

NEBRASKA BOARD OF PUBLIC ACCOUNTANCY

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

Minutes
May 19, 2011

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

Thursday, May 19, 2011

1. General

A. Call to Order and Roll Call. The Nebraska Board of Public Accountancy (Board) was called to order at 8:40 a.m. on Thursday, May 19, 2011 with Chair Doug Skiles, presiding. The roll was called with the following members present: Doug Skiles, Michael Wassinger, Anne Fuhrman, Kate King Wu, Jim Rieker, Tom Obrist, and Bernie Gutschewski. Member Richard Zacharia was absent. Also present were Executive Director Dan Sweetwood, Staff members Kelly Ebert and Jo Lowe, and Board Intern Nicole Enstrom. Board Attorney Robert Gruit and hearing officer Jim Titus were present. The meeting was held at the Board Office, 140 N. 8th Street, Suite 290, Lincoln, Nebraska. Chair Skiles noted the location of the notebook containing the Public Open Meeting Act, that the statutes were posted on the wall, and asked if anyone present needed an agenda or had any questions regarding the law.

Agenda Item 11B. Staff Kelly Ebert was presented a plaque, from the Board, in recognition of completion of her B.A. degree in Business from Doane College. Motion out of Committee to recommend Board approval of a \$500 Employee Recognition Award. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, and Gutschewski voted aye. Member Zacharia was absent. Motion #1 carried.

B. Approval of Meeting Agenda for May 19, 2011. Moved by Fuhrman, seconded by King Wu to approve the agenda for the May 19, 2011 meeting. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, and Gutschewski voted aye. Member Zacharia was absent. Motion #2 carried.

C. Approval of Minutes from March 18, 2011. Moved by King Wu, seconded by Rieker, to approve the Board minutes from the March 18, 2011 meeting. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, and Gutschewski voted aye. Member Zacharia was absent. Motion #3 carried.

3. Consent Agenda

A. Published Notice of Meeting. Moved by Wassinger, seconded by King Wu, to approve the consent agenda. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, and Gutschewski voted aye. Member Zacharia was absent. Motion #4 carried.

B. Approval of Disbursements. Disbursements were reviewed by Member Fuhrman who provided explanations for atypical expenses. She also discovered one invoice that had been paid twice.

C. Review of Board Budget Status Report. The current budget status report was provided for review. ED Sweetwood commented expenses in the current fiscal year are tracking lower mainly due to fewer legal related expenses and other savings instituted by the Board. Legal related expenses will increase due to the formal hearing at this May Board meeting.

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D. Office Licensing Report. The Office Licensing Report was provided.

2. Public Comment Period (15 minute period)

Dan Vodvarka, President Nebraska Society of CPAs was present to update the Board on several items. Mr. Vodvarka acknowledged Board staff for their assistance in the review of Society CPE courses and indicated he attended the last CPE Committee meeting on request to provide input on how “soft courses” should be handled by the Board. He indicated he agreed with the Committees initial decision to allow 50% for identified “soft courses” and indicated most Society courses offered are technical. The Society leadership is also prepared to assist on the Experience Work Group (EWG) and is awaiting notice of the first meeting. He also commented on the Society Board’s identification of a possible successor to Member Fuhrman for recommendation to the Governor’s office. ED Sweetwood commented that Board members could recommend people apply for state board and commission appointments.

Agenda Item 5 B. 9:00 am: Public Hearing for Complaint #10-03 NBPA vs. Michael Walsh. Hearing officer Jim Titus opened the public hearing for Complaint #10-03 NBPA vs. Michael Walsh at 9:08 a.m., Thursday, May 19, 2011. Respondent Michael Walsh was present and represented by attorney John Raynor. The Board was represented by Board Attorney Robert Gruit. The public hearing was closed at 12:15 p.m., Thursday, May 19, 2011.

Closed Session

Closed Session. Moved by Fuhrman, seconded by King Wu, that the Board go into closed session at 12:45 p.m., on Thursday, May 19, 2011 for the purpose of discussing the Walsh case. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, and Gutschewski voted aye. Member Zacharia was absent. Motion #5 carried. Chair Skiles restated that the purpose for the closed session was to discuss the Walsh case.

Return to Open Session. Moved by King Wu, seconded by Gutschewski, that the Board return to open session at 2:10 p.m., on Thursday, May 19, 2011. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, and Gutschewski voted aye. Member Zacharia was absent. Motion #6 carried.

Member Richard Zacharia arrived at 2:10 pm.

Closed Session

Closed Session. Moved by Gutschewski, seconded by Fuhrman, that the Board go into closed session at 2:20 p.m., on Thursday, May 19, 2011 for the purpose of discussing personnel matters. Staff was excused. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Zacharia, and Gutschewski voted aye. Motion #7 carried. Chair Skiles restated that the purpose for the closed session was of discussing personnel matters.

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Return to Open Session. Moved by King Wu, seconded by Zacharia, that the Board return to open session at 2:28 p.m., on Thursday, May 19, 2011. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Zacharia, and Gutschewski voted aye. Motion #8 carried.

4. Report of the Chair

- A. Report of the Chair.** Board Chair Skiles gave the report. He noted that office performance survey cards sent with renewal reminders were sent to his office with mostly favorable responses. The first Experience Working Group (EWG) meeting will be scheduled after the NASBA Regional Meeting in June. The next Board meeting will be conducted on Wednesday, June 8th held in conjunction with the NASBA Western Regional meeting at the Qwest Center/Hilton Hotel in Omaha. The meeting will be devoted for presentation by the AICPA Peer Review team to give the Board a perspective of the program based on initial recommendations to end the QEP program and require Peer Review for firm licensure.
- B. NASBA Western Regional Meeting Update.** Member Zacharia updated the Board on the plans for the upcoming meeting. He indicated NASBA staff has basically made preparations for the meetings with input from the Hospitality Work Group (HWG). The HWG is recruiting Board spouses to staff an information booth to suggest Omaha activities, and requested ideas for a gift bag. The welcome with video is being prepared by Chair Skiles.
- C. Executive Committee Report: 2010-2011 Executive Directors Performance and Salary Review.** The Committee met at 7:30 am before the start of the meeting and met with ED Sweetwood to discuss his performance and to make recommendations to the Board. Moved by Zacharia, seconded by King Wu, to approve a 2.9% salary increase for Executive Director Sweetwood commencing on July 1, 2011. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #9 carried.
- D. Review Board Calendar.** Revisions were made to the Board calendar.
- E. Report on To Do List.** There was no report at this time.

5. Report of Enforcement of Professional Conduct Committee

- A. Open Case/LMCO Update.** Committee Chair Zacharia reviewed the open cases.
- B. Public Hearing for Complaint #10-03 NBPA vs. Michael Walsh.** See Item #2. Moved by Fuhrman, seconded by King Wu, to approve the following, Findings of Fact, Conclusions of Law, and Decision and Order regarding Michael P. Walsh. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, and Gutschewski voted aye. Member Zacharia had abstained and was absent. Motion #18 carried.

DECISION AND ORDER

The Board finds that the 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 the

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Respondent has held out to the public as a permit holder in the practice of public accountancy and used the designation CPA and Certified Public Accountant without an active permit to practice and without the disclaimer required by regulation, despite the holdings of the Supreme Court in the above cited case. The Board further finds the Respondent has held out as an inactive CPA after expiration of his inactive registration. The Board finds such conduct occurred on at least five occasions as set forth above in the findings of fact and Respondent should be assessed a civil penalty of \$1,250.00 or \$250.00 per occasion.

WHEREFORE, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Respondent shall be placed on probation subject to the Board's Rules and Regulations and subject to the Public Accountancy Act until the successful completion of Respondent's probation as set forth below.

The terms and conditions of probation shall be as follows:

- a. The Respondent shall be placed on probation for three (3) years from the date of this Order, and shall pay the above assessed civil penalty of \$1,250.00 within 30 days of the effective date of this Order.
- b. The Respondent shall comply in all respects with all provisions of the Nebraska accountancy laws and all Rules and Regulations of the Board.
- c. The Respondent shall timely respond to all inquiries from the Board or the Board's representatives and shall timely file all required applications and documents with the Board.
- d. Respondent must apply for renewal by June 30, 2012 for his inactive registration or obtain an active individual permit to practice and firm permit to practice, or surrender his Nebraska certificate.
- e. The Respondent shall within 30 days provide to the Board evidence of the issuance of checks without the words "Certified Public Accountant" or "CPA" on them and new letterhead without such designations, unless accompanied by the disclaimer in parentheses of "inactive registrant."

Respondent's application for inactive registration shall be accepted as of May 19, 2011, expiring on June 30, 2012. Staff will determine the appropriateness of Continuing Professional Education submitted by Respondent for any application for an active permit, but no such application shall be considered until the terms of probation items (a) and (e) have been completed. Determination by the staff will be made in the normal course of business and will be dependent upon documents submitted by Respondent to demonstrate compliance.

WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Respondent is placed on probation for his conduct as set forth in this Decision and Order. The Respondent shall retain his Nebraska CPA certificate and his application for inactive registration is hereby granted. In the event the Respondent violates the terms and conditions of the probation, 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 Respondent as the Board in its discretion deems appropriate. Respondent's motion to dismiss is overruled.

IT IS SO ORDERED.

DATED this 19th day of May, 2011, which shall be the "Effective Date" of this Order.

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

BY: _____

Douglas Skiles, Chair

C. Recommended Closure of Enforcement Cases. No cases were closed.

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 76 courses from March 19, 2011 to May 10, 2011 with 75 approved

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and one denied. The Committee forwarded 7 reinstatements to the Licensing Committee for approval. The 2011 CPE audit was discussed. Motion out of Committee to allow CPE Chair Zacharia authority to approve the 2011 CPE Audit when completed prior to license renewal July 1, 2011. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #11 carried. The Committee recommended to the Board that generally "personal development" or soft courses will be granted 50% of the hours requested for approval. The Committee approved the proposal after conferring with the Nebraska Society. The Committee discussed the large number (66) of CPE deficient people and the number (41) requesting CPE extensions, and recommended that every effort be made to prevent their holding out as a CPA after July 1 unless CPE is completed.

- B. Ratification/Denial of Staff Program Qualification Evaluations.** Motion out of Committee to recommend Board approval of 75 courses and to deny 1 course from March 19, 2011 to May 10, 2011. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #10 carried.
- C. Ratification of CPE Sponsor.** There were no sponsor applications at this time.
- 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 King Wu reported on language to help CPAES with quantitative applications in business course descriptions to meet the subject area requirements. Successful exam candidate surveys were sent for January and February 2011. Staff Lowe visited NASBA/CPAES March 21-22, 2011 to review exam application processes. The Committee reviewed courses from institutions to meet the subject area requirements for the CPA Exam. Motion out of Committee to approve Wayne State and Creighton University courses submitted to meet the CPA Exam subject area requirements. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #13 carried. Exam scores were received.
- B. Approval of CPA Exam Scores.** Motion out of Committee to recommend Board approval of January and February 2011 CPA exam scores. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #12 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 Skiles noted that he will announce the Experience Work Group (EWG) next week and attempts will be made to meet late next month. He will be joined by Members Rieker, Obrist, and Gutschewski on the EWG.
- B. Report on To Do List.** There was no report at this time.

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9. Report of Quality Enhancement Program (QEP) Committee

- A. **Report of the Committee.** Committee Chair Fuhrman reported preparations are under way for QEP to begin the first of June. ED Sweetwood traveled to Topeka, Kansas and visited the Kansas Board of Accountancy to discuss their Peer Review program. A report is prepared for the QEP Task Force.
- 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 adding a bankruptcy question for initial firm permits. It was recommended by the attorney general's office not to add the question. The Committee determined that PAA 1-124 means an active CPA whose permit is current and CPE is up to date. Motion out of Committee to recommend Board approval that PAA 1-124 "certificate as a CPA, then in full force and effect..." means an active permit to practice in any state. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #14 carried. The Committee reviewed a proposed fictitious firm name application. Motion out of Committee to recommend Board approval of the fictitious firm name Axxess CPA, LLC. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #15 carried.
- B. **Ratification of initial permits to practice issued, certificates issued, firm permits.** Motion out of Committee to approve the initial permits to practice, certificates, and firm permits, issued between March 18, 2011 and May 18, 2011. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #16 carried.
- C. **Reinstatements to Active Permits, Inactive Retired Affidavits, Surrendered Certificates.** Motion out of Committee to approve the Reinstatements, Inactive Retired Affidavits, and Surrendered Certificates received between March 17, 2011 and May 13, 2011.

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|--------------------------------|-------------------|------------------|
| Reinstatements: | Jerome Bailey | Port Monmouth NJ |
| | Devin Moylan | Omaha NE |
| | Zane Nielsen | LeClaire IA |
| | Jean Gorecki | Hastings NE |
| | Michael Keays | Omaha NE |
| | John Jarrett | Papillion NE |
| | Linda Bernadt | Omaha NE |
| Inactive - Retired affidavits: | James Hyland | Omaha NE |
| | Marc Splittgerber | Olathe KS |
| | Thomas Cole | Des Moines IA |
| | Janet Redick | Omaha NE |
| Surrendered Certificates: | Thomas Brean | Chicago IL |

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| Frank Jakosz | Naperville IL |
| Chandni Sarawagi | Redondo Beach CA |
| Joseph Willaert | Mankato MN |
| David Seiler | Sioux City IA |
| Tom Hintz | Manhattan, KS |
| Katherine Stockman | Norfolk NE |

On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #17 carried.

- D. Report on To Do List.** There was no report at this time.

Closed Session

Closed Session. Moved by King Wu, seconded by Rieker, that the Board go into closed session at 4:17 p.m., on Thursday, May 19, 2011 for the purpose of updating the Board on current complaints and litigation. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Zacharia, and Gutschewski voted aye. Motion #19 carried. Chair Skiles restated that the purpose for the closed session was to update the Board on current complaints and litigation.

Return to Open Session. Moved by Zacharia, seconded by Wassinger, that the Board return to open session at 4:21 p.m., on Thursday, May 19, 2011. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Zacharia, and Gutschewski voted aye. Motion #20 carried.

11. Report of Executive Director

- A. Kansas Board of Accountancy Visit/ D. Sweetwood, ED.** A report was provided to the Board regarding the ED's visit to the Kansas Board. Two areas of concern were noted by the Kansas Board including the Board's Mobility requirement that an out of state firm partner be licensed and out-of-state CPAs must submit continuing education information to the Board. Sweetwood reported he explained the Board discussed the Mobility requirement based on current law within the Public Accountancy Act within Section 1-135 and that compliance with CPE requirements were high in Nebraska and believed based on the current reporting requirements. Both issues will be discussed in committee for possible formal response to the Kansas Board in the future.
- B. Recognition - Ms. Kelly Ebert, Graduation from Doane College, Business Degree.** Ms. Ebert was recognized for her graduation from Doane College. As a full time employee, wife, and busy mother of two she completed her degree requirements. Ms. Ebert thanked the Board for their support.
- C. 2012/2013 Budget Update.** ED Sweetwood reported the Board's FY12-13 budget was recently approved within LB 374 by the Legislature and signed by the Governor. As previously reported, there was no increase in appropriations from the FY10-11 budget; however, the bill did allow the Board to carry-over unspent appropriations into the new fiscal year commencing on July 1, 2011. The Legislative Fiscal Office noted the Board's issue regarding unknown disciplinary expenses as a factor in allowing the

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carry-over. Sweetwood thanked Board staff and the Executive Committee for their assistance in preparation of the new budget.

- D. **Report of Online Renewal Applications.** ED Sweetwood requested Staff Lowe to overview the progress of the Online Renewal applications. Ms. Lowe indicated few problems to this point with the online renewals. Most renewals had been received with what appears high usage of the online system. Minor issues with the systems will be discussed with Neb.Gov at the conclusion of the license renewal period.
- E. **Staffing & General Office Issues.** ED Sweetwood reported a new computer work station system will be purchased to replace a used system purchased over 6 years ago. Another work station will be updated.
- F. **Report on To Do List.** There was no report at this time.

12. New Business

- A. **National Association of State Boards of Accountancy (NASBA) Items.**
 - 1. **NASBA Vice Chair.** It was noted Mr. Gaylen Hansen, CPA, Colorado, was nominated as Vice-Chair for NASBA for 2011-2012 by the Nomination Committee.
 - 2. **Nomination for NASBA Regional Director.** The Board supported the nomination of Iowa Board member, Mr. Telford Lodden, CPA, as NASBA Central Regional Director. Moved by Rieker, seconded by King Wu, to write a letter to NASBA supporting Ted Lodden for NASBA Regional Director. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #21 carried.
- B. **Other Miscellaneous Items: FYI articles.** Various articles were noted related to the CPA profession as provided by staff.

13. Adjournment

Moved by King Wu, seconded by Zacharia, to adjourn the meeting at 4:37 pm on Thursday, May 19, 2011. On a roll call vote, Members Skiles, Wassinger, Fuhrman, King Wu, Obrist, Rieker, Gutschewski, and Zacharia, voted aye. Motion #22 carried.

Respectfully submitted by,

Anne K. Fuhrman
Board Secretary