

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

Minutes
September 23-24, 2004

Thursday, September 23, 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 Thursday, September 23, 2004 with Chair William Gaines, Jr., CPA presiding. The roll was called with the following members present: William Gaines, Dean Graf, William Nuckolls, Jim Titus, Richard Zacharia, Doug Skiles, Michelle Thornburg, and Anne Fuhrman. 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. Dan Vodvarka, President, Nebraska Society of Certified Public Accountants (NSCPA), arrived at 9:15 a.m.
- B. **Approval of Meeting Agenda for September 23-24, 2004.** Moved by Nuckolls, seconded by Titus, to approve the agenda for the September 23-24, 2004 meeting. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #1 carried.
- C. **Approval of Minutes from July 27-28, 2004.** Moved by Zacharia, seconded by Titus, to approve the minutes. On a roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #2 carried.

2. Public Comment Period (15 minute period)

Gene Garrelts, Graeve Garrelts Denham Bruce, LLC appeared before the Board to present a formal petition for Title 288 Rule change relating to the names of public accounting firms licensed as allowed in Title 288, Chapter 4, Section 007.01. The two Rules that specifically address the names for public accounting firms are Title 288, Chapter 5, 007.03 and Chapter 11, 002 Form of Practice. The recommendation is to adopt the language in the Uniform Accountancy Act (UAA) Section 14 (i) 1 and 2.

3. Consent Agenda

- A. **Published Notice of Meeting.** Moved by Nuckolls, seconded by Graf, to approve the consent agenda. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #3 carried.
- B. **Approval of Disbursements.** Disbursements for July and August, 2004 were provided.
- C. **Review of Board Budget Status Report.** The Budget Status Report was provided.
- D. **Office Management Report.** The Office Management Report was provided.

4. Report of the Chair

- A. **Assistant Attorney General Lynn Melson.** Postponed until Ms. Melson's arrival.
- B. **2006 & 2007 Board Budget/Dan Sweetwood.** Agenda item moved to Executive Directors Report Item 16B.

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- C. Board Calendar.** Calendar was presented. The November Board meeting was moved to Tuesday, November 2, 2004, beginning at 2:00 p.m. and Wednesday, November 3, 2004, beginning at 8:30 a.m.
- D. Report on To Do List.** Chair Gaines noted that the Performance Card summary from the past five years was sent to Board members in August and complimented staff that the overall comments were much improved over the previous years.
- E. Other Misc. Items.** There were no miscellaneous items at this time.

CLOSED MEETING

Closed Meeting. Moved by Zacharia, seconded by Skiles, that the Board go into closed session at 9:40 a.m., for the purposes of personnel, litigation and enforcement. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #4 carried.

Return to Open Meeting. Moved by Zacharia, seconded by Thornburg, 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 recused himself. Motion #5 carried.

4. Report of the Chair

- A. Assistant Attorney General Lynn Melson.** Ms. Melson was present at 11:00 a.m. to review current litigation, attorney general opinions, and her role with the Board.

CLOSED MEETING

Closed Meeting. Moved by Skiles, seconded by Nuckolls, that the Board go into closed session at 11:15 a.m., for the purposes of litigation and enforcement. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #6 carried.

Return to Open Meeting. Moved by Thornburg, seconded by Titus, that the Board return to open session at 11:50 a.m. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #7 carried.

The Board recessed for lunch.

CLOSED MEETING

Closed Meeting. Moved by Titus, seconded by Fuhrman, that the Board go into closed session at 12:24 p.m., for the purposes of litigation, personnel, and enforcement. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf recused himself. Motion #8 carried.

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Return to Open Meeting. Moved by Titus, seconded by Thornburg, that the Board return to open session at 1:30 p.m. On roll call vote, Members Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Graf recused himself. Motion #9 carried.

7. Formal Hearing for Sheryl Brenn - 1:30 p.m.

Pursuant to the Board's Notice of Complaint and Formal Hearing, a hearing was held September 23, 2004 at 1:43 p.m. Attorney Robert Gruit represented the Board. The Respondent, Sheryl Brenn, represented herself. Board member Jim Titus was the Hearing Officer. Participating in the hearing were Board members, William Gaines, Dean Graf, Michelle Thornburg, William Nuckolls, Richard Zacharia, Jim Titus, Doug Skiles, and Anne Fuhrman. At the conclusion of the Hearing, the Board ordered Attorney Gruit to prepare recommended Findings of Fact and Conclusions of Law with Decision and Order. Following testimony and questions by the Board the hearing was closed at 2:47 p.m.

CLOSED MEETING

Closed Meeting. Moved by Skiles, seconded by Zacharia, that the Board go into closed session at 2:12 p.m., for the purposes of deliberation. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #10 carried.

Return to Open Meeting. Moved by Graf, seconded by Skiles, that the Board return to open session at 2:44 p.m. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #11 carried.

5. Report of the Enforcement Committee

Sheryl Brenn. Moved by Gaines, seconded by Graf, that in the case of State of Nebraska vs. Sheryl Brenn that the Findings of Fact (FOF) and Conclusions of Law (COL) as prepared by Board Attorney Gruit are hereby adopted and directed to be attached to the Decision and Order as a part thereof.

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 attached hereto. The Board further finds that the Respondent should 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 on the effective date of this Order until June 30, 2007, and shall pay a civil penalty of \$1,000.00 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.

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c. The Respondent shall timely respond to all inquiries from the Board or the Board's representatives and shall timely file all required documents with the Board.

d. The Respondent shall by December 1, 2004 file for reinstatement of her active permit to practice, or file for inactive status, or surrender her Nebraska Certificate.

Staff will determine the appropriateness of Continuing Professional Education submitted by Respondent. 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.

On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #12 carried.

8. Formal Hearing for Zwycart & Morgan, P.C. Firm Permit - 2:45 p.m.

Pursuant to the Board's Notice of Formal Hearing, a hearing was held September 23, 2004 at 2:57 p.m. Attorney Robert Gruit represented the Board. Attorney Robert Bartle for the Respondant Zwycart & Morgan, P.C., was connected via speaker phone. Board member Jim Titus was the Hearing Officer. Participating in the hearing were Board members, William Gaines, Dean Graf, Michelle Thornburg, William Nuckolls, Richard Zacharia, Jim Titus, Doug Skiles, and Anne Fuhrman. At the conclusion of the Hearing, the Board ordered Attorney Gruit to prepare recommended Findings of Fact and Conclusions of Law with Decision and Order. Following testimony and questions by the Board the hearing was closed at 3:34 p.m.

CLOSED MEETING

Closed Meeting. Moved by Nuckolls, seconded by Gaines, that the Board go into closed session at 3:15 p.m., for the purposes of deliberation. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #13 carried.

Return to Open Meeting. Moved by Skiles, seconded by Gaines, that the Board return to open session at 3:32 p.m. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #14 carried.

9. Report of Licensing Committee

Zwycart & Morgan, P.C. Firm Permit. Moved by Gaines, seconded by Zacharia, to overrule Mr. Bartle's motion to reconsider, and to accept the Findings of Fact (FOF), Conclusions of Law (COL) and Decision and Order as prepared by Board Attorney Gruit in the Zwycart & Morgan, P.C. Firm Permit case.

DECISION AND ORDER

The Nebraska State Board of Public Accountancy finds that a renewal of the firm permit for the firm Zwycart & Morgan, P.C. should not be permitted. The facts and the law as set forth in the above Findings of Fact and Conclusions of Law cause the Board to refuse to grant the

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application and to decline to issue the renewal of the firm permit pursuant to the request. The Motion to Reconsider made by respondent's attorney should be denied.

On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #15 carried

5. Report of Enforcement of Professional Conduct Committee

- A. Rodney Zwygart Appeal Update.** Executive Director Sweetwood updated the Board that the letter demanding Zwygart's certificate and permit had been sent. There was no reply within 15 days as requested. However, a faxed copy of the permit was received from Zwygart's attorney Robert Bartle, with the message that he would hold the permit until the appeal had been determined. Executive Director Sweetwood has continued to try to obtain the requested documents. He has set a meeting with the Madison County Attorney's office on October 6, 2004.
- B. Troshynski Appeal Update.** There was no update at this time.
- C. Open Case/LMCO Update.** Chair Gaines reviewed the open cases.
- D. Recommend Closure of Complaints.** Motion out of Committee to approve recommended closure of open complaint cases # 04-01, 04-02, 04-07, 04-16, 04-17, 04-19, 04-20. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #16 carried.
- E. Report on To Do List.** There was no report at this time.
- F. Other Miscellaneous Items.** Moved by Titus, seconded by Zacharia, to accept the amended Findings of Fact (FOF) and Conclusions of Law (COL) of the Hearing Officer Dennis Tegtmeier, and to consider at the November 2-3, 2004 Board meeting the proposed Decision and Order (D & O) as submitted by Board Attorney Gritmit in the Dana Weber case; to send the proposed D & O with a listing of the proposed assessed costs to Mr. Weber; and to set a further hearing for the November 2-3, 2004 Board meeting. On a roll call vote, Members Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Member Graf recused himself. Motion #17 carried.

6. Report of Continuing Professional Education Committee

- A. Report of the Committee.** Committee Chair Nuckolls presented the report. The Committee reviewed 302 courses. Of those, 273 courses were approved and 29 courses were denied since July 15, 2004. Paul Mueller will be sent a letter informing him that there was a discrepancy on his reporting form. The Committee assisted in answering a Focus Question regarding the adoption of UAA Rule 6-5(c): A non-licensee seeking renewal of a certificate in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a certificate in the state in which the licensee's principal office is located. The Committee approved additional Nebraska Society of Certified Public Accountants (NSCPA) courses for ethics hours.
- B. Ratification/Denial of Staff Program Qualification Evaluations.** Motion out of Committee to approve 273 courses submitted since July 15, 2004. On a roll call vote,

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Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #18 carried. Motion out of Committee to deny 29 courses submitted since July 15, 2004. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #19 carried.

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

D. Other Miscellaneous Items. Motion out of Committee to approve additional NSCPA course hours for ethics as presented by staff. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #20 carried.

9. Report of Licensing Committee

A. Ratification of initial permits to practice issued, certificates issued, firm permits.

Motion out of committee to approve the permits to practice, certificates, and firm permits issued on the August 30, 2004 report. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #21 carried. Moved by Titus, seconded by Fuhrman, to approve the permits to practice, certificates, and firm permits issued on the September 21, 2004 report. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #22 carried.

B. Reinstatements to Active Permit, Inactive Retired Affidavits, Surrendered

Certificates. Motion out of committee to approve all reinstatements to active permit except Marjorie Harberg, inactive retired affidavits, and surrendered certificates submitted to the Board since the July 27, 2004 Board meeting. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #23 carried.

C. Report of the Committee. Committee Chair Titus gave the report. The Committee received several letters requesting waiver of the Stipulation & Consent administrative fee for missed permit renewal deadlines. The Committee determined that a missed deadline is a missed deadline and the administrative fee is consistent with Board policy. Staff will conduct a Quick Poll of surrounding states for their missed deadline procedure. Duplicate permits will be issued for \$15. Staff will report failure to renew licensees to the IRS, AICPA, NSCPA, NASBA, and Accounting Boards of All States. A line will be added to the experience verification form alerting applicants that an additional fee may be required, since some boards are charging a fee even to other state boards. Sixteen licensees have not renewed their permit to practice. Of those, eight in Nebraska do not appear to be holding out as CPA's.

D. Report of To Do List. There was no report at this time.

E. Other Miscellaneous Items. The Committee reviewed the Attorney General's opinion on Deloitte Tax, LLP name request and business structure. Motion out of Committee to allow the name Deloitte Tax, LLP. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #24 carried. Staff was directed to inform Deloitte & Touche, LLP that while the name may be approved, the application for a firm permit for Deloitte & Touche USA, LLP has been denied, and that

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upon application for renewal, the firm permit of Deloitte & Touche, LLP will be reviewed for prohibited ownership by an entity.

10. Recess

Friday, September 24, 2004

11. General - 8:30 a.m.

- A. Call to Order and Roll Call.** The Nebraska Board of Public Accountancy (NBPA) was called to order at 8:43 a.m. on Friday, September 24, 2004 with Chair William Gaines, Jr., CPA presiding. The roll was called with the following members present: William Gaines, Dean Graf, William Nuckolls, Jim Titus, Richard Zacharia, Doug Skiles, Michelle Thornburg, and Anne Fuhrman. 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.

12. Public Comment Period (15 minute period)

There were no members of the public present.

13. Report of the Legislative Committee

- A. Report on Proposed Legislative Re-write Status.** Committee Chair Gaines is in the process of gathering research on a number of issues for the rewrite. He will provide a report at the November Board meeting.
- B. Report on To Do List.** There was no report on the TO DO list at this time.
- C. Other Miscellaneous Items.** There were no miscellaneous items at this time.

14. Report of Exam & Education Committee

- A. Report of the Committee.** Committee Chair Thornburg gave the report. The Education Advisory Committee (EAC) requested that the Executive Director meet with Bellevue University regarding the number of transfer credits accepted for the purpose of a degree. Following the meeting, Executive Director Sweetwood requested an answer in writing from Bellevue staff that has not been received at this time. Staff will follow up with Bellevue University regarding foreign transcript evaluation. Committee Chair Thornburg reported on the scoring error in the first window of the Computer Based Exam (CBT). No Nebraska candidates were effected. NASBA has put safeguards in place to prevent future scoring errors. The Board received \$345 in administrative fees from Certified Public Accountant Exam Services (CPAES) for the second testing window. Staff has received a copy of the survey used by CPAES to follow up with candidates regarding Prometric site procedures. CPAES proposes research on exam functionality and testing facilities among other areas. Request was made to use the National Candidate Database to a select random

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sample of candidates. The Board expressed concern about privacy issues and whether the applicant was notified on their application and approved the use of their information for research purposes. More information will be obtained at the NASBA Annual Meeting regarding this issue. One of the Focus questions discussed at the committee meeting dealt with a projected shortage of PhD's to teach accounting courses. This concern will be added to the EAC agenda.

- B. Report on To Do List.** There was no report on the To Do list at this time.
- C. Other Miscellaneous Items.** There were no miscellaneous items at this time.

15. Report of QEP Committee Chair

- A. Report of the Committee.** Committee Chair Graf gave the report. The Committee reviewed the required responses from firms that received a Type 3 or Type 4 rating. Staff will respond to those that require a response. The Committee reviewed and discussed the five most common problems on reports and these will be posted on the NBPA website and in the NSCPA newsletter. The Committee decided to continue using bound copies of reference materials for reviewers. The Committee reviewed and discussed the National Association of State Boards of Accountancy (NABSA) Public Company Accounting Oversight Board (PCAOB) contract including the Board receiving PCAOB non-public reports. Committee members have chosen to remain on the Committee for next year.
- B. Report on To Do List.** There was no report on the To Do list at his time.
- C. Other Miscellaneous Items.** There were no miscellaneous items at this time.

16. Report of Executive Director

- A. Computer System Proposal/Doug Skiles, CPA.** Member Skiles provided additional information at the request of the Board from the July meeting regarding the online licensing proposal with Nebraska Online (NOL). Rod Armstrong and Doug Gibbs were present to answer any other questions the Board may have had. Research and development of this project has been in progress for over a year. State government efficiency is a priority of the current administration, and NBPA is working to provide the best service for citizens and CPA's. This project is a start toward continual assessment, planning and implementation of information technology advancements. Moved by Skiles, seconded by Zacharia, to approve the contract proposal for online licensing and CPE reporting, including a new database, with NOL, utilizing the State Records Board information technology grant funds awarded in April 2003, subject to review and approval of the contract by Assistant Attorney General Lynn Melson. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #25 carried.

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- B. Budget.** Executive Director Sweetwood reported on the budget for 2006 and 2007 submitted to the Governor's office on September 15, 2004. Following review, it will go to the Legislature's fiscal office. The Budget had been sent to the Executive Committee for review prior to submission.
- C. Staffing & General Office Issues.** The Board received an engagement letter and request for payment of services from Gary Pavel in support of Quick Books. At this time the Board decided not to sign the engagement letter, however, staff was directed to pay the invoice.
- Resolution for Board Members William L. Gaines, Jr. and Michelle R. Thornburg.** Board members Gaines and Thornburg were recognized for their years of dedication to the Board by reading their respective Resolutions and entering one for each of them into the minutes. Moved by Titus, seconded by Zacharia, to enter the Resolution for Michelle R. Thornburg into the minutes. On a roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #26 carried. Moved by Thornburg, seconded by Nuckolls, to enter the Resolution for William L. Gaines Jr. into the minutes. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #27 carried.
- D. Report on To Do List.** There was no report on the To Do list at this time.

17. New Business

- A. National Association of State Boards of Accountancy (NASBA) Items:**
- 1.) **NASBA Annual Meeting.** The Board reviewed those attending in Chicago, October 17-20, 2004.
 - 2.) **Designation of one Board member for voting rights at NASBA.** Moved by Thornburg, seconded by Skiles, to approve Dean Graf as the NBPA voting delegate at the NASBA Annual meeting, October 17-20, 2004. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #28 carried
 - 3.) **UAA Rule Changes Letter.** The Board reviewed the letter.
- B. Other Miscellaneous Items: FYI articles.** The articles were noted. The Board discussed the proposed NASBA by-law changes to be voted on at the Annual Meeting.

18. Adjournment

Moved by Titus, seconded by Skiles, to adjourn the meeting at 1:06 p.m. on Friday, September 24, 2004. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #29 carried.

Respectfully submitted by,

Michelle Thornburg
Board Secretary