

**NEBRASKA BOARD OF PUBLIC ACCOUNTANCY**  
**140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska**

**Minutes**

November 5 - 6, 2003

**1. General**

- A. Call to Order and Roll Call.** The Board of Public Accountancy was called to order at 9:34 a.m. on Wednesday, November 5, 2003 with Chair William Gaines, CPA presiding. The roll was called with the following members present: William Gaines, Michelle Thornburg, Dean Graf, William Nuckolls, Richard Zacharia, Doug Skiles, and Anne Fuhrman. Member Titus was absent. Also present were Executive Director, Dan Sweetwood, and Office Staff Administrator, Jo Lowe. There were no visitors. The meeting was held at the Board Office at 140 N. 8<sup>th</sup> Street, Suite 290, Lincoln, Nebraska. Chair Gaines welcomed new Member Anne Fuhrman to the Board.
- B. Approval of Agenda.** Moved by Thornburg, seconded by Nuckolls, to approve the agenda for the November 5-6, 2003 meeting. On a roll call vote, Members Gaines, Thornburg, Graf, Nuckolls, Zacharia, and Skiles voted aye. Member Fuhrman abstained. Member Titus was absent. Motion #1 carried.
- C. Approval of minutes for the September 15-16, 2003 meeting.** Moved by Graf seconded by Skiles to approve the minutes as amended. On roll call vote Members Gaines, Thornburg, Graf, Nuckolls, Zacharia, and Skiles voted aye. Member Fuhrman abstained. Member Titus 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. Member Titus arrived at 9:42 a.m.

**3. Consent Agenda**

- A. Published Notice of Meeting.** Moved by Zacharia, seconded by Nuckolls, to approve the consent agenda items with the removal of October disbursements. The public meeting notice stated the meeting would begin at 8:30 a.m. Due to the attendance of Board members at the CPA Exam the meeting was delayed until 9:30 a.m. On roll call vote, all members present voted aye. Motion #3 carried.
- B. Approval of September Disbursements.** Questions were answered regarding the disbursements for September. The Board discussed proper completion and staff review of Board Member expense reimbursement forms.
- C. Review of Board Budget Status Report.** Dan has reviewed the budget with the state budget office, and the budget is within state appropriation at this time.
- D. Office Management Report.** The report was included for Board review.

**4. Report of The Chair**

- A. Recognition of Nina Kavich.** Chair Gaines read the recognition plaque and resolution for Nina Kavich, whose term on the Board recently ended. Moved by Graf, seconded by Thornburg, to approve the resolution and plaque. On a roll call vote all members present voted aye. Motion number #4 carried.

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- B. Board Shirts.** Ordering information for Board shirts was made available to new Board members. Cost of the shirts will be paid personally by Board members who placed an order.
- C. Approval for Executive Director to attend NASBA Executive Director's Conference.** Moved by Nuckolls, seconded by Zacharia, to approve Executive Director's travel to the NASBA Executive Director's conference in February 2004. On a roll call vote all members present voted aye. Motion number #5 carried.
- D. Executive Director's Expectations.** Deferred until Thursday.
- E. Reminder to Board members to review the minutes.** Chair Gaines asked that Board members respond to the staff after they have reviewed the meeting minutes. Committee Chairs were asked to carefully check their committee's section of the minutes.
- F. Report on To Do List.** Chair Gaines requested that staff keep a running list of Board meeting To Do's.
- G. Other Miscellaneous Items.** There were no other miscellaneous items.

**CLOSED MEETING**

**Closed Meeting.** Moved by Zacharia seconded by Graf, that the Board go into closed session at 10:13 a.m., for the purposes of litigation, personnel, and enforcement issues. On a roll call vote all members present voted aye. Motion number #6 carried.

**Return to Open Meeting.** Moved by Nuckolls, seconded by Zacharia, that the Board return to open session at 12:09 p.m. On a roll call vote all members present voted aye. Motion number #7 carried.

**7. Hearing for Rodney Zwygart**

At 1:30 p.m., the formal hearing for Rodney Zwygart began.

**CLOSED MEETING**

**Closed Meeting.** Moved by Zacharia seconded by Thornburg, that the Board go into closed session at 1:43 p.m., for the purpose of deliberation. Members Titus, Nuckolls, Zacharia, Thornburg, and Graf voted aye. Members Fuhrman and Skiles abstained. Member Gaines was recused. Motion number #8 carried.

**Return to Open Meeting.** Moved by Nuckolls, seconded by Zacharia, that the Board return to open session at 1:53 p.m. Members Titus, Nuckolls, Zacharia, Thornburg, and Graf voted aye. Members Fuhrman and Skiles abstained. Member Gaines was recused. Motion number #9 carried.

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**13. Report of the Enforcement Committee**

**A. Determination of Rodney Zwygart.** Moved by Graf, seconded by Thornburg, 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, are hereby adopted and directed to be attached to the decision as a part thereof, and the Board further finds that costs of the proceedings, attorneys fees and expenses for the hearing in this matter are in the amounts as set forth below, and that Respondent Zwygart's CPA certificate and permit to practice are hereby revoked, and 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>

2.) Deliver his certificate #01670 and permit to practice #10797 within ten days to the Nebraska Board of Public Accountancy office, 140 S. 8th St., #290, Lincoln NE.

Members Titus, Nuckolls, Zacharia, Thornburg, and Graf voted aye. Members Fuhrman and Skiles abstained. Member Gaines was recused. Motion #10 carried.

Mr. Zwygart's Counsel Mr. Robert Bartle informed the Board an appeal of the previous decision would immediately be filed with the Lancaster County District Court in accordance with the State Administrative Procedures Act. Mr. Bartle requested the Board to stay their decision concerning Mr. Zwygart until the appeal could be heard before the Lancaster County District Court.

**CLOSED MEETING**

**Closed Meeting.** Moved by Graf, seconded by Nuckolls, that the Board go into closed session at 2:18 p.m., for the purpose of enforcement issues. Members Titus, Nuckolls, Zacharia, Thornburg, and Graf voted aye. Members Fuhrman and Skiles abstained. Member Gaines was recused. Motion number #11 carried.

**Return to Open Meeting.** Moved by Graf, seconded by Zacharia, that the Board return to open session at 2:28 p.m. Members Titus, Nuckolls, Zacharia, Thornburg, and Graf voted aye. Members Fuhrman and Skiles abstained. Member Gaines was recused. Motion number #12 carried.

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**13. Report of the Enforcement Committee**

**A. Determination of Rodney Zwygart.** Moved by Thornburg, seconded by Graf, to deny the respondent's request for a stay. Members Titus, Nuckolls, Zacharia, Thornburg, and Graf voted aye. Members Fuhrman and Skiles abstained. Member Gaines was recused. Motion #13 carried.

**5. Report of the QEP Committee**

**A. Report of the Committee.** Committee Chair Graf reported on the status of the 2003 QEP Review. He requested that we ask for reviewers from the Nebraska Society of CPA's. Each committee member has committed to getting three reviewers for next year.

**1.) Policy on Type 4 Reports:**

- a.) A Type 4 report two consecutive years will require an additional 8 hours of CPE that pertains to the area of deficiency by the individual in charge of the engagement within the firm during the current reporting period.
- b.) A Type 4 report three consecutive years will require an additional 8 hours of CPE that pertains to the area of deficiency by the individual in charge of the engagement within the firm during the current reporting period, and a pre-issuance review.
- c.) A Type 4 report after three consecutive years will require the firm to appear before the Board for a "show cause hearing."

Motion out of committee to approve the Type 4 Policy. On a roll call vote all members present voted aye. Motion #14 carried.

**2.) Criteria for Granting Exemptions.** Currently, an exemption may be granted based on an unqualified opinion report at the discretion of the QEP Committee Chair. Motion out of committee to approve the exemption based on the unqualified opinion report only without regard to the letter of comments. Members Skiles, Zacharia, and Fuhrman voted aye. Members Nuckolls, Thornburg, Titus, Gaines, and Graf voted nay. Motion #15 failed.

**3.) Approval of 2003 QEP Rating.** Motion out of committee to approve the 2003 QEP Rating forwarded by the committee and that the appropriate letters be sent to all practicing units. On a roll call vote all members present voted aye. Motion #16 carried.

**B. Report on the To Do list.** Add to the Committee agenda the discussion and publication of the five major problems with the 2003 QEP reports to practicing units.

**C. Other Miscellaneous Items.** There were no other miscellaneous items.

**6. Report of the Licensing Committee**

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

Committee Chair Titus presented the committee report. Motion out of Committee to ratify all certificates issued by exam. On a roll call vote, all members present voted aye. Motion #17 carried.

Motion out of Committee to ratify all initial permits to practice issued and reciprocal certificates. On a roll call vote, all members present voted aye. Motion # 18 carried. Motion out of Committee to ratify all firm permits issued. On a roll call vote, all members present voted aye. Motion #19 carried.

**B. Request to Return certificates to Good Standing.**

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Returned to committee to determine the process for returning certificates to good standing. Staff was directed to send a letter to inform them of the status of this issue and to request additional information.

**C. CPA Active Non Renewals and CPE Deficiencies.**

- 1.) The Board reviewed the proposed letters and process for permit holders with CPE deficiencies. Moved by Titus, seconded by Nuckolls, to send letters to CPE deficient permit holders that as of July 1st their permit was not renewed, and that staff will track the 3-year revocation rule on certificates and report to the Board for review. Members Skiles, Zacharia, Fuhrman, Nuckolls, Thornburg, Gaines, and Graf voted aye. Member Titus voted nay. Motion #20 carried.
- 2.) The Board reviewed the proposed letters and process for non-renewal of Active permit holders. Motion out of committee to approve proposed action. On a roll call vote, all members present voted aye. Motion #21 carried.
- 3.) Active to Inactive Status. The previously approved Board process was discussed regarding an active permit holder who requests to go inactive after the July 1st renewal deadline, they may sign a Stipulation and Consent Order for \$250 and complete the Inactive registration including the fee.

**D. Letter of Registration for Inactive Permit holders.** The Board agreed with the Licensing Committee's proposed sample letter with corrections to be used as an "inactive registration."

**E. Firm Name Approval.** Moved by Titus, seconded by Zacharia, to approve the use of initials in a firm name as requested. Members Skiles, Zacharia, Fuhrman, Nuckolls, Thornburg, Titus, and Graf voted aye. Member Gaines voted nay. Motion #22 carried.

**F. Workspace Advertising.** A firm requested Board review of their proposed workspace advertisement. Moved by Titus, seconded by Skiles, that staff respond in a letter that the firm may not use the advertisement of a workspace as presented. Members Skiles, Zacharia, Fuhrman, Nuckolls, Thornburg, Titus, and Gaines voted aye. Member Graf abstained. Motion #23 carried.

**G. CPA Certificate/Permit Document.** Board members tabled the item until the January meeting after returning the document to the Committee for additional discussion.

**H. Suggested Changes to Application Forms.**

- 1.) Sole Practitioner Application: It was decided that the Board will set fees at the January 2004 meeting and will address the issue at that time.
- 2.) Foreign Firm Application Question #7. Motion out of committee to approve the recommended change in question #7 to read, "Do your governing documents and organizational contracts conform to the Nebraska Professional Corporations Act 21-2216 and the Nebraska Public Accountancy Act Title 288 - Rules and Regulations?" and to add "Date qualified to do business in the State of Nebraska" replacing question #8 Incorporation Date. On a roll call vote, all members present voted aye. Motion #24 carried.
- 3.) Reciprocal Certificate Application. Suggestion was made to add "(i.e., performing services for a client in Nebraska)" following "regularly employed" in the residency requirements. This item returned to the Licensing Committee and staff for review, to gather information from other states, and to add the proposed changes to the January Board agenda.

**I. Report on To Do list.** The Committee's To Do list is on-going with issues posed to Committee Members on a regular basis. The minutes of the committee meeting were included in the list.

**J. Other Miscellaneous Items.**

- 1.) Refund issue returned to committee for recommended action.

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- 2.) Use of "consulting" in firm name reflects specialization, and therefore is not permissible.
- 3.) NASBA Licensing database. Members Thornburg and Graf reported to the Board on the new licensing database being developed by NASBA. Also, the Board decided to obtain information from NASBA on outsourcing the licensing function.
- 4.) Use of "temporary" permit. The Board asked the Licensing Committee to develop recommendations regarding definitions for "temporary" and "notification" including the length of time for one engagement permit in Nebraska. See Statute 1-163.

**13. Report of the Enforcement Committee**

**A. Determination of Rodney Zwygart.** Moved by Titus, seconded by Zacharia, to approve the form of the Decision and Order. Members Titus, Nuckolls, Zacharia, Thornburg, and Graf voted aye. Members Fuhrman and Skiles abstained. Member Gaines was recused. Motion #25 carried.

**Recess**

The Board recessed at 5:35 p.m. on November 5, 2003.

**November 6, 2003**

**9. Formal Hearing - CPE Rules Changes to Title 288: Chapter 8 - Continuing Professional Education.**

**8:30 a.m.**

The Board conducted a formal public hearing on CPE Rule changes to Title 288: Chapter 8 - Continuing Professional Education. Dan Vodvarka, President of Nebraska Society of CPA's, testified in favor of the proposed Rule changes on behalf of the Nebraska Society of CPA's Board. Email comments were presented for the record.

**10. General**

**A. Call to Order and Roll Call.** The Board of Public Accountancy was called to order at 9:34 a.m. on Thursday, November 6, 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, Doug Skiles, Richard Zacharia, and Anne Fuhrman. Also present were Executive Director Dan Sweetwood, Office Staff Jo Lowe and Kelly Ebert.

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

**11. Public Comment Period**

There were no members of the public present.

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**13. Report of the Enforcement Committee**

- A. Determination on Rodney Zwygart.** See Motions #10, #13, and #25.
- B. John Troshynski Appeal.** No further information from the previous Board meeting. The case is awaiting a ruling from the District Court.
- C. Open Case Update.** Committee Chair Gaines reviewed the Enforcement summary. He noted that all of the 19 remaining cases are being worked on by staff or are under Litigation Monitoring Consent Orders with the Board.
- D. Kenneth J. Reese: Consent Order, Revocation of Certificate/permit, Close complaint.** Motion out of Committee to close complaint #001004 and #001006 upon acceptance of Mr. Reese's certificate #1708, active permit to practice #7926 and firm permit by voluntary surrender. Certificate and Permits are hereby revoked and the Stipulation and Consent Order is approved. On a roll call vote, all members present voted aye. Motion #26 carried.
- E. Recommend Closure of Complaints.** Motion out of Committee to close complaint #0102019 and to notify complainant and CPA of findings. On a roll call vote, all members present voted aye. Motion #27 carried.
- F. Report on To Do list.** Staff is working to resolve open complaints.
- G. Other Miscellaneous items.** There were no miscellaneous items.

**12. Report of the Continuing Professional Education Committee (CPE)**

- A. Report of the Committee.** Committee Chair Nuckolls presented the report.
  - 1.) Approval of accepted CPE courses. Motion out of committee to ratify CPE Course Evaluations completed by staff since the previous Board meeting. On a roll call vote, all members present voted aye. Motion #28 carried.
  - 2.) Website Searchable CPE Database Removal. There has been some confusion about courses on the searchable CPE database on the NBPA website, as well as, the difficulty of keeping it current. Motion out of committee to recommend that the searchable database be removed from the NBPA website. Members Zacharia, Fuhrman, Nuckolls, Thornburg, Titus, Graf, and Gaines voted aye. Member Skiles voted nay. Motion #29 carried.
- B. Update on review of CPE Rules and Guidelines.**
  - 1.) Approval of CPE Guidelines. Motion out of committee to approve the revised CPE Guidelines as corrected. On a roll call vote, all members present voted aye. Motion #30 carried.
  - 2.) Approval of CPE Rules Changes to Title 288: Chapter 8 - Continuing Professional Education. Motion out of committee for the Executive Director to forward and file the proposed CPE Rules with the Attorney General's office and the Governor's Policy Research office. On a roll call vote, all members present voted aye. Motion #31 carried.
- C. Ratification of Approved CPE Course Evaluations.** See item A-1.
- D. Report on To Do list.** There was no additional report.
- E. Other Miscellaneous Items.** The Board requested that staff get more information for the next Board meeting on the NASBA letter requesting consistency in CPE reporting for the purpose of

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a non residency agreement. Staff will also gather information on statutory authority and research regarding the fee for program sponsor reviews.

**14. Report of the Education and Exam Committee**

**A. Report of the Committee.** Committee Chair Thornburg presented the committee report.

1.) Exam Proctor Resolution. Thornburg reported that the last paper and pencil exam was taking place November 5-6. She requested a Board Resolution thanking all of the proctors who have faithfully monitored the exam, and that the resolution be sent with a photo of the group to the Nebraska Society of CPA's to be printed in their newsletter. Moved by Zacharia, seconded by Titus, that the Board recognize the Exam Proctors. On a roll call vote, all members present voted aye. Motion #32 carried.

2.) EAC. Thornburg reported that the Education Advisory Committee (EAC), made up of representatives from post secondary institutions, which advises the Board on educational issues, will have the annual meeting via conference call sometime between Thanksgiving and fall semester finals. She presented the proposed slate of members and the meeting agenda. Motion out of Committee to accept the slate as presented. Members Skiles, Zacharia, Fuhrman, Nuckolls, Thornburg, Titus, and Gaines voted aye. Member Graf voted nay. Motion #33 carried.

**B. Summary of Exam Application Issues.** A report of the issues for November 2003 exam candidates was discussed.

**C. 150 Hour Requirement Flowchart/Candidate Problems.** Committee Chair Thornburg created a flow chart explaining the process for the 150 Hour Requirements and exemptions. A review of the candidates identified by CPAES as having 150 hour discrepancies was presented to the Board. In the future, successful exam candidate's education will be reviewed using this report. All past candidates who have received certificates met the requirements or exemptions.

**D. Shane Melrose Letter to the Board.** A letter of response will be prepared and sent to Mr. Melrose.

**E. CPAES.**

1.) Staffing update. Bridget Candler has left CPAES. Laura Grube has been temporarily assigned to work with Nebraska applicants.

2.) Fox Pro Database changes. Committee Chair Thornburg and staff will continue to explore options and requirements for the Board concerning the National Candidate Database.

**F. Computerized Based Testing (CBT) Update.**

1.) **Proposed Rule changes for CBT.** Committee Chair Thornburg presented the proposed CBT Rule changes. Moved by Thornburg, seconded by Graf, to approve the CBT changes to Chapter's 6 & 9 of the Rules, subject to minor modifications to allow the public hearing at the January 7-8, 2004 Board Meeting. On a roll call vote, all members present voted aye. Motion #34 carried.

2.) **Questions and Answers Regarding CBT CPA Examination.** The Committee will have a recommended fee structure at the January meeting.

3.) **State Board Legislative Analysis.** A spreadsheet comparing all of the States legislation was presented to Board members.

4.) **Article: An Insider's View of the New, CBT CPA Exam.** The article was presented for the Board's information.

**G. Report on To Do List.** There were no additional items reported.

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**H. Other Misc. Items.** There were no additional items reported.

**15. Report of the Legislative Committee**

- A. Proposed Legislative Re-write Status.** Chair Gaines presented the committee report. Discussion notes from the October 10th meeting of the NBPA and Nebraska Society of CPA's Board Chairs and Executive Directors indicated that both entities agreed that there would be no legislation on the re-write in the 2004 Legislature.
- B. Status of Lobbyist.** Executive Director Sweetwood was directed to call the lobbyist Paul O'Hara to discuss termination of the contract due to expire in April 2004.
- 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.

**16. Executive Directors' Report**

- A. Computer System Issues.** The Executive Director reported staff has met with the Department of Administrative Services/Purchasing to ask them to assist in the development of a Request for Proposal (RFP) for consulting services on the Board's Technology Plan. Board Member Skiles has agreed to assist staff in the review and development of the Technology Plan.
- B. NBPA Intern Program.** The Executive Director recommended an intern program be developed and initiated with the University of Nebraska-Lincoln accounting department. Administrator Jo Lowe has met with and interviewed potential applicants. She reported staff is prepared to hire the intern and commence the program. The Board agreed to the program but cautioned this program would not meet the internship requirement under the 150 hour rule to sit for the CPA exam.
- C. Report on Open Meeting Seminar.** Executive Director reported he was disappointed in the seminar and requested a refund.
- D. Internal Controls Procedure.** Staff has reviewed the internal controls recommended by the State Auditor's office.
- E. Report on Web Site Review.** Staff reviewed the web page printouts. Changes will be made as soon as possible.
- F. Staffing & General Office Issues.** Staff continues to learn and is working in a team environment..
- G. Newsletter.** Articles are being collected for the newsletter.
- H. Annual Register 2003.** The 2003 Annual Register is scheduled to be mailed in December.
- I. Report on To Do List.** The TO DO list was attached.
- J. Board Calendar.** A Board calendar was included and corrections/additions requested.

**17. New Business**

- A. National Association of State Boards of Accountancy (NASBA) Items**

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- 1.) Report on NASBA Annual Meeting. Members Thornburg and Graf reported that Sarbanes-Oxley and CBT were the major topics at the Annual Meeting. They learned and shared much with other State Boards. They updated the Board on major topics and issues.
- 2.) a.) NASBA Discussion Memorandum: Answering the SOX Challenge was provided for the Board's information.  
b.) An Overview of State Issues Related to the Sarbanes-Oxley Act: A Reasoned Approach to Reform was provided for the Board's information.

**B. Other Miscellaneous Items.**

Executive Committee Items:

- 1.) Executive Directors Expectations. The Board wants to make sure that the ED can be successful. The Executive Committee will be preparing a list of expectations to be discussed with the Executive Director.
- 2.) Enforcement and Legislative Committees are being chaired by a Member who will be off the Board in 10 months.
- 3.) Documentation of all NBPA processes needs to continue.
- 4.) Law/Rule rewrite will be on the agenda.
- 5.) Board members need a plan for leadership succession.
- 6.) Expense reports will be added to the Board packets and staff will review for compliance with state laws.

**18. Adjournment**

Moved by Zacharia, seconded by Titus, that the Board adjourn at 5:12 p.m. on Thursday, November 6, 2003. On a roll call vote, all members present voted aye. Motion #35 carried.

Respectfully submitted by,

Michelle Thornburg  
Board Secretary