

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

Minutes

November 2-3, 2004

DRAFT The minutes are not final until approved at the January 5-6, 2005 Board meeting.

Tuesday, November 2, 2004

1. General

- A. Call to Order and Roll Call.** The Nebraska Board of Public Accountancy (NBPA) was called to order at 2:05 p.m. on Tuesday, November 2, 2004 with Chair Dean Graf, CPA presiding. The roll was called with the following members present: Dean Graf, William Gaines, 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.
- B. Approval of Meeting Agenda for November 2-3, 2004.** Moved by Zacharia, seconded by Titus, to approve the agenda for the November 2-3, 2004 meeting. On a roll call vote, Members Graf, Fuhrman, Gaines, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #1 carried.
- C. Approval of Minutes from September 23-24, 2004.** Moved by Nuckolls, seconded by Zacharia, to approve the minutes with the recommended changes. On a roll call vote, Members Graf, Fuhrman, Gaines, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #2 carried.

2. Public Comment Period (15 minute period)

No members of the public were present.

3. Consent Agenda

- A. Published Notice of Meeting.** Moved by Gaines, seconded by Thornburg, to approve the consent agenda, with the exception of the disbursements. On a roll call vote, Members Graf, Fuhrman, Gaines, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #3 carried.
- B. Approval of Disbursements.** Disbursements for September, 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. Formal Hearing for Dana Weber - 2:30 p.m.

Pursuant to the Board's Notice of Complaint and Formal Hearing, a hearing was held November 2, 2004 at 2:35 p.m. Attorney Andy Smith representing Board Attorney Robert Gruit appeared for the Board. The Respondent, Dana Weber was not present nor was he represented by counsel. Board member Jim Titus 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. Member Dean Graf recused himself. Following testimony and questions by the Board the hearing was closed at 2:50 p.m.

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Moved by Zacharia, seconded by Skiles, that in the case of State of Nebraska vs. Dana Weber, that the Board adopt the Findings of Fact (FOF) and Conclusions of Law (COL) as prepared by Hearing Officer Attorney Dennis Tegtmeier, amended to include the fees and costs; to adopt the proposed Decision and Order, to include the fees and costs, prepared by Board Attorney Gritmit; and that the Findings of Fact (FOF) and Conclusions of Law (COL) are directed to be attached to the Decision and Order as a part thereof.

DECISION AND ORDER

The Board of Public Accountancy met on September 23, 2004 and having considered the evidence adduced at the hearing held on July 27, 2004, the Hearing Officer's Findings of Facts, Conclusions of Law and Recommendation (as amended to reflect the fact that Dean Graf was absent and with the exception of any finding based upon Title 288, Chapter 5-004.05 with respect to which the Board makes no finding and does not utilize as the basis for this Decision and Order), and having been fully advised in the matter, finds that the Board should adopt and incorporate by reference in this Decision and Order the Hearing Officer's Findings of Fact, Conclusions of Law (as amended), except for any additional findings of fact and conclusions of law as set forth herein.

On the 2nd day of November, 2004, a formal hearing was held on the matter of assessment of fees, expenses, and costs against respondent. Board member Jim R. Titus acted as the Hearing Officer for the hearing held on November 2, 2004.

With respect to the November 2, 2004 hearing, the Board makes the following additional findings of fact and conclusions of law. The Board finds that it has the authority, pursuant to NEB. REV. STAT. § 1-148(8) to assess attorney's fees and other expenses of the hearing, including attorney's fees and expenses, court reporter fees, and Hearing Officer fees and expenses. The Board further finds that the fees and expenses of Baylor, Evnen, Curtiss, Gritmit & Witt, LLP, and the fees and expenses of the Hearing Officer, and the court reporter fees as contained in Exhibits 11, 12 and 13 are fair and reasonable and were necessary for the prosecution of this matter. Therefore, the following attorney's fees and other expenses:

Fee of Court Reporter for Hearing and Transcript	\$1,053.50
Fee of Hearing Officer	\$7,700.00
Fees and expenses of Baylor, Evnen, Curtiss, Gritmit & Witt, LLP	<u>\$ 1,849.99</u>
TOTAL:	<u>\$10,603.49</u>

are assessed to Weber and should be paid by Weber.

All members participating in this decision and voting in favor of this Decision and Order are: William L. Gaines, Jr., Michelle R. Thornburg, William C. Nuckolls, Richard Zacharia, Jim Titus, Doug Skiles, and Anne K. Fuhrman. Dean Graf was absent at the hearing on July 27, 2004 and abstained from any participation in this Decision and Order.

WHEREFORE, the Board of Public Accountancy, State of Nebraska, finds, and orders:

1. At all times relevant, the Board of Public Accountancy had jurisdiction over the subject matter and the persons involved in this proceeding.

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2. The Hearing Officer's Findings of Fact and Conclusions of Law (as amended) and the additional Findings of Fact and Conclusions of Law set forth above are hereby adopted in all respects, and are hereby made a part of this Decision and Order by reference, to the same extent and like effect as though such Findings of Fact and Conclusions of Law (as amended), were fully set forth verbatim in this Order.

3. RE HILL PUBLIC SCHOOL COMPLAINT: The evidence does not show that the Respondent violated the Board's Rules and Regulations as alleged in the Complaint to the extent that any disciplinary action shall be taken. Therefore, the portion of the Board's Complaint with respect to Hill Public School, Morrill County School District No. 44 against the Respondent is hereby dismissed.

4. RE JERRY GORR COMPLAINT:

a. The evidence shows that the Respondent violated § 1-137(2) and § 1-137(4) of the State of Nebraska Public Accountancy Act by conduct which includes failing to timely prepare certain corporate and individual tax returns for Gorr for the years of 1997 to 2002 and by telling Gorr as concerns his returns that had not been timely prepared, that everything was "all right" and that he had filed an extension and there was "nothing to worry" about (T167:19-168:11).

b. The evidence further shows that the Respondent, by failing to timely prepare certain corporate and individual tax returns for Gorr for the years of 1997 to 2002 and by telling Gorr as concerns his returns that had not been timely prepared, that everything was all right and that he had filed an extension and there was nothing to worry about, violated the following rules of professional conduct adopted and promulgated by the Board under the authority by the Act:

Integrity and Objectivity. A licensee shall not in the performance of professional services knowingly misrepresent facts, nor subordinate his judgment to others.

Title 288, Chapter 5-003.

Acts discreditable. A licensee shall not commit an act that reflects adversely on his fitness to engage in the practice of public accountancy.

Title 288, Chapter 5-007.01.

c. The conduct of Respondent in not timely responding to the Board's Complaint is contrary to the Board rules and regulations with respect to responses to the Board (Title 288, Chapter 5-007.05).

d. The Respondent misrepresented the truth in this proceeding, as shown by his testimony and by his written response to the Complaint, in reporting, "To my knowledge and understanding, all income tax returns for periods up to December 1, 1999, were properly prepared and filed." (Exhibit 5)

e. The Respondent's violation of each of the above-mentioned statutes, rules and regulations of the Board is a separate violation and constitutes a separate and additional basis for discipline.

5. It is the decision and order of the Board that the following disciplinary action with respect to the Gorr Complaint should be hereby taken and ordered against the Respondent:

a. The Respondent is hereby reprimanded and 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 Respondent shall also pay within 30 days of the effective date of this Order the sum of \$10,603.49 to the Board as reimbursement

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for attorney fees, investigation fees, hearing costs and other expenses. Such sum consists of the following expenses that have now been submitted to the Board:

1.	Attorney's Fees:	\$ 1,849.99
2.	Hearing Officer Fees:	\$ 7,700.00
3.	Court Reporter Fees:	\$ 1,053.50
	TOTAL:	<u>\$10,603.49</u>

The terms and conditions of probation shall be as follows:

- a. The Respondent shall be placed on probation commencing the effective date of this Order through June 30, 2006.
- b. The Respondent shall comply in all respects with all provisions of the Nebraska accountancy laws and all rules and regulations of the Board.
- c. The Respondent shall timely respond to all inquiries from the Board or the Board's representatives and shall timely file all requested documents with the Board.
- d. The Respondent shall timely pay the Board the reimbursement as ordered above.
- e. The Respondent may retain his permit to practice as long as he remains in compliance with the terms and conditions of this probation and the Nebraska Accountancy laws and rules and regulations of this Board. In the event Respondent violates the terms and conditions of the probation, the Board shall be entitled to pursue such other remedies as Nebraska law and the Board's rules and regulations allow. The Board shall have the right in such event to take such further action against Respondent as the Board in its discretion deems appropriate.

On a roll call vote, William Gaines, Michelle Thornburg, William Nuckolls, Richard Zacharia, Jim Titus, Doug Skiles, and Anne Fuhrman voted aye. Member Dean Graf was recused. Motion #4 carried.

5. Report of the Chair

- A. Report of the Chair.** Chair Dean Graf and Executive Director Dan Sweetwood (ED) reported on the NASBA Annual Meeting. The Board reviewed and discussed the National Association of State Boards of Accountancy (NABSA) request that the Board sign a contract with the Public Company Accounting Oversight Board (PCAOB) which includes the Board receiving PCAOB non-public reports. The ED was directed to discuss the contract with the attorney general's office before the Board makes any further decisions on this matter.
- B. Board Calendar.** Due to a conflict the scheduled March Board meeting was changed to March 18, 2004.
- C. Report on To Do List.** There was no report at this time.
- D. Other Miscellaneous Items.** There were no miscellaneous items at this time.

CLOSED MEETING

Closed Meeting. Moved by Gaines, seconded by Zacharia, that the Board go into closed session at 3:50 p.m., for the purposes of enforcement, litigation and personnel. On roll call vote, Members

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Graf, Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #5 carried.

Return to Open Meeting. Moved by Zacharia, seconded by Titus, that the Board return to open session at 4:43 p.m. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #6 carried.

6. Report of Enforcement of Professional Conduct Committee

- A. Rodney Zwygart Appeal Update.** Executive Director Sweetwood updated the Board regarding his visit with Madison County Attorney Joseph Smith. Mr. Smith transmitted a letter concerning the front door signage of Mr. Zwygart's office containing the words "certified public accountant" to Mr. Zwygart and requested he comply with the Public Accountancy Act. It was later learned the words "certified public accountant" had been removed from the door as requested in Mr. Smith's letter. No further action will be taken at this time.
- B. Troshynski Appeal Update.** There was no update at this time.
- C. Open Case/LMCO Update.** Chair Graf reviewed the open cases. Motion out of the Enforcement Committee to recommend that complaint #0001-013 be forwarded to Board Attorney Mr. Robert Gritit upon the finding of probable cause in violation of Board Rules and Regulations under Chapter 5 004: Rules of Professional Conduct/ Competence and Technical Standards; and to direct Mr. Gritit to attempt to enter into a stipulation, agreed settlement, or consent order as indicated in Chapter 4 006.06 with the CPA involved in this matter. It is recommended that the CPA be placed on probation for a period of two years. On roll call vote, Members Graf, Gaines, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #7 carried.
- D. Recommend Closure of Complaints.** None at this time.
- E. Report on To Do List.** There was no report at this time.
- F. Other Miscellaneous Items.** There were no miscellaneous items at this time.

7. Report of Continuing Professional Education Committee

- A. Report of the Committee.** Committee Chair Nuckolls presented the report. The Committee reviewed 103 CPE courses. Of those, 102 courses were approved and 1 course was denied since October 22, 2004. Michael McNichols reinstatement was approved and referred to the Licensing Committee. The NSCPA ethics course offered on January 6, 2005 was approved for 2004 ethics hours, due to over-registration for a December course.
- B. Ratification/Denial of Staff Program Qualification Evaluations.** Motion out of Committee to approve 102 courses submitted since October 22, 2004. On a roll call vote, Members Graf, Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #8 carried. Motion out of Committee to deny 1 course submitted since October 22, 2004. On a roll call vote, Members Graf, Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #9 carried.
- C. Report on the To Do list.** There was no report at this time.
- D. Other Miscellaneous Items.** There were no miscellaneous items at this time.

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8. 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 October 8, 2004 report. On a roll call vote, Members Graf, Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #10 carried. Moved by Gaines, seconded by Zacharia, to approve the permits to practice, certificates, and firm permits issued since the October 8, 2004 report. On a roll call vote, Members Graf, Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #11 carried.
- B. Reinstatements to Active Permit, Inactive Retired Affidavits, Surrendered Certificates.** Motion out of committee to approve Michael McNichols reinstatement to active permit. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #12 carried.
- C. Report of the Committee.** Committee Chair Titus gave the report.
- 1.) Application for Deloitte Financial Advisory Services, LLP.** Staff indicated the Board had received a firm application from Deloitte Financial Advisory Services, LLP. Moved by Zacharia, seconded by Fuhrman, not to allow the Deloitte Financial Advisory Services, LLP firm application based on ownership structure that appears not to meet the requirements of the Public Accountancy Act and Title 288 Board Rules & Regulations. On a roll call vote, Members Graf, Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #13 carried.
 - 2.) Rule Change Petition.** The Committee reviewed the Rule change petition received from Gene Garrelts on behalf of the firm Graeve, Garrelts, Denham, & Bruce, LLC, to use the Uniform Accountancy Act (UAA) language regarding Board discretion in the use of a fictitious name in the name of a licensed CPA firm. The Board, at this time, is not prepared to allow any use of fictitious names as indicated in the UAA. Motion out of Committee to deny the Rule change petition as submitted, at this time. On a roll call vote, Members Graf, Gaines, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Member Thornburg voted nay. Motion #14 carried.
 - 3.) Revocation Process for Certificate Holders with No Registration for Three Years.** The Committee has asked the Executive Director to discuss with the attorney general's office, the law (PAA1-136 #3) regarding revocation of certificates after 3 years without registering with the Board.
 - 4.) Reciprocal and Peer Review Issues.** The Committee determined that the South Dakota request for substantial equivalency for reciprocal applicants would be referred to the Exam and Education Committee to make a recommendation to the Licensing Committee. The Board determined that peer reviews are the practice of public accountancy and may require licensing depending on the number of engagements. In most instances, peer review would be regulated under Public Accountancy Act 1-163 Temporary practice permitted.
- D. Report of To Do List.** There was no report at this time.
- E. Other Miscellaneous Items.** There were no miscellaneous items at this time.

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9. Recess

Wednesday, November 3, 2004

10. General - 8:30 a.m.

- A. Call to Order and Roll Call.** The Nebraska Board of Public Accountancy (NBPA) was called to order at 8:45 a.m. on Wednesday, November 3, 2004 with Chair Dean Graf, 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.

11. Public Comment Period (15 minute period)

Mr. Ken Brauer, Independent Accountants Association, was present regarding the potential re-write of the Public Accountancy Act.

12. Report of the Legislative Committee

- A. Report on Proposed Legislative Re-write Status.** Member Gaines reported that the re-write is on hold until more information can be gathered at the national level regarding UAA language. The Board held a discussion on how best to move forward on new legislation. It was agreed no proposed language would be submitted for the 2005 legislative session, but work would begin in 2005 on possible proposed language to be shared with the NSCPA for the 2006 legislative session.
- B. Report on To Do List.** There was no report at this time.
- C. Other Miscellaneous Items.** There were no miscellaneous items at this time.

13. Report of Exam & Education Committee

- A. Report of the Committee.** Committee Chair Skiles gave the report.
- 1.) Release of Candidate Names.** Motion out of Committee to not allow the release of candidate names as requested by NASBA to third party interests. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #15 carried.
 - 2.) Reciprocal Application.** The request from South Dakota Executive Director for substantial equivalency for reciprocal candidates has been tabled for further review.
 - 3.) AICPA Steering Committee.** A report from the AICPA Steering Committee on the status of the examination was provided. Issues relating the Computer Based Test (CBT) were discussed including national volume numbers of candidates taking the examination. At this point actual volume numbers are not meeting projections and a fee increase could be possible in the future. NASBA has requested Boards do everything possible to assist in encouraging candidates to take the examination. It

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- appears Nebraska numbers are in line with the past paper/pencil examinations. The issue will be discussed at the next Education Advisory Committee (EAC) Committee meeting. Executive Director Sweetwood also reported he has requested the Board intern to prepare a research report for the Board regarding discussions with fellow students and professors concerning the launch of the CBT.
- 4.) Exam Scores Ratification.** Committee Chair Skiles reported on the statistics and scoring anomaly in the second window of the CBT. He reported the committee conducted research into the anomaly with the assistance of CPAES and Board staff. At the conclusion of the inquiry, Chair Skiles indicated he was satisfied with the results of the inquiry and released the remaining scores for approval. The Board received \$420 in administrative fees from Certified Public Accountant Exam Services (CPAES) for the second testing window. Motion out of Committee to ratify the CPA Exam scores from the July to September 2004 CBT testing window. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #16 carried.
- 5.) Bellevue University Education Advisory Committee Membership Request.** The Board received a request from Bellevue University instructor Cynthia Nye to serve on the Education Advisory Committee (EAC). Motion out of Committee to approve Cindy Nye, Bellevue University, for membership on the EAC. On roll call vote, Members Gaines, Graf, Thornburg, Fuhrman, Nuckolls, Skiles, Titus, and Zacharia voted aye. Motion #17 carried.
- 6.) EAC Meeting Date. Staff will set up an EAC call for early December.**
- 7.) Institutions 150-Hour Rule Course Updates.** Updates from those institutions that had not responded in February were provided to the committee.
- B. Report on To Do List.** There was no report at this time.
- C. Other Miscellaneous Items.** There were no miscellaneous items at this time.

14. Report of QEP Committee Chair

- A. Report of the Committee.** Committee Chair Fuhrman gave the report. Moved by Titus, seconded by Gaines, to retain Michelle Thornburg on the QEP Committee. On a roll call vote, Members Gaines, Graf, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #18 carried.
- B. Report on To Do List.** There was no report at his time.
- C. Other Miscellaneous Items.** There were no miscellaneous items at this time.

15. Report of Executive Director

- A. Staffing & General Office Issues.**
- 1.) NOL Summary.** Executive Director Sweetwood (ED) reported on initial meetings with Nebraska Online (NOL) and that the proposed NOL contract had been shared with the attorney general's office. Future meetings are scheduled between NOL and Board staff on the development of the Board's database and online systems.
- 2.) CLEAR Conference.** The ED reported on the Regulatory Leadership Development Training Program he attended in Kansas City, Missouri. He reported a favorable

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impression of the CLEAR organization and recommended the Board continue its membership.

3.) NSCPA Annual Meeting Booth. Staff members Jo Lowe and Kelly Ebert reported on the booth they had set up at the NSCPA Annual Meeting. Early feedback appeared to reveal the booth was productive and should be set up at future NSCPA meetings.

4.) General Office Issues. Staff member Kelly Ebert gave an update on her work with Quick Books. Reports for 2004 can now be generated. The ED reported Quick Books would assist in the Board budget process.

B. Report on To Do List. There was no report at this time.

C. Other Miscellaneous Items. There were no additional miscellaneous items.

16. New Business

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

- 1.) NASBA Annual Meeting. See agenda item #5 Report of the Chair. The ED provided a summary of the Annual Meeting activity.
- 2.) NASBA Calendar of 2005 meetings. Board members were encouraged to attend NASBA meetings.

B. Other Miscellaneous Items: FYI articles. The articles were noted.

17. Adjournment

Moved by Zacharia, seconded by Nuckolls, to adjourn the meeting at 11:15 a.m. on Wednesday, November 3, 2004. On a roll call vote, Members Graf, Gaines, Fuhrman, Nuckolls, Skiles, Thornburg, Titus, and Zacharia voted aye. Motion #19 carried.

Respectfully submitted by,

William Nuckolls
Board Secretary