

NEBRASKA BOARD OF PUBLIC ACCOUNTANCY
140 N. 8th Street, Suite 290, Lincoln, Nebraska

Meeting Minutes
July 27-28, 2004

Tuesday, July 27, 2004

1. General

- A. Call to Order and Roll Call.** The Nebraska Board of Public Accountancy (NBPA) was called to order at 8:34 a.m. on Tuesday, July 27, 2004 with Chair William Gaines, CPA presiding. The roll was called with the following members present: William Gaines, William Nuckolls, Jim Titus, Richard Zacharia, Doug Skiles, Michelle Thornburg, and Anne Fuhrman. Member Dean Graf was absent. Also present were Executive Director Dan Sweetwood, Staff Kelly Ebert and Jo Lowe. The meeting was held at the Board Office at 140 N. 8th Street, Suite 290, Lincoln, Nebraska. Visitors Ken Brauer, Independent Accountants Association, arrived at 8:40 and Dan Vodvarka, President, Nebraska Society of CPAs (NSCPAs), arrived at 9:15.
- B. Approval of Agenda.** Item 3-B, April, May, and June disbursement approval was postponed to Wednesday, July 28. Moved by Nuckolls, seconded by Zacharia, to approve the agenda for the July 27-28, 2004 meeting as amended. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #1 carried.
- C. Approval of minutes for the May 3-4, 2004 meeting.** Moved by Zacharia, seconded by Titus, to approve the minutes. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Thornburg abstained. Member Graf was absent. Motion #2 carried.

2. Public Comment Period

William Cheese, CPA was present regarding the request for a name change for the firm Dutton & Associates. (Refer to agenda item 8. E. 2.)

Stephen Classe, CPA was present regarding Stipulation and Consent Order for missing individual permit application renewal deadline. (Refer to Licensing Committee 8. I agenda item.)

3. Consent Agenda

- A. Published Notice of Meeting.** Moved by Fuhrman, seconded by Skiles, to approve the consent agenda items A,C, & D. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #3 carried.
- B. Approval of Disbursements.** Item 3-B, the April, May, and June disbursements were postponed to Wednesday, July 28, so they could be reviewed.
- C. Review of Board Budget Status Report.** The budget status report was provided.
- D. Office Management Report.** The Office Management Report was presented.

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4. Report of the Chair

- A. Discussion on Future Board Officers.** Chair Gaines suggested that Board officer elections take place at the July meeting to facilitate a smooth transition and allow committee appointments. The Election of Officers was added to New Business on Wednesday, July 28.
- B. Update on Unauthorized Practice of Law.** Chair Gaines and Vice Chair Graf represented the Board and provided testimony on May 12, 2004, at the hearing. Dan Vodvarka, President, NSCPAs updated the Board and indicated that the issue is still under advisement by the Bar Association.
- C. Performance Card Survey 2003-2004.** The 2004 results were presented to the Board. Staff is still working on a yearly comparison spreadsheet. Comments will be included.
- D. Board Calendar.** The item was moved to Wednesday, July 28, to allow Board members to check calendars for future meeting dates.
- E. Report on To Do List.** There was no report at this time.
- F. Other Misc. Items.** There were no miscellaneous items at this time.

CLOSED MEETING

Closed Meeting. Moved by Nuckolls, seconded by Zacharia, that the Board go into closed session at 9:34 a.m., for the purposes of personnel, litigation, and enforcement. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #4 carried.

Return to Open Meeting. Moved by Thornburg, seconded by Nuckolls, that the Board return to open session at 10:57 a.m. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #5 carried.

5. Report of Enforcement of Professional Conduct Committee

- A. Rodney Zwiygart Appeal Update.** Mr. Gritmit updated the Board in closed session.
- B. Troshynski Appeal Update.** No update at this time.
- C. Open Case/LMCO Update.** The Board discussed the length of time some LMCO's have been continuing with CPA's holding out and whether this is in the best of public interest. Since the Board takes a secondary position to the original case filed, the process must continue as it is currently.
- D. Motion out of Committee to recommend Case 04-18 move to formal hearing** and to direct Mr. Robert Gritmit, Board Attorney, to prepare and file a complaint against the named CPA for alleged violation of:
 - ? Law: Public Accountancy Act 1-136 Public Accounting. Permits to engage in the practice of public accountancy in this state shall be issued by the Board to persons who are holders of the certificate of certified public accountant issued under sections 1-114 to 1-124 and who have met the experience requirements of section 1-136.02 ... as long as all of such person's

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offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

- ? Law: Public Accountancy Act 1-151 No person shall assume or use the title or designation certified public accountant or the abbreviation CPA or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a certified public accountant unless such person holds a permit issued under subdivision (1) (a) of section 1-136 ... and all of such person's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.
- ? Title 288/ Rules and Regulations: Chapter 3 001.09 "Holding out to the public as a permit holder" As that term is used in these rules and in the definition of the practice of public accountancy, it means any representation that such a person holds a permit to practice made in connection with an offer to perform or the performance of services to the public.
- ? Title 288/ Rules and Regulations: Chapter 3 001.17 "Practice of Public Accountancy" shall mean the performance or offering to perform by a person holding himself out to the public as a permit holder, for a client or potential client, of one or more kinds of services ...
- ? Title 288/ Rules and Regulations: Chapter 5 007.03 "Form of Practice/ No firm permit" A licensee may practice public accountancy , whether as an owner or employee only in the form of a proprietorship, a partnership, a professional corporation, a limited liability company or any other permissible form of practice.

On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #6 carried.

- E. Recommend Closure of Complaints.** Motion out of committee to approve closure of cases 9900015, 04-11, and 04-13. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #7 carried.
- F. Report on To Do List.** There was no report at this time.
- G. Other Misc. Items.** There were no miscellaneous items at this time.

6. Report of Continuing Professional Education Committee

- A. Report of the Committee.** Chair Nuckolls presented the report. CPE deficient licensees were referred to the Licensing Committee for final determination. The Committee reported on the policy process for reinstatement to active following CPE deficiency. Applicants must go through the reinstatement process within Rule Chapter 8 009.10, and must have 120 hours of CPE in the preceding three years and enter into a Stipulation and Consent Order, including a \$250 administrative fee, with the Board. The Committee reviewed 245 courses and approved 242 with three being denied since April 21, 2004. The CPE Ethics requirement allows other states ethics courses to be accepted at this time. AIPCA Professional Ethics will count toward the 4 hours required unless the same course was used to meet certification requirements.
- B. Ratification of Staff Program Qualification Evaluations.** Motion out of Committee to approve 242 and deny 3 courses submitted since April 21, 2004. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #8 carried.

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- C. Update on individuals with CPE Deficiencies 2004.** Certified letters were mailed to twelve deficient licensees and one incomplete extension on July 13, 2004.
- D. Report on To Do List.** Staff has been asked to draft an application for approving sponsors. Staff is also working on the Committee handbook.
- E. Other Misc. Items.** There were no miscellaneous items at this time.

8. Report of Licensing Committee

- A. Ratification of initial permits to practice issued, certificates issued, firm permits.** Motion out of Committee to approve all initial permits to practice issued, certificates issued, firm permits reviewed at the Licensing Committee meeting on July 9, 2004. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #9 carried. Moved by Titus, Seconded by Skiles to approve the initial permits to practice, certificates, and firm permits issued since July 1, 2004. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #10 carried.
- B. Reinstatements to Active Permit.** See motion #11 in agenda item 8.D.
- C. Inactive Retired Affidavits.** See motion #11 in agenda item 8.D.
- D. Surrendered Certificates.** Motion out of Committee to approve all reinstatements, inactive retired affidavits except William Scheffel, and all surrendered certificates submitted to the Board since May 4-5, 2004. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #11 carried.
- E. Report of the Committee.** Chair Titus presented the report.
 - 1.) Update on NASBA Licensing. While the Committee is supportive of the National Candidate Database, they do not recommend that NBPA use NASBA for licensing at this time.
 - 2.) Letter from Dutton & Associates on firm name change. Motion out of Committee to deny use of PKF in the firm name of Dutton & Associates due to PKF being a membership organization and not having ownership interest in Dutton & Associates, which could be misleading to the public. Refer to Form of Practice Rule Chapter 11 002. On a roll call vote, Members Gaines, Fuhrman, Skiles, Titus, and Zacharia voted aye. Members Nuckolls and Thornburg voted nay. Member Graf was absent. Motion #12 carried.
 - 3.) Report on Zwygart Firm Permit. The Committee recommended that the firm permit not be issued. Mr. Zwygart's attorney has requested a hearing at the September Board meeting concerning this matter. Motion on agenda item 8.3.E. deferred to Wednesday, July 28, 2004.
 - 4.) Public Announcements for 2004 non-renewals for firms and individual permits. Concern was expressed that enforcement and licensing failures are not publicized, and the cease and desist letters for late firms had not been issued. Staff will research ways to assist in publication of this information in the future, and cease and desist letters will be mailed July 28, 2004. Moved by Titus, seconded by Nuckolls that firms not renewed by June 30 be sent a certified cease and desist letter the first week of July, and a Stipulation and Consent Order with a \$250 administrative fee will be required to return to compliance. On

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a roll call vote, Members Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Gaines voted nay. Member Graf was absent. Motion #13 carried.

- 5.) Policy to Require Stipulation and Consent Order for Inactive Registration Non Renewals. The policy will remain the same as it has been at this time. Staff will check the list of inactive registrations for any "holding out" issues.
- 6.) Temporary License. Committee members concluded the "California Model" should be reviewed. Staff will share the California Model with the NSCPAs for possible inclusion in the legislative rewrite.

- F. Update on Certificate Holders with No Activity for Three Years.** There is no progress at this time. Seventy-seven active licensees with no permit have been added to the list of 217.
- G. Update on Deloitte Firm Name Issue.** The Committee is waiting for an opinion on ownership structure and specialization of form of practice from the Attorney General's office before making a decision.
- H. Report of To Do List.** There was no report at this time.
- I. Other Misc. Items.** Firm name request: Motion out of Committee not to allow the requested use of "Orizon" in the firm name for Graeve, Garrelts, Denham, & Bruce because it is fictitious and could be misleading to the public. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Thornburg voted nay. Member Graf was absent. Motion #14 carried.

7. Formal Hearing for Dana Weber

Pursuant to the Board's Notice of Complaint and Formal Hearing, a hearing was held July 27, 2004 at 1:30 p.m. Attorney Robert Gruit represented the Board. The Respondent, Dana Weber, represented himself. Dennis Tegtmeier was the hearing officer. Participating in the hearing were Board members, William Gaines, Michelle Thornburg, William Nuckolls, Richard Zacharia, Jim Titus, Doug Skiles, and Anne Fuhrman. Board member Dean Graf was absent. The Board ordered Hearing Officer Tegtmeier to prepare recommended Findings of Fact and Conclusions of Law with recommendations for review at the next Board meeting, and to have the official hearing transcript prepared by the court reporter.

CLOSED MEETING

Closed Meeting. Moved by Thornburg, seconded by Titus, that the Board go into closed session at 7:08 p.m., for the purposes of enforcement. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #15 carried.

Return to Open Meeting. Moved by Thornburg, seconded by Titus, that the Board return to open session at 7:15 p.m. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #16 carried.

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CLOSED MEETING

Closed Meeting. Moved by Thornburg, seconded by Titus, that the Board go into closed session at 7:26 p.m. for the purpose of enforcement. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #17 carried.

Return to Open Meeting. Moved by Zacharia, seconded by Titus, that the Board return to open session at 7:37 p.m. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #18 carried.

9. Recess

The Board recessed at 7:40 p.m.

Wednesday, July 28, 2004

10. General

A. Call to Order and Roll Call by Chair William L. Gaines Jr., CPA at 8:34 a.m. The roll was called with the following members present: William Gaines, William Nuckolls, Jim Titus, Richard Zacharia, Doug Skiles, Michelle Thornburg, and Anne Fuhrman. Member Dean Graf was absent. Also present were Executive Director Dan Sweetwood, Staff Kelly Ebert and Jo Lowe. The meeting was held at the Board Office at 140 N. 8th Street, Suite 290, Lincoln, Nebraska.

11. Public Comment Period

No members of the public were present.

8. Report of the Licensing Committee

I. Other Misc. Items. Moved by Titus, seconded by Zacharia to allow Stephen Classe to renew his active permit subject to signing the Stipulation and Consent Order with a waiver of the \$250 administrative fee. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion # 19 carried.

3. Consent Agenda

A. Approval of disbursements for April, May and June. Moved by Thornburg, seconded by Nuckolls to approve disbursements for April, May and June, 2004. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #20 carried.

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8. Report of the Licensing Committee

E. Report of the Committee.

- 3.) Report on Zwygart Firm Permit. Moved by Titus, seconded by Zacharia that staff contact Mr. Bartle, attorney for Mr. Zwygart, to demand Zwygart's certificate and active permit to practice be returned to the Board office, that Zwygart cease holding out as a CPA by a set deadline, and then to contact the Attorney General's office if there are no results by the deadline. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #21 carried.

CLOSED MEETING

Closed Meeting. Moved by Zacharia, seconded by Skiles, that the Board go into closed session at 8:52 a.m., for the purposes of enforcement. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #22 carried.

Return to Open Meeting. Moved by Thornburg, seconded by Zacharia, that the Board return to open session at 10:24 a.m. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #23 carried.

12. Report of the Legislative Committee

- A. Report on Proposed Legislative Re-write Status.** The Board continues to meet with the Nebraska Society of CPAs to work on the rewrite.
- B. Report on To Do List.** There was no report.
- C. Miscellaneous Items.** There were no additional items.

13. Report of Exam & Education Committee

- A. Report of the Committee.** Chair Thornburg reviewed the July 7, 2004, Committee minutes. The EAC Committee recommended a rule change to reflect no more than 66 credit hours be allowed to transfer into a four year institution for the purpose of a degree. However, the Committee realizes that the Board recently amended the Chapter 9 Education rules and concluded that this rule change, along with others, will be considered in the future. Applicants with educational issues are being handled.
- B. CBT Update:**
 - 1.) Policy for Release of Exam Scores. Draft policy for release of scores was approved.
 - 2.) Ratification of CPA Exam Scores for the first CBT testing window. Chair Thornburg presented an analysis and review of candidate's scores. Motion out of Committee to ratify scores from the first CBT testing window. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf was absent. Motion #24 carried.
 - 3.) Activity Reports. Chair Thornburg requested that activity reports not be included in Board packets.

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- 4.) Verification of Administrative Reimbursement from NASBA. Staff will verify via activity reports that all first time applicant's fees were received, which is important to satisfy due diligence for the auditor.
- C. CPAES Issues.** Suggestion was made that staff survey applicants following the exam to be sure security regulations were adhered to. Staff continues to monitor the National Candidate database on Monday mornings.
- D. Education Advisory Committee (EAC) Report.** Chair Thornburg reviewed the Education Advisory Committee Meeting minutes from May 26, 2004. Staff will follow up with CPAES and institutions on course approvals, as well as with those institutions that did not reply in February. Issues that arise that were unforeseen as the CBT went into effect will be noted for future rule revisions. The EAC will continue to monitor the NASBA UAA Task Force on changes to the 150-hour educational requirements.
- E. Report on To Do List.** The To Do list will be updated by staff.
- F. Other Misc. Items.** The 2004 CPA Examination Review Board management report and Board of Examiners response was included for Board members review.

14. Report of Quality Enhancement Program Committee

- A. Report of the Committee.** Staff member Kelly Ebert presented the report in the absence of Committee Chair Graf. The Committee determined a policy to return a firm to licensed status that did not submit reports to the Quality Enhancement Program: 1.) Sign a Stipulation and Consent Order with a \$250 administrative fee; 2.) Submit the required reports; 3.) Pay a \$100 administrative fee for each report submitted for review. The Committee established a deadline to submit a request for an exemption that would be earlier than the deadline to submit reports. The reason for the earlier deadline is that in the case of denial of the request for exemption, the firm would have adequate time to submit reports by the May 15 deadline. The Request for the Exemption deadline is May 1. The deadline for submission of all reports would remain May 15.
- B. Report on To Do List.** There was no report.
- C. Other Misc. Items.** There were no miscellaneous items.

15. Report of Executive Director

- A. Computer System Proposal/Presentation by Nebraska On-line (NOL).** Rod Armstrong and Doug Gibbs presented the NOL proposal to NBPA for on-line licensing and CPE reporting as well as the database migration. Board Member Doug Skiles reported on his research with off the shelf software and our application. Dan Vodvarka, Nebraska Society of CPAs, was also invited to attend the presentation. The Board had additional questions to be responded to at the September Board meeting.
- B. Budget.** The final budget report will be sent to Board members. Quick Books has been installed with the help of Gary Pavel. Staff is entering the previous year's financial data and expect to have the history report for the September Board meeting.
- C. JUSTICE.** The Executive Director reported on the free access to data (named JUSTICE) from 92 county court systems for civil and criminal cases available for background checks on

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licensees. The Board requested that Executive Director Sweetwood check with the Attorney General's office to review the project.

- D. Permit Process Report.** Executive Director Sweetwood reported that the project was a success, with overall good comments from licensees.
- E. Staffing & General Office Issues.** Executive Director Sweetwood reported that intern Jess Paisley has indicated that he would continue working for the Board during the next school year.
- F. Report on To Do List.** The To Do list was included in the Board packet.

16. New Business

A. NASBA Items.

- 1.) NASBA Regional Meeting Executive Directors Report
- 2.) NASBA Annual Meeting Dates and location. Moved by Titus, seconded by Nuckolls, to approve attendance at NASBA Annual Meeting, October 17-20, 2004 in Chicago for all Board members and the Executive Director. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #25 carried.

B. Other Miscellaneous Items.

- 1.) Election of Officers: Dean Graf was nominated for Chair; Jim Titus was nominated for Vice Chair; Bill Nuckolls was nominated for Secretary. Moved by Thornburg, seconded by Skiles, to approve the slate of officers. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #26 carried.
- 2.) 2004-2005 Board Meeting Dates. Board meeting dates were set:
 - September 23-24, 2004
 - November 4-5, 2004
 - January 5-6, 2005
 - March 20-21, 2005
 - May 2-3, 2005

17. Adjournment

Moved by Zacharia, seconded by Fuhrman, that the Board adjourn at 4:54 p.m. on Wednesday, July 28, 2004. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf was absent. Motion #27 carried.

Respectfully submitted by,

Michelle Thornburg
Board Secretary