

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

Minutes
July 16, 2015

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

Thursday, July 16, 2015

1. General

- A. Call to Order and Roll Call.** The Nebraska Board of Public Accountancy (Board) was called to order at 8:30 a.m. on Thursday, July 16, 2015 with Chair Bernie Gutschewski presiding. The roll was called with the following members present: Bernie Gutschewski, Lori Druse, Michele Stromp, Marcy Luth, Thomas Purcell, Michael McClure, and Glen Waltemath. Member Jan Glenn, was absent. Also present were Executive Director Dan Sweetwood and Staff members Heather Myers, and Jo Lowe. Intern Lisa Steffensmeier was not present. The meeting was held at the Board Office, 1526 K Street, in Suite 4D, Lincoln, Nebraska. Chair Gutschewski 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 was Dan Vodvarka, Nebraska Society, Robin Kilgore, NBPA Governor's Budget Office, and Ken Brauer, Nebraska Society of Independent Accountants. Board attorney Robert Gruit was also present at 10:00am.
- B. Approval of Meeting Agenda for Thursday, July 16, 2015.** Moved by Stromp, seconded by Druse, to approve the agenda for the Thursday, July 16, 2015 meeting. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn was absent. Motion #1 carried.
- C. Approval of Minutes from May 14, 2015.** Moved by Purcell, seconded by Luth, to approve the Board minutes from the May 14, 2015 meeting. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn was absent. Motion #2 carried.

2. Public Comment Period (15 minute period)

Dan Vodvarka, Nebraska Society President, gave an update of Society news including working with the Governor's Office on the appointment of new State Board members and the Nebraska Tax Commissioner and continued good participation in Society offered CPE courses. He also indicated the Society will be offering a free of charge course in September focusing on audit quality initiatives as recently reported from the AICPA.

Ken Brauer, Nebraska Society of Independent Accountants, was anticipating appointment to the Board most likely in September and welcomed the opportunity to participate on the State Board.

3. Consent Agenda

- A. Published Notice of Meeting.** Moved by Druse, seconded by Stromp, to approve the consent agenda. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth,

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McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #3 carried.

- B. **Review of Disbursements for May and June 2015.** ED Sweetwood reviewed the budget and noted Fiscal Year 2015 ended June 30, 2015. Overall, the Board experienced a good year with expenditures over revenues by around \$10,000. He reminded the Board that the goal of the budget was to decrease the cash fund over the next biennium. No appropriated carry-over savings was allowed this year as in the past by the Legislature so the Board's Fiscal Year 2016 budget will begin with the appropriated budget numbers. In FY 2016 he reported potential for higher legal costs with three possible enforcement hearings and the 2015 Rules Project. The Board requested the staff prepared report be amended to reflect a better understanding of heading descriptions.
- C. **Review of Board Budget Status Report.** The current budget status report was provided and reviewed by ED Sweetwood (see above).
- D. **Office Licensing Report.** The Office Licensing Report was not provided to the Board. Staff member Lowe reported she is working on providing the report in the future.

4. Report of the Chair

- A. **Report of the Chair.** Chair Gutschewski reported.
- B. **Election of 2015-2016 Board Officers.** Board Chair Gutschewski reported he had consulted with current officers, and asked and received a positive answer from member Luth she would accept the secretary nomination. Moved by Stromp, seconded by Waltemath, to elect the Board officers as nominated: Chair Gutschewski, Vice Chair Druse, Secretary Luth. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #15 carried.
- C. **NASBA Western Regional Meeting Report.** Members, Druse, Stromp, Luth, and Waltemath attended and gave a review of national and regional issues effecting the Board. The issues involved UAA language regarding inactive status, CPA Exam revisions for 2017, the increase in the number of complaints received by Boards, peer reviewer competence issues, and other significant, relevant items for the Board's attention. All Board members attending felt the topics covered were beneficial to their understanding of the Board's role. Due to possible travel cost savings and the importance for Board members and staff to attend NASBA Meetings. Moved by McClure, seconded by Luth, to approve three Board members and ED Sweetwood to attend the NASBA Annual Meeting, October 25- 27, 2015, Dana Point, CA. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #4 carried.
- D. **Review of Board Calendar.** Rules hearing date was scheduled for Friday, Oct. 23, 2015, at the State Capitol, provided the Rule revisions are approved at the September Board meeting.
- E. **Report on To Do List.** There was no report at this time.

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Closed Session

Closed Session. Moved by Stromp, seconded by Luth, that the Board go into closed session at 10:16 a.m., on Thursday, July 16, 2015, for the purpose of reviewing enforcement matters, and answering questions from a previous enforcement matter with the Board Attorney. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #5 carried.

Return to Open Session. Moved by Druse, seconded by Stromp, that the Board return to open session at 10:46 a.m., on Thursday, July 16, 2015. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #6 carried.

5. Report of Enforcement of Professional Conduct Committee

A. Open Case/LMCO Update. Board attorney Robert Gruit was present to discuss a Supreme Court decision in a North Carolina case related to "over-reach" of Boards. Committee Chair Stromp reviewed the open case file, and a Stipulation & Consent Order related to independence in audit engagements. Motion out of Committee to authorize Board Chair Gutschewski to sign the Order regarding Michael Gorka.

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,

Complainant,

VS.

MICHAEL D. GORKA, CPA

Respondent.

STIPULATION AND
CONSENT ORDER

THIS MATTER comes before the State Board of Public Accountancy of the State of Nebraska (Board) upon the Stipulation and Consent Order of Respondent Michael D. Gorka (Gorka). The following Board members were present and participated in the motion to approve this Stipulation and Consent Order: Bernie Gutschewski, Lori Druse, Jan Glenn, Michele Stromp, Michael McClure, Marcy Luth, Thomas Purcell, and Glen Waltemath.

Stipulation

1. The Board is charged by law, with the responsibility to enforce the provisions of the Public Accountancy Act (Act) and the Board's Rules and Regulations.

2. The Board has the authority by statute to issue a Petition alleging non compliance with the Act and Rules and Regulations, and may, after hearing, take appropriate disciplinary action against individuals or firms found to be in violation of said statutes and Board regulations.

3. At all times relevant to matters set forth herein, the Respondent has been issued Nebraska Certificate No. 1784 and has held an active permit to practice, currently No. 41172, to practice as a Certified Public Accountant in the State of Nebraska.

4. Respondent recognizes his right to a hearing on this matter pursuant to law, acknowledges that he knowingly and voluntarily waives his right to said hearing, and acknowledges that he waives his right to any appeal from this Stipulation and Consent Order of the Board.

5. In consideration for the Respondent's agreement to comply with all the provisions of this Stipulation and Consent Order, the Board agrees that will not issue a Petition nor conduct a hearing as permitted under the Act, nor will the Board take further disciplinary action as long as the terms of this Stipulation and Consent Order are complied with by the Respondent. In the event the Respondent violates the terms of this Stipulation and Consent Order, the Board shall be entitled to pursue such other remedies as the Act and the Board's rules and regulations allow. The Board shall have the right in such event to take further action against Respondent, as the Board in its discretion deems appropriate.

Findings of Fact and Conclusions of Law

6. Respondent admits he performed an ERISA Audit for a client in which he was not independent during the engagement. Gorka self reported the violation.

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7. Respondent consents to a finding by the Board that he acted in violation of the provisions of the Act and the Rules and Regulations of the Board and has subjected himself to disciplinary action by the Board, under the provisions of Section 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, Respondent violated Title 288, Chapter 5, § 002 of the Rules and Regulations which state:

002 Independence A licensee who is performing an engagement in which the licensee will issue a report on financial statements of any client (other than a compilation report in which a lack of independence is disclosed) must be independent with respect to the client in fact and appearance.

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

9. The Board further finds and the Respondent has agreed that the appropriate sanction is as follows: Respondent shall not perform any ERISA engagements in the future until the Board approves otherwise; pay a \$1000 civil penalty and 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 Respondent's probation as set forth below.

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

Gorka may retain his Nebraska CPA certificate and his active permit to practice as long as he remains in compliance with the Act and the Board's Rules and Regulations and as long as he complies with the following terms and conditions of probation:

- a. Gorka shall be placed on probation for three (3) years commencing on the effective date of this Stipulation and Consent Order.
- b. Gorka shall comply in all respects with all provisions of the Act and all Rules and Regulations of the Board.
- c. Gorka 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. Gorka shall pay a \$1000 civil penalty to the Board office within 30 days of said Order.

In the event Gorka 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 the Act and the Board's Rules and Regulations allow. The Board shall have the right in such event to take such further action against Gorka as the Board in its discretion deems appropriate.

Gorka agrees that if he 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 the Act and the Board's Rules and Regulations, as the Board in its discretion deems appropriate.

IT IS SO ORDERED.

DATED this _____ day of _____, 2015.

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

BY: _____

Bernie Gutschewski, Chair

On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #8 carried.

B. Recommended Cases to Close. Motion out of Committee to close cases:

#13-09 A high profile case involving a lawsuit filed against a CPA/CPA firm regarding failure to find defalcations/ embezzlements from a former employee. The Enforcement Committee requested on several occasions items from the CPA to review. At the conclusion of the investigation it was determined not enough evidence was present to file a Petition in the matter.

#13-09A (see above)

On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #7 carried.

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

6. Report of Continuing Professional Education (CPE) Committee

- A. Report of the Committee.** Committee Chair Purcell gave the report. The Committee reviewed a total of 111 courses from May 4, 2015 to July 6, 2015 with 111 recommended for Board approval and none denied. Motion out of Committee to recommend Board approval of 111 courses. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn,

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was absent. Motion #9 carried. Motion out of Committee to approve a reinstatement waiver request. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #10 carried. Motion out of Committee to forward one reinstatement to the Licensing Committee. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #11 carried. The Committee also discussed the proposed Rule changes to Chapter 8.

- B. Ratification of CPE Sponsor.** No CPE sponsor applications were received.
- C. CPE Audit.** No report 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 member Luth gave the report. There is concern at the national level on the thoroughness of "accreditation services." NASBA Regional Meeting attendees learned, for example, the Western Governor's University meets the accreditation requirements. The Committee was provided the Q2 -2015 Candidate Survey results. Congratulations to Creighton University and Member Purcell on the decision to establish a CPT Chapter. The EAC meeting has been scheduled for 10:00 am, October 9, 2015, UN-Kearney with Kathy Smith as organizer. Member Purcell and staff continue to work on the Board ethics exam with a meeting on July 21, 2015 at Creighton.
- B. Ratification of CPA Exam Scores.** Member Luth noted that Nebraska scored sixth in the nation for highest exam scores. Motion out of Committee to recommend Board ratification of the Q2 -2015 CPA Exam scores. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. 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:** The proposed draft Rule changes in Chapters 3, 4, 8, 9 and new Chapter 13, along with the draft explanatory statement to the Governor were provided to Board members for review and comment. Board Attorney Gruit provided an overview of Chapter 3 and (new) Chapter 13 regarding the proposed peer review requirements as outlined within LB 159. Board members requested further clarification from Mr. Gruit on the transition from QEP to Peer Review in Chapter 13 for CPA firms. The drafts are now available to anyone interested in commenting. It is anticipated the final drafts will be approved by the Board at the September 10, 2015 Board meeting and then the drafts will be exposed to the public for 30 days for formal comment. A rules hearing at the Capitol will then be held on October 23, 2015.
- 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.** Staff completed the 2015 QEP review process. The QEP Committee meeting has been set to review the reviewers reports.
- B. **Report on To Do List.** There was no report at this time.

10. Report of the Licensing Committee

- A. **Report of the Committee.** Committee Chair Druse gave the report.
- B. **Licensing Issues.** The Committee discussed one Business, Governmental, Academia (BGA) experience application using experience verified 23 years ago. CPE certificates of completion taken in the previous three years were included with the application. The Board has received a hearing request for return of certificate to be discussed for a future Board meeting. ED Sweetwood updated the Committee on Department of Labor ERISA audit issues. He also covered the discovery of peer review fraud for a Missouri firm, and his anticipated face to face appointments with three habitual non-renewed CPAs with CPE/QEP issues. The 2015 online licensing adoption rates with a previous year comparison was provided to the Committee and Board, along with the number of non-renewals for each type of permit and registration. Board staff sent numerous email reminders, as well as, telephoned those without email addresses in the database.
- C. **Ratification of initial permits to practice issued, certificates issued, firm permits.** Moved by Luth, seconded by Waltemath, to recommend Board approval of initial permits to practice issued, certificates issued, firm permits issued from May 13, 2015 to July 10, 2015. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn was absent. Motion #13 carried.
- D. **Reinstatements to Active Permit, Inactive Retired Affidavits, Surrendered Certificates.** Moved by Waltemath, seconded by Luth, to recommend Board approval of the Reinstatements, Inactive Retired Affidavits, and Surrendered Certificates received between May 13, 2015 and June 26, 2015:

Reinstatements:	Reece Oliver	LaVista NE
Inactive - Retired affidavits:	Jerome Bailey	Beach Haven NJ
	John Binkly	McCook Lake SD
	Blondina Blankenau	Bennington NE
	John Brinjak, Jr.	Scottsdale AZ
	Philip Cleland	Houston TX
	John Connor II	Lakewood Ranch FL
	James Coulton	Omaha NE
	David Hamilton	Houston TX
	George Kennedy	Danville CA
	William Miskell	Leawood KS
	Lee Schaller	Omaha NE
	Terryll Williams	Sioux Falls SD

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	Michael Wiskirchen	Johnston IA
Surrendered Certificates:	Lindsay Goszulak	Littleton CO
	Mark Lyons	Rapid City SD
	Kyle TenPas	Des Moines IA

On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #14 carried.

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

11. Report of Executive Director

- A. **NASBA Western Regional Conference Report.** ED Sweetwood provided a written report that was distributed to Board members for review.
- B. **Budget Update/Fiscal Year 2015 Summary (See Item 3.B)**
- C. **Nebraska.gov Report.** Staff held meetings with Neb. Gov regarding the 2015 online licensing period. Overall, the systems performed well with a few minor issues. ED Sweetwood reported he has been working with CIO's office and the Engineers & Architects Board regarding a vendor interested in providing a replacement to the Board's database. He was hopeful discussions will continue and will be assisted by the Board's consultant (Midwest Microsystems). The Executive Committee will be updated on the progress of this project.
- D. **Staffing & General Office Issues.** ED Sweetwood acknowledged Ms. Lowe, Ms. Myers, and Board intern Steffensmeier for their performance over the last several months. Over 5000 transactions for licensing, the QEP program in full swing, and compliance issues have been processed by staff. A busy time for Board staff!
- E. **Report on To Do List.** There was no report at this time.

12. New Business

- A. **NASBA Items:**
 - 1.) **NASBA:** Committee reports were provided under Agenda Item #4.
 - 2.) **NASBA FYI articles.** Articles were provided to the Board.
- B. **Other Miscellaneous Items: FYI articles.** Articles were provided to the Board.

13. Adjournment

Moved by Stromp, seconded by McClure, to adjourn the meeting at 1:35 p.m. on July 16, 2015. On a roll call vote, Members Gutschewski, Druse, Stromp, Luth, McClure, Purcell, and Waltemath voted aye. Member Glenn, was absent. Motion #16 carried.

Respectfully submitted by,

Acting Board Secretary
Marcy Luth