Complainant,)	
)	
VS.)	
)	

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Michael T. Harrington

)

Respondent

This matter came before the Nebraska State Board of Public Accountancy of the State of Nebraska (Board) upon the Consent Agreement of Michael T. Harrington (Respondent) and upon written surrender of his certificate. The Board is aware Mr. Harrington is the subject of a federal indictment for felony embezzlement from the federal government. In lieu of a hearing in this matter and in lieu of further Board action, the Respondent has voluntarily surrendered his CPA certificate no. #4912 and the Board does accept the surrender of said certificate.

Wherefore, it is ordered that pursuant to the surrender of the certificate, the Respondent's Nebraska CPA certificate no. #4912 in the State of Nebraska is hereby revoked effective as of the date of this Order.

Moved by Obrist, seconded by Fuhrman, to accept Joyce Borchert's signed consent order. On a roll call vote, Members Titus, Skiles, Fuhrman, King Wu, Obrist, Rieker, and Wassinger voted aye. Member Zacharia abstained. Motion #6 carried.

STATE OF NEBRASKA, ex. rel.,
STATE BOARD OF PUBLIC
ACCOUNTANCY OF THE STATE OF
NEBRASKA,

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Complainant,

)

VS.

)

)

JOYCE E. BORCHER,

)

)

Respondent.

)

STIPULATION AND
CONSENT ORDER

THIS MATTER comes before the State Board of Public Accountancy of the State of Nebraska (Board) upon the Consent Agreement of Respondent Joyce E. Borchert (Borchert). The following Board members were present and participated in the motion to approve this Consent Order: Jim Titus, Anne Fuhrman, Doug Skiles, Michael Wassinger, Richard Zacharia, Jim Rieker, Tom Obrist, and Kate King Wu.

1. The Board previously made a determination of probable cause and thereafter a Complaint was filed and a Notice of Hearing was given. The Complaint sets forth the allegations against Borchert. Borchert consents to a finding by the Board that she acted in violation of the provisions of the Public Accountancy Act and Rules and Regulations of the Board and has subjected herself to disciplinary action by the Board, under the provisions of § 1-137 of the Public Accountancy Act which state that the Board may suspend, revoke or censure 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;

Further, by said conduct alleged above, Borchert violated Title 288, Chapter 5, § 004.01 and 007.05 of the Board's Rules and Regulations which state:

004.01 Competence. A permit holder shall undertake only those engagements which he or his firm can reasonably expect to complete with professional competence. This shall mean only those which he or someone in his firm is qualified, either by experience or education, to handle.

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007.05 Communications. Any requested response to a communication from the Board shall be within thirty (30) calendar days of the receipt of the communication.

2. The Board finds that such violation occurred by reason of Borchers' conduct as outlined in the Complaint.

3. The Board finds that Borchers did violate the provisions of § 1-137 of the Public Accountancy Act and the Board's Rule and Regulations described above.

4. The Board further finds and Borchers has agreed that the appropriate sanction is as follows: Borchers shall complete sixteen (16) hours of CPE in the tax, ethics, and internal control areas within one year of the date of this Consent Order. Said sixteen (16) hours of CPE is above and beyond the normal requirement for renewal of a permit in Nebraska. Borchers shall be placed on probation subject to the Board's Rules and Regulations and subject to the Public Accountancy Act until a successful completion of Borchers' probation as set forth below.

WHEREFORE, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

Borchers may retain her Nebraska CPA certificate and her active permit to practice as long as she remains in compliance with all the Nebraska accountancy laws and Rules and Regulations of the Board and as long as she complies with the following terms and conditions of probation:

- a. Borchers shall be placed on probation for two (2) years commencing the effective date of this Stipulation and Consent Order.
- b. Borchers shall comply in all respects with all provisions of the Nebraska accountancy laws and all Rules and Regulations of the Board.
- c. Borchers shall timely respond to all inquiries from the Board or the Board's representatives and shall timely file all requested documents with the Board.
- d. Borchers shall complete sixteen (16) hours of CPE in the tax, ethics, and internal control areas within one year of the date of this Consent Order. Said sixteen (16) hours of CPE is above and beyond the normal requirement for renewal of a permit in Nebraska.

In the event Borchers violates the terms and conditions of the probation or in the event other complaints are made to the Board or come to the attention of the Board, the Board shall be entitled to pursue such other remedies as Nebraska law and the Board's Rules and Regulations allow. The Board shall have the right in such event to take such further action against Borchers as the Board in its discretion deems appropriate.

Borchers agrees that if she does not comply in all respects with this Consent Order or in the event of other complaints as set forth above, the Board is entitled to pursue all remedies as permitted by Nebraska law and the Board's Rules and Regulations, as the Board in its discretion deems appropriate.

3. Consent Agenda

- A. **Published Notice of Meeting.** Moved by King Wu, seconded by Wassinger, to approve the consent agenda. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Obrist and Zacharia voted aye. Motion #3 carried.
- B. **Approval of Disbursements.** Board Secretary Fuhrman reviewed the disbursements for March of 2009. She indicated the disbursements appeared to be in order and commented that the Executive Director's furniture was recovered and a new chair was purchased for staff Jo Lowe.
- C. **Review of Board Budget Status Report.** The Budget Status Report was provided.

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- D. Office Management Report.** The Office Management Report was provided.

4. Report of the Chair

- A. Report of the Chair.** Chair Titus gave the report.
- B. Executive Committee Report: 2009-2010 Executive Directors Performance and Salary Review.** The Executive Committee met before the Board meeting with the executive director. Motion out of Committee to recommend Board approval for Executive Director Dan Sweetwood's salary increase of 2.9% as of July 1, 2009 and 2.5% as of July 1, 2010. Additionally, Executive Director Sweetwood may apply to attend the Strategic Management of Regulatory and Enforcement Agencies session located at the Harvard Kennedy School of Executive Education for the October 4-9, 2009 session or the 2010 session with expenses paid by the Board. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Obrist and Zacharia voted aye. Motion #10 carried.
- C. FASB / Mark to Market Accounting Discussion.** Member Rieker requested Board discussion on this topic based on a letter sent on behalf of NASBA President David Costello to FASB Chair Robert Hertz on April 1, 2009 regarding his recent appearance before the Congress Financial House Sub-Committee concerning the Mark to Market Accounting issue. Various recent news articles of the matter were provided within the Board packet. Mr. Rieker, a public member, has had the opportunity to observe and listen to banking representatives struggling to open new credit lines during the downturn in the economy. Many bankers were pleased to see the quick actions of Congress in requiring FASB to move quickly in determining flexibility to standards related to asset determination. Comments covered the needed independence of FASB while being sensitive to the economy. Others were concerned with NASBA's comments to FASB while representing State Board's without requesting a consensus. No further action was taken.
- D. Review Board Calendar.** It was noted July 15, 16, and 17 have been set aside for the July Board meeting.
- E. Report on To Do List.** There was no report at this time.

Closed Session

Closed Session. Moved by King Wu, seconded by Skiles, that the Board go into closed session at 10:53 a.m., for the purpose of updating the Board about current open enforcement cases, to discuss disciplinary matters, and to discuss personnel matters. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Zacharia and Obrist voted aye. Motion #7 carried. Chair Titus restated that the purpose for the closed session was to update the Board about current open enforcement cases, to discuss disciplinary matters, and to discuss personnel matters.

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Return to Open Session. Moved by Rieker, seconded by Obrist, that the Board return to open session at 11:55 a.m. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Zacharia and Obrist voted aye. Motion #8 carried.

5. Report of Enforcement of Professional Conduct Committee

- A. Open Case/LMCO Update.** Committee Chair Zacharia reviewed the open cases. Chair Zacharia discussed Case #05-06 where a letter was sent by Board Attorney Gritmit to Mr. Walsh's attorney. Mr. Gritmit indicated no update was received and offered to send a letter directly to Mr. Walsh to ascertain his plan of action in response to the Board's Order as affirmed by the Nebraska Supreme Court. The letter will be sent.
- B. Recommended Closure of Enforcement Cases.** Motion out of Committee to recommend that the Board close case:
0102022/0102028-2: The Committee scrutinized the matter based on the large settlement in the civil suit. A third-party CPA reviewed the matter for the Committee, concluded there was no negligence and that other factors were involved that resulted in the matter being settled. The Committee concurred with the expert's report. On a roll call vote, Members Titus, Fuhrman, Skiles, Rieker, Wassinger, Zacharia, and Obrist voted aye. Member King Wu was absent. Motion #9 carried.
- C. Report on To Do List.** The Board Attorney was requested to discuss the use of a hearing officer with the Attorney General's office in Board cases that could be complicated and require several days of testimony.

6. Report of Continuing Professional Education (CPE) Committee

- A. Report of the Committee.** Committee Chair Zacharia gave the report. The Committee reviewed a total of 33 courses from March 7, 2009 to April 22, 2009, with 33 approved and no courses denied. The Committee reviewed individuals with insufficient CPE hours. The Committee reviewed the staff evaluation of reinstatement applications and referred the list to the Licensing Committee. Staff updated the Committee on the 2009 CPE Audit process. Motion out of Committee to recommend Board approval giving CPE Committee Chair Zacharia, the authority to approve the 2009 CPE audit when completed prior to license renewal July 1, 2009. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Obrist, Rieker, Wassinger, and Zacharia voted aye. Motion #13 carried. The CPE Rules and Guidelines will be reviewed this year at Mahoney State Park, as they were last year, with any other staff recommendations for revisions provided to the Committee.
- B. Ratification/Denial of Staff Program Qualification Evaluations.** Motion out of Committee to approve 33 courses from March 7, 2009 to April 22, 2009. On a roll call vote, Members Titus, Fuhrman, Skiles, Obrist, King Wu, Rieker, Wassinger, and Zacharia voted aye. Motion #12 carried.

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- C. **Ratification of CPE Sponsor.** There were no CPE sponsor requests.
- D. **Report on To Do list.** The To Dos are listed in the Committee Report.

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

- A. **Report of the Committee.** Committee Chair Skiles gave the report. Review of the Board's survey of successful candidates continues. One educational issue dealt with community college course credit transferring to the four year institution at 2.7 credit hours, leaving the candidate three tenths of a credit hour short to be able to take the exam. Moved by Skiles, seconded by King Wu to deny the request to "round up" the number of credit hours. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Obrist, Rieker, Wassinger, and Zacharia voted aye. Motion #14 carried. The Board is satisfied with CPAES's administration of the CPA exam and had the attorney general's office review the CPAES contract. Motion out of Committee to recommend Board renewal of the contract with CPAES for 2009-2012. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Obrist, Rieker, Wassinger, and Zacharia voted aye. Motion #15 carried.
- B. **Approval of CPA Exam Scores.** Motion out of Committee to recommend Board approval of January – February 2009 Exam scores. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Obrist, Rieker, Wassinger, and Zacharia voted aye. Motion #16 carried.
- C. **Report on To Do List.** There was no report at this time.

8. Report of the Legislative Committee

- A. **Report on Legislation.** Chair Titus indicated Board Attorney Gritmit and staff will continue to meet and draft regulations for the Committee to review.

9. Report of Quality Enhancement Program (QEP) Committee

- A. **Report of the Committee.** Committee Chair Fuhrman reported that she had no report. She updated the Board with the dates for the QEP reviews and reminded Board members that we are seeking reviewers. May 1 was the deadline for exemptions from QEP and May 15 is the deadline for all submitted reports. The Board office received several applications as a result of the QEP reviewer application tear out page in the annual letter. Firm QEP survey postcard will be mailed soon.
- B. **Report on To Do List.** There was no report at this time.

10. Report of the Licensing Committee

- A. **Report of the Committee.** Chair Obrist gave the report. The Committee reviewed an application response from a certificate applicant, and recommended that the Board determine whether or not to allow a reciprocal certificate. The applicant requested a

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public hearing. The Committee determined an applicant was a resident of Nebraska having passed the exam in February 2009. The Committee reviewed a request to administer an ethics oath prior to certification. While they recognized the importance of ethical behavior, there is no specific authority for the Board to require an oath. Online renewals are ready for launch May 5, 2009. The Committee discussed the Litigation Monitoring Consent Order (LMCO) project. The LMCO's currently used to monitor civil action are under review by Board Attorney Gruit. Staff has gathered information for the project.

B. Ratification of initial permits to practice issued, certificates issued, firm permits.

Motion out of Committee to approve the permits to practice, certificates, and firm permits, issued between March 19, 2009 and May 1, 2009. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Zacharia and Obrist voted aye. Motion #17 carried.

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

Certificates. Motion out of Committee to approve the reinstatements, inactive - retired affidavits, and surrendered certificates received between March 19 and May 4, 2009.

Reinstatements:

Judy Rasmussen	Omaha NE
Christopher Veigel	Snellville GA
Sharise Engel	Omaha, NE

Inactive - Retired affidavits: Dennis Wagner W. Des Moines IA

On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Zacharia, and Obrist voted aye. Motion #18 carried.

D. Public Hearing for Kenneth Stauffer regarding licensure, 10:00 am. See public comment period. Moved by Zacharia, seconded by Fuhrman, to approve the reciprocal certificate application for Kenneth Stauffer. On a roll call vote, Members Titus, Fuhrman, Skiles, Wassinger, Zacharia and Obrist voted aye. Member King Wu voted no. Member Rieker abstained. Motion #11 carried.

E. Report on To Do List. There was no report at this time.

11. Report of Executive Director

A. 2009/2010 Budget Update. ED Sweetwood indicated the Legislative Appropriations Committee had released their recommendations for the Board's 2009/2010 Budget. A small increase was noted along with the elimination of language requiring the Board to utilize a portion of the Personal Service Limitation (PSL) funds for Board Member per diems that would allow more flexibility.

B. Midwest MicroSystems (MMS) Non-exclusive Contract. ED Sweetwood provided a background report for the Board to review. He indicated MMS has provided excellent service to the Board including the creation of the enforcement case update log report, the QEP direct reporting systems, along with the installation and support for the Board server, staff software, security protection, training and disaster recovery. It was noted MMS is owned by Administrator Jo Lowe's husband, Jim Lowe. From the onset, all

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engagement requests for MMS were prepared and requested through the ED and Staff Member Ebert. Moved by Obrist, seconded by King Wu, to enter into a non-exclusive contract with MMS. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Zacharia, and Obrist voted aye. Motion #19 carried.

- C. **Report of Online Renewal Applications.** ED Sweetwood reported the Board's online renewal applications will go live Tuesday, May 5, 2009. Mailings were sent out as last year, the second half of the biennial period for individual licensing. Active Permit Holders, Inactive Registrants, and CPA firms can license through paper applications or through the online systems. The online systems have been tested and should be ready to go. Some issues continue regarding the captured online information and the transfer of data to the Board's database. Staff continues to work closely with Nebraska.gov and IMS Services on the project.
- D. **Staffing & General Office Issues:** The Board's current intern, Richard Christensen, will graduate in May and the process of hiring a new intern for next year has been completed. The new intern is Jeff Paesl, an accounting honors student from UNL. It was noted the Board had 11 applications from students at UNL and Nebraska Wesleyan University.
- E. **Report on To Do List.**

12. New Business

- A. **National Association of State Boards of Accountancy (NASBA) Items.**
 - 1.) **NASBA Nominations.** Board Members were encouraged to sign up for a NASBA Committee if they wished.
 - 2.) **NASBA FYIs.** The Board reviewed material and applications for NASBA Committees and the Board of Examiners (BOE).
- B. **Other Miscellaneous Items.** Various articles were noted related to the CPA profession as provided by staff.

13. Adjournment

Moved by Rieker, seconded by King Wu, to adjourn the meeting at 1:13 pm on Monday, May 4, 2009. On a roll call vote, Members Titus, Fuhrman, Skiles, King Wu, Rieker, Wassinger, Zacharia, and Obrist voted aye. Motion #20 carried.

Respectfully submitted by,

Anne K. Fuhrman
Board Secretary