

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

September 15-16, 2003

1. General

- A. Call to Order and Roll Call.** The Board of Public Accountancy was called to order at 8:32 a.m. on Monday, September 15, 2003 with Chair William Gaines, CPA presiding. The roll was called with the following members present: William Gaines, Michelle Thornburg, Dean Graf, Jim Titus, William Nuckolls, Richard Zacharia, and Doug Skiles. Member Nina Kavich was absent. Also present were Executive Director, Dan Sweetwood, and Office Staff Administrator, Jo Lowe. The meeting was held at the Board Office at 140 N. 8th Street, Suite 290, Lincoln, Nebraska.
- B. Approval of Agenda.** Moved by Nuckolls, seconded by Zacharia, to approve the agenda as amended for the September 15-16, 2003 meeting. On a roll call vote, all members present voted aye. Member Nina Kavich was absent. Motion #1 carried.
- C. Approval of minutes for the August 12, 2003 meeting.** Moved by Graf seconded by Nuckolls to approve the minutes. On roll call vote, William Gaines, Michelle Thornburg, Dean Graf, Jim Titus, William Nuckolls, Richard Zacharia voted aye. Member Doug Skiles abstained. Member Nina Kavich was absent. Motion #2 carried.

2. Public Comment Period

Time was allowed on the agenda for members of the public to address the Board with comments. No members of the public were present.

3. Consent Agenda

- A. Published Notice of Meeting.** Moved by Titus, seconded by Zacharia, to approve the consent agenda items 3-A and 3-C. On roll call vote, all members present voted aye. Member Nina Kavich was absent. Motion #3 carried.
- C. Review of Board Budget Status Report.** Board members requested that as soon as the 2004 appropriation information can be entered into NIS that this information be included with the Board Budget Status Report and be sent to the Board members in binders.

CLOSED MEETING

Closed Meeting: Moved by Nuckolls, seconded by Thornburg, that the Board go into closed session at 8:58 a.m., for the purposes of litigation, personnel, and enforcement issues. On a roll call vote all members present voted aye. Member Gaines recused himself during the discussion of the Zwygart matter. Member Kavich was absent. Motion number #4 carried.

Return to Open Meeting: Moved by Titus, seconded by Graf, that the Board return to open session at 11:39 a.m. On a roll call vote all members present voted aye, except Member Gaines who was recused. Member Kavich was absent. Motion number #5 carried.

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4. Report of The Chair

- A. Paul O'Hara Visit.** Deferred discussion until Tuesday, September 16th.
- B. Report on To Do List.** The To Do list will be a part of the Executive Director's report.
- C. Unauthorized use of Law Issue/ Nebraska Society of CPA's.** Nebraska Society of CPA's is monitoring and will keep the Board informed of any change in status of the proposed rules.
- D. Financial Statement Preparation/ Peachtree.** Nina Kavich will work with Gary Pavel in future preparation of financial reports for Board Member review. The Board has agreed to compensate Member Kavich for her work on this project. An engagement letter will be obtained from Mr. Pavel.
- E. Approval for Executive Director to attend Public Meeting Seminar.** The Board feels this would be an educational and worthwhile seminar and approves attendance of the Executive Director.
- F. Approval for Executive Director and Administrator to meet with Missouri Board for exchange of information/organization.** Board will reconsider at the March Board meeting following the Executive Directors conference in February 2004. In the meantime, the staff should gather information from other Nebraska agencies and other State Boards via email, mail, etc. Also, the Board requests an agenda for the proposed trip.
- G. Response to Public Auditor.** Nina Kavich has drafted a letter of response that will be sent by the end of the month.

14. Legislative Committee

B. Moved by Graf, second by Zacharia, to leave the rules (Title 288, Chapter 10-002) as is with no changes relative to LB 258. On a roll call vote, members Graf, Nuckolls, Skiles, Titus, and Zacharia voted aye. Members Thornburg and Gaines voted nay. Member Kavich was absent. Motion # 6 carried

5. Organizational Meeting

- A. Election of Officers.** Suggestion was made that Board members step up through the executive offices to provide continuity and experience.

Chair: Member Nuckolls nominated Gaines for office of Chair. Members Skiles recommended that nominations cease.

Vice Chair: Member Thornburg nominated Graf for Vice Chair. Members Skiles recommended that nominations cease.

Secretary: Member Zacharia nominated Thornburg for Secretary. Members Skiles recommended that nominations cease.

Moved by Thornburg, seconded by Titus, to approve the slate of officers. On a roll call vote, all members present voted aye. Member Kavich was absent. Motion # 7 carried.

- B. Future Board meeting dates.** November 5-6, 2003
January 7-8, 2004

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March 21-22, 2004

May 6-7, 2004

July 22-23, 2004

September 28-29, 2004

- C. Ex Parte Communication.** Chair Gaines asked Board members to review the attached information and be aware of Ex Parte communications as members of the Board.

6. Report of the QEP Committee

- A. Report of the Committee:** Committee Chair Graf reported on the status of the QEP Review.
- B. Report on the To Do list.** The goal is to finish the QEP process for this year.
- C. Other Miscellaneous Items.** The Board discussed the need to find more practitioners interested in reviewing.

7. Report of the Licensing Committee

- A. Ratification of initial permits to practice issued, certificates issued, firm permits issued.** Moved by Graf, seconded by Zacharia, to ratify all initial permits to practice with the exception of Brian Bangs and Alyssa Tiwald. On a roll call vote, all members present voted aye. Members Kavich and Titus were absent. Motion #8 carried.

After discussion, moved by Graf, seconded by Nuckolls, to approve initial permit to practice for Alyssa Tiwald. On a roll call vote, all members present voted aye. Members Kavich and Titus were absent. Motion # 9 carried.

After discussion, moved by Nuckolls, seconded by Zacharia, to approve initial permit to practice for Brian Bangs. On a roll call vote, Members Gaines, Nuckolls, Thornburg, Zacharia, Titus and Skiles voted aye. Member Graf abstained. Member Kavich was absent. Motion # 10 carried.

Moved by Graf, seconded by Zacharia, to ratify certificates issued by exam with the exception of Tarsha Jackson. On a roll call vote, all members present voted aye. Member Kavich was absent. Motion # 11 carried.

Moved by Zacharia, seconded by Graf, to ratify certificates issued by reciprocity. On a roll call vote, all members present voted aye. Member Kavich was absent. Motion # 12 carried.

Moved by Graf, seconded by Zacharia, to ratify firm permits issued. On a roll call vote, all members present voted aye. Member Kavich was absent. Motion #13 carried.

- B. Reinstatement to Active Permit Holders.** Moved by Graf seconded by Zacharia, to ratify reinstatements from Inactive registration to Active permit as presented. On a roll call vote, all members present voted aye. Member Kavich was absent. Motion # 14 carried.

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- C. Applications for Inactive - Retired and Certificates Surrendered.** Moved by Graf, seconded by Thornburg to ratify applications for Inactive - Retired and Certificates Surrendered as presented. On a roll call vote, all members present voted aye. Member Kavich was absent. Motion # 15 carried.
- D. Michael Walsh/ Firm Permit.** The Board agreed with the licensing committee that an inactive permit holder should not be approved for a Professional Corporation firm permit.
- E. CPA Certificate/Permit Document.** Board members reviewed several examples from the State print shop. CPAES can provide a certificate of completion for successful exam candidates.
- F. Report on To Do list.** The Committee's To Do list is on going with an agenda supplied to Committee Members on a regular basis with questions posed to the committee as needed.
- G. Other Miscellaneous Items.** There were no additional items.

8. Report of the Education and Exam Committee

- A. Report of the Committee.** Committee Chair Thornburg requested that staff draft a letter of apology to Gina Riley and reimburse her for cost of replacement transcripts.
- B. Computerized Testing Update.** The Committee will continue to provide the Board with additional information. Chair Thornburg will gather additional information at the NASBA Annual Meeting in October. The Committee is working on Rule changes needed to implement CBT.
- C. Certified Public Accountant Examination Services.** Committee Chair Thornburg will report the number of candidates who have not met the 150 hour rule. Staff needs to review certificates issued for 150 hour requirement and report findings to the Committee.
- D. Report on To Do list.** No report.
- E. Other Miscellaneous Items.** There were no miscellaneous items.

12. Report of the Enforcement Committee

- A. Determination of Rodney Zwygart.** Moved by Titus, seconded by Graf, that in the case of the State of Nebraska v. Rodney G. Zwygart that the Findings of Fact and the Conclusions of Law of the hearing officer, Kent Radke, Attorney at Law, are hereby adopted and directed to be attached to the decision as a part thereof, and that Respondent Zwygart's CPA certificate and permit to practice are hereby revoked, that Respondent Zwygart is hereby ordered to:

1.) pay to the Board of Public Accountancy the following costs of the proceedings, including attorney's fees and expenses within sixty days of the order:

Court Reporter	\$1,118.50
Hearing Officer	\$1,185.00
Attorney fees and expenses	<u>\$12,389.55</u>
Total:	<u>\$14,693.05</u>

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2.) deliver his certificate #01670 and permit to practice #10797 on or before November 16, 2003 to the Nebraska Board of Public Accountancy office, 140 S. 8th St., #290, Lincoln NE.

On a roll call vote, Members Nuckolls, Titus, Thornburg, Zacharia, and Graf voted aye. Members Gaines was recused. Member Skiles was present but abstained. Member Kavich was absent. Motion # 16 carried.

9. Recess

The Board recessed at 5:10 p.m. on September 15, 2003.

September 16, 2003

10. General

A. Call to Order and Roll Call. The Board of Public Accountancy was called to order at 8:32 a.m. on Tuesday, September 16, 2003 with Chair William Gaines, CPA presiding. The roll was called with the following members present: William Gaines, Michelle Thornburg, Dean Graf, Jim Titus, William Nuckolls, and Doug Skiles. Members Nina Kavich and Richard Zacharia were absent. Also present were Executive Director, Dan Sweetwood, and Office Staff Administrator, Jo Lowe. Guests present were Ken Brauer, Nebraska Society of Independent Accountants and Dan Vodvarka, Nebraska Society of Certified Public Accountants.

The meeting was held at the Board Office at 140 N. 8th Street, Suite 290, Lincoln, Nebraska.

Carry over items from Monday, September 15, 2003.

7-A. Certificates Issued. Tarsha Jackson's certificate will not be issued at this time for further evaluation of 150 hour rule requirements. Member Thornburg will give staff guidelines on future similar situations.

14-B. Rule Change. Member Thornburg expressed concern about binding future Board's to a previous motion. Member Titus opinioned any motion can be changed at any time and is not binding on the future Board.

3.B Approval of Disbursements

B. Approval of Disbursements July - August, 2003. Moved by Thornburg, seconded by Nuckolls, to approve the disbursements. On a roll call vote, all members present voted aye. Members Kavich and Zacharia were absent. Motion #17 carried.

11. Public Comment Period

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Ken Brauer, Nebraska Society of Independent Accountants, wanted to be sure that any future Law or Rule changes would not adversely affect non CPA's ability to perform tax and financial work.

Dan Vodvarka, Nebraska Society of Public Accountants, will provide a list of issues regarding the rewrite of the Public Accountancy Act to the Executive Director by the end of the week. Mr. Vodvarka proposed a joint meeting of the two Board's Chairs and Executive Directors to discuss legislation. Meeting dates will be proposed to facilitate this meeting. Mr. Vodvarka expressed concern about unauthorized use of law and that he may need to come before the Board to assist in further discussion.

12. Report of the Enforcement Committee

- B. Troshynski Appeal.** The Board received a letter that Troshynski has filed an appeal in response to the Board's decision. Staff will meet with Lynn Melson, who is preparing the Board's response to the appeal.
- C. Open Case Update.** Chair Gaines reviewed the open complaint cases.
- D. Recommend to close complaint #0102-031.** Motion out of committee to close complaint #0102-031. On a roll call vote, Members Gaines, Graf, Nuckolls, Thornburg, and Titus voted aye. Member Skiles abstained. Members Kavich and Zacharia were absent. Motion # 18 carried.
- E. Recommend to close complaint #0102-027, & 028, & 029.** Motion out of committee to close the complaints #0102-027, & 028, & 029. On a roll call vote, Members Gaines, Graf, Nuckolls, Thornburg, and Titus voted aye. Member Skiles abstained. Members Kavich and Zacharia were absent. Motion # 19 carried.
- F. Recommend to close complaint #0001-016 & 017.** Motion out of committee to close the complaints #0001-016 & 017. On a roll call vote, Members Gaines, Graf, Nuckolls, Thornburg, and Titus voted aye. Member Skiles abstained. Members Kavich and Zacharia were absent. Motion # 20 carried.
- G. Recommend to close complaint #0102-114.** Motion out of committee to close the complaint #0102-114. On a roll call vote, Members Gaines, Graf, Nuckolls, Thornburg, and Titus voted aye. Member Skiles abstained. Members Kavich and Zacharia were absent. Motion # 21 carried.
- H. Report on To Do list.** Staff is working to resolve the number of open complaints.
- I. Other Miscellaneous items.** There were no miscellaneous items.

13. Report of the Continuing Professional Education Committee (CPE)

- A. Report of the Committee.** Committee Chair Nuckolls reported that the CPE Committee has suggested a number of Rule changes to be effective January 1, 2004. See item B.
- B. Update on review of CPE Rules and Guidelines.** Committee Chair Nuckolls explained the proposed revisions for CPE:
 - 1.) **Audit:** Motion out of committee to ratify the audit approach to the CPE process and to allow the committee to determine the requirements. On a roll call vote, Members Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Member's Kavich and Zacharia were absent. Motion # 23 carried.

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2.) Revised Reporting Form: Motion out of committee to approve the revised CPE Reporting form with suggested changes. On a roll call vote, Members Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Members Kavich and Zacharia were absent. Motion # 24 carried.

3.) Motion out of committee to ratify Chapter 8 - Continuing Professional Education Rules with suggested changes to be effective Jan. 1, 2004. Drafted changes will be sent to Board members by staff. On a roll call vote, Members Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Members Kavich and Zacharia were absent. Motion # 25 carried.

Directed staff to prepare the information necessary to conduct a rules hearing on November 6, 2003, at the Board offices concerning the proposed changes to the Continuing Professional Education Rules.

C. Ratification of Approved CPE Course Evaluations. Motion out of committee to ratify CPE Course Evaluations made by staff since the previous Board meeting. On a roll call vote, Members Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Members Kavich and Zacharia were absent. Motion # 22 carried.

D. Report on To Do list. There was no additional report.

E. Other Miscellaneous Items. The Committee discussed the need to develop standards for what should be attached to the CPE reporting form.

14. Report of Legislative Committee

A. Proposed Legislative Re-write Status. Lobbyist Paul O'Hara joined the meeting at 11:10 a.m. He recommended that the Board respond to Sen. Bromm's letter. Mr. O'Hara reported on his status as the Board Lobbyist. He also provided information regarding the upcoming 60 day legislative session beginning in January 2004.

B. Proposed Rule Changes. See on Monday, September 15th under Report of Legislative Committee.

C. Report on the To Do list. There was no report on the To Do list.

D. Miscellaneous Items. There were no additional items reported.

CLOSED MEETING

Closed Meeting: Moved by Graf, seconded by Nuckolls, that the Board go into closed session at 11:55 a.m. for the purposes of litigation, personnel, and enforcement issues. On a roll call vote Members Graf, Nuckolls, Skiles, Thornburg, and Titus present voted aye. Member Gaines was recused from the discussions regarding the Zwygart matter. Members Kavich and Zacharia were absent. Motion number #26 carried.

Return to Open Meeting: Moved by Graf, seconded by Thornburg, that the Board return to open session at 12:33 p.m. On a roll call vote Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Members Kavich and Zacharia were absent. Motion number #27 carried.

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15. Executive Directors' Report

- A. Computer System Issues.** The Executive Director reported on meetings with Information Management Services (IMS) and Nebrask@ On Line (NOL) regarding hardware solutions and on line licensing. NOL can provide on line licensing. Staff printed the entire web page for staff and Board review. The Board recommended staff add to the To Do list the creation of a technology plan that describes in stages, where we are and where we want to go with cost projections and technology needs.
- B. Nebraska Information System (NIS)/ Financial Status.** State budget officer has reviewed our budget status. Once the NIS system can incorporate this year's appropriation/budget information it will be provided to the Board.
- C. Staffing & General Office Issues.** The Executive Director reported on the decision to purchase file cabinets to open up space for filing. He also updated the Board on staff activity.
- D. Status of Annual Register for 2002.** The 2002 Annual Register is ready to go to the Print Shop with 200 copies ordered.
- E. New Board Member Manual.** Staff has started work on the new Board member manual.
- F. Newsletter: Request for articles.** The Fall 2003 newsletter is being prepared. Suggestion was made that this be the final hard copy of the newsletter, with notice requesting that those who want a hard copy must notify the office. Future "news" items will be on the web page or issued through email.
- G. Report on To Do List.** The To Do List was included for Board information.

16. New Business

- A. National Association of State Boards of Accountancy (NASBA) Items**
 - 1. Annual Meeting:**
 - a.) Voting Delegate.** Moved by Thornburg, seconded by Nuckolls, to nominate Dean Graf as the Nebraska voting delegate for the NASBA Annual Meeting. On a roll call vote Members Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Members Kavich and Zacharia were absent. Motion number #28 carried.
 - b.) Voting Issues.** The Board suggested that Member Graf contact our Central Regional Director to discuss the issues being voted upon.
 - 2. Regional Directors Focus Questions.** Member Graf and the Executive Director will work on the survey. The Board discussed responses to the questions.
- B. Other Miscellaneous Items.** There were no additional items.

CLOSED MEETING

Closed Meeting: Moved by Thornburg, seconded by Titus that the Board go into closed session at 3:03 p.m., for the purpose of enforcement issues. On a roll call vote Members Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Member Gaines was recused from discussions

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regarding the Zwygart matter. Members Kavich and Zacharia were absent. Motion number #29 carried.

Return to Open Meeting: Moved by Thornburg seconded by Graf that the Board return to open session at 3:29 p.m. On a roll call vote Members Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Members Kavich and Zacharia were absent. Motion number #30 carried.

12-A. Report of the Enforcement Committee

A. Determination of Rodney Zwygart. Moved by Titus, seconded by Graf, that upon reconsideration, motion #16 enacted by the Board on September 15, 2003 is rescinded and consideration of this matter is continued to the Board meeting on November 5, 2003 at 9:30 a.m. on the matter of the amount of attorney's fees, costs and expenses to be included as part of the final order. Counsel is directed to provide notice to the respondent of his opportunity to appear and be heard on the assessment of attorney's fees, costs, and expenses at said time. On a roll call vote Members Graf, Nuckolls, Thornburg, and Titus voted aye. Member Gaines was recused. Member Skiles was present but abstained. Members Kavich and Zacharia were absent. Motion number #31 carried.

Moved by Graf, seconded by Nuckolls, to appoint Member Titus to conduct the hearing on November 5, 2003. On a roll call vote Members Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Member Gaines was recused. Members Kavich and Zacharia were absent. Motion #32 carried.

17. Adjournment

Moved by Titus, seconded by Skiles, that the Board adjourn at 3:41 p.m. on Tuesday, September 16, 2003. On roll call vote Gaines, Graf, Nuckolls, Skiles, Thornburg, and Titus voted aye. Members Kavich and Zacharia were absent. Motion # 33 carried.

Respectfully submitted by,

Michelle Thornburg
Board Secretary