

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY
MEETING MINUTES OF
September 16, 1999**

1. General

A. Call to Order and Roll Call. The Board of Public Accountancy was called to order at 9:15 a.m. on Thursday, September 16, 1999 with Chair Kathleen Smith presiding. The meeting was held at the office of the Board at 140 N. 8th Street, Suite 290, Lincoln, Nebraska.

The roll was called with the following members present: Kathleen Smith, Nina Kavich, William Gaines, Dean Graf, David Hunter, George Klein, Luke Aldy, and Richard Hoiekvam. Also present were personnel members Annette Harmon and Gerald Batliner.

B. Approval of meeting agenda for September 16, 1999. Moved by Graf, seconded by Kavich, to approve the agenda for the September 16, 1999 meeting as amended. Changes to the agenda were as follows: Agenda Items 9-A and 9-D were moved to after the Public Comment Period. On roll call vote, all members present voted aye, except Member Aldy who voted nay. Motion number 1 carried.

C. Approval of the minutes of the August 16-17, 1999 Board meeting. Moved by Hoiekvam, seconded by Hunter, to approve the minutes as revised. On roll call vote, all members present voted aye. Motion number 2 carried.

2. Consent Agenda

Approval of Consent Agenda by Roll Call Vote. Moved by Aldy, seconded by Graf, to approve the Consent Agenda. On roll call vote, all members present voted aye. Motion number 3 carried.

A. Published Notice of Meeting. Pursuant to call and published notice, the notice of meeting is herewith attached.

B. Review of Board Budget Status Report. The Board reviewed the August 31, 1999 Budget Status Report.

C. Approval of July and August 1999 disbursements. The board reviewed and approved the July and August 1999 disbursements.

D. Office Management Report. The Board reviewed a report on permits and registrations issued as of September 6, 1999. Prior year's statistics were also reviewed for comparison.

3. Public Comment Period

There were no members of the public present.

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9. New Business

A. Election of Officers. Moved by Aldy, seconded by Klein, to table agenda item 9-A "Election of Officers" until the December 1, 1999 meeting. On roll call vote, Members Hoiekvam, Klein and Aldy voted yes. Members Gaines, Kavich, Graf, Smith and Hunter voted nay. Motion number 4 failed.

Elected by secret ballot to the office of Chair was William Gaines, with four votes. In the election for Chair, Member Hoiekvam received three votes and Member Kavich received one vote. Elected by secret ballot to the office of Vice Chair was Dean Graf, with four votes. In the election for Vice Chair, Member Hoiekvam received two votes, Member Kavich received one vote and Member Aldy received one vote. Elected by secret ballot to the office of Secretary was Nina Kavich, with four votes. In the election for Secretary, Member Klein received three votes and Member Aldy received one vote.

Moved by Klein, seconded by Hoiekvam, that the newly elected officers be effective as of the next meeting. On roll call vote, all members present voted aye. Motion number 5 carried.

D. LB 382. Moved by Hoiekvam, seconded by Aldy, that the Chair of the Board of Public Accountancy abstain from voting as a member of the Convention Center Facility Financing Assistance board created by LB 382. On roll call vote, Members Hoiekvam and Aldy voted aye. Members Gaines, Graf, Kavich, Smith, Klein and Hunter voted nay. Motion number 6 failed.

Moved by Hoiekvam, seconded by Aldy, to send a letter to the appropriate Legislative Committee for the 2000 session to remove the Chair of the Board of Public Accountancy from the Convention Center Facility Financing Assistance board created by LB 382. After discussion, Member Aldy withdrew his second. Motion number 7 died for lack of a second.

4. Report of Quality Enhancement Program

A. Report of Responses to Type 3 and 4 Letters. Chair Richard Hoiekvam discussed the meeting of the QEP Committee on September 10, 1999. Moved by Hoiekvam with the Committee's recommendation, to adopt the QEP Committee's report from the September 10, 1999 meeting that reviewed the responses to the Type 3 and 4 ratings. On roll call vote, all members present voted aye. Motion number 8 carried.

B. NSA Request for Approval of Peer Review Program. The QEP Committee had reviewed a request from the National Society of Accountants to approve their program for peer review. The Committee discussed the possible review of the peer review program by NASBA. Since this item was reported in item 4-A, no action was necessary.

C. Informal Hearings for Lack of Response to Type 3 or 4 Rating. At the August 16-17, 1999 meeting, the Board determined that any practice unit not responding to the Type 3 or 4

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rating letter by the September 3, 1999 deadline would be required to attend an informal show cause hearing at the next meeting. One practice unit whose response was not received until September 9, 1999 was sent a Certified letter requiring his presence before the Board on September 16, 1999. Moved by Hoiekvam, seconded by Aldy, to require the practice unit to respond to the Type 4 rating within 20 days. After discussion, motion number 9 was withdrawn by Member Hoiekvam.

The practitioner had called the office the morning of September 16, requesting the possibility of having the informal hearing postponed and indicated he would fax something to the Board that day. It was decided to take up this matter later in the day after his fax was received.

CLOSED MEETING

Closed Meeting. Moved by Aldy, seconded by Gaines, that the Board go into closed session at 10:45 a.m. for the purpose of enforcement. On roll call vote, all members present voted aye. Member Hunter was absent. Motion number 10 carried.

Return to Open Meeting. Moved by Aldy, seconded by Gaines that the Board return to open session at 11:50 a.m. On roll call vote, all members present voted aye. Motion number 11 carried.

5. Report of Enforcement of Professional Conduct Committee

A. Complaint Consent Agenda. The Board reviewed the Complaint Status log, consisting of open and monitored complaints. Moved by Klein, with the Committee's recommendation, to approve the complaint Consent Agenda. On roll call vote, all members present voted aye. Motion number 12 carried.

B. 99-10 CPA has failed to prepare tax returns timely, provide information regarding estate and trust to trustee. A letter was received from an estate administrator for U.S. Bank alleging that a CPA had failed to file various tax returns for a deceased husband and wife and had failed to provide interested individuals, including U.S. Bank - the estate's Personal Representative - with relevant information regarding the estates. The CPA had agreed with U.S. Bank to prepare final tax returns for the husband. As of the date of the complaint received by the Board, the CPA had not completed the returns nor returned the calls from the Personal Representative. The CPA was sent a copy of the complaint and as of August 16, 1999 had not responded to the Board's letter. The Respondent CPA and managing owner of the CPA firm appeared before the Board for an informal hearing in closed session. After the informal hearing the Board directed personnel to communicate with the Bank, the CPA and the firm that the expectation is that the complaint will be resolved by the September Board meeting; and that written confirmation of the resolution needs to be sent to the Board.

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Moved by Klein, with the Committee's recommendation, to offer the CPA a Stipulation and Consent Order acknowledging his non-response to the Board about the complaint, paying a \$100 administrative fee, and agreeing to comply with all Board rules in the future. On roll call vote, all members present voted aye, except Member Hunter who voted nay. Motion number 13 carried.

C. 99-08 Holding out as CPA by Unlicensed Individual. An unlicensed individual was alleged to be using his deceased fathers name (a licensed CPA) in continuing the father's CPA practice. The Board directed staff to continue to investigate the complaint.

D. Failure of Lee Johnson to Reimburse Costs to Board as Part of Order. Lee Johnson was ordered as a result of a Board hearing to pay the costs of the hearing (\$2,000) within 60 days of the date of the Order (August 10). He has failed to do so. Moved by Klein, with the Committee's recommendation, to file Notice of Complaint and Formal Hearing against Lee Johnson for violating two provisions of the Board's Decision and Order and Title 288, Chapter 5, Section 007.05. Mr. Johnson will be given the opportunity to enter into a Stipulation and Consent Order agreeing to revocation of his CPA certificate in lieu of a formal hearing. On roll call vote, all members present voted aye. Motion number 14 carried.

E. Use of NASBA's EIX Database. NASBA has put on their web page the "Enforcement Information Exchange" database for use by state boards of accountancy. They have asked each state board to submit all their disciplinary action for posting on the database. The Board has determined that Nebraska should establish its own disciplinary information database on its own web page and provide a link to the NASBA site.

F. Flowchart of Enforcement Procedures. The Board reviewed a flowchart of enforcement procedures and directed staff to revise them and come back with recommendations at the December meeting.

6. Report of Continuing Education Committee

A. Ratification of staff program evaluations since last meeting. Moved by Gaines, with the Committee's recommendation, to change Course #99-143 to three hours, and Course #99-142 to four hours, and to approve the remainder of the recommendations of administrative personnel for courses requesting continuing education credit. On roll call vote, all members present voted aye. Motion number 15 carried.

B. Review of Allowable Subject Matter for CPE Credit. The Committee reviewed requests for continuing education credit that involved investment advisory services, investments, insurance products and real estate laws. Moved by Gaines, with the Committee's recommendation, that the CPE Committee draft an article for the next newsletter on accepting courses that are pertinent to the practice of public accountancy. On roll call vote, all members present voted aye. Motion number 16 carried.

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C. Course Approval Forms. A draft of a proposed form to be used by licensees' in requesting approval of CPE courses by the Board were reviewed by the Committee and Board. Moved by Gaines, with the Committee's recommendation, to make the recommended changes to the proposed form and adopt its use by attaching it to the CPE Guidelines. On roll call vote, all members present voted aye. Motion number 17 carried.

7. Report of Examination & Licensing Committee

A. Ratification of initial permits to practice issued; certificates issued. Moved by Aldy, with the Committee's recommendation, to ratify the initial permits to practice and certificates issued by examination and reciprocity. On roll call vote, all members present voted aye. Motion number 18 carried.

B. Request from Phil Waldron. Phil Waldron attended the last Board meeting and spoke to the Board briefly during the public comment period. It was his statement that Board personnel disagreed with the Articles of Incorporation that he filed to become a professional corporation. He then asked his attorney to change the Articles. Staff had also indicated that there were some problems with his Bylaws as written and signed. His attorney changed the Articles of Incorporation and wrote an 18-page letter on why the suggested changes to the bylaws were unnecessary. Staff subsequently issued his firm permit to practice after the Amended Articles and letter were submitted. Mr. Waldron is asking for reimbursement of his attorney's fees to change the Articles and to write the 18-page opinion letter.

Moved by Aldy, with the Committee's recommendation, to write a letter to Mr. Waldron stating that the administrative staff exercised reasonable prudence in examining the documents before issuing the P.C. firm permit; that the Board will not be reimbursing his requested attorney fees; and that staff is directed to put together a checklist of things required by law for accepting firm entities to assist both staff and practitioners in making sure the requirements are met. On roll call vote, all members present voted aye, except Member Hunter who voted nay. Motion number 19 carried.

C. Flowcharts of Procedures. The Board reviewed flowcharts on Examination Requirements, CPA Certificate Issuance and Licensure of Individuals and Firms. Checklists will be added to supplement the flowcharts.

D. Report on AICPA Examination Meeting. Administrative personnel was directed to write a letter to the NASBA Examinations Committee that the Board needs to know the maximum amount charged to state boards for the computerized exam; how much more would the computerized exam cost if NASBA were to administer it; and what about the availability of the pen/paper examination if, legislatively, we cannot provide the computerized exam.

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8. Report of Executive Director

A. Computer Program Update. The Executive Director reported on the progress of networking the new computers, converting data into the new computer program, and the installation of cabling and a router to connect to the State's main frame system. The cost of the connection includes a \$763 one-time installation charge, and a three-year contract with a monthly fee of approximately \$300 (actual cost: \$328). After the three-years, the monthly charge is reduced to approximately \$200 (actual cost: \$217). The Board was reminded that the cost of networking, hardware maintenance and cabling were not included in the computer programming charges. Most of the work would be performed by the State's Division of Communications and billed separately.

B. Personnel Update. The Executive Director reported that she had interviewed several more candidates for the Staff Assistant position and would be making a hiring decision within the next week.

The question of a Board member's personal liability was raised and the Executive Director conferred with Lynn Melson, Assistant Attorney General. Since the State is self-insured, in the event of a lawsuit the Attorney General's office would represent the Board and any Board members named individually within the suit – as long as the person was acting within his scope as a member of the board. Any monetary awards would be paid by the state – either through the indemnification fund or from the Board's reserves. However, if a Board member was not acting within his/her scope as a member of the Board, he/she could be held personally liable. Members were also reminded that when traveling on state business in their personal vehicles, their own insurance policies would provide primary coverage, while the State would be considered as excess.

The Board discussed confirming a location for the May and November 2000 examination sites and directed staff to contract with AKSARBEN in Omaha for both exams.

9. New Business

B. Future Meeting Dates. The next regularly scheduled Board meeting is December 1, 1999 in Lincoln, Nebraska. Future meetings are set for January 13-14, 2000, and April 20-21, 2000.

C. NASBA. 1. Focus Questions. The Board reviewed and answered questions to NASBA's latest focus question survey. This will then be submitted to the Central Regional Director, Phil Gleason.

C. NASBA. 2. Bylaws Revision. The Board reviewed the red-line draft of proposed NASBA bylaws revisions. They also discussed the changes proposed by Eli Mason that were previously supported by the Board. It was determined that they would "caucus" at the NASBA Annual Meeting on October 13-16, 1999 regarding the vote at that time.

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C. NASBA. 3. Nominations to NASBA Board. Moved by Kavich, seconded by Gaines, to nominate Princy Harrison of the Mississippi Board as a candidate for NASBA's Vice Chairman, and to request her name be placed on the ballot at the Annual Meeting. On roll call vote, all members present voted aye, except Member Hoiekvam who abstained. Motion number 20 carried.

4. Report of Quality Enhancement Program (QEP)

C. Informal Hearings for Lack of Response to Type 3 or 4 Rating. The Board received a fax from the practice unit not timely submitting his response to the Type 4 rating he received on a compilation report. Moved by Hoiekvam, seconded by Gaines, that the practitioner must submit verification from his doctor of his medical condition and a written response to the summary of deficiencies and comments on the report within twenty days. On roll call vote, all members present voted aye. Motion number 21 carried.

10. Adjournment

It was moved by Aldy, seconded by Gaines, that the Board adjourn at 2:55 p.m. On roll call vote, all members present voted aye, except Member Hunter who was absent. Motion number 22 carried.

Submitted by,

William L. Gaines, Jr., CPA
Secretary