



DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY
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DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA BOARD OF ACCOUNTANCY

FINAL

MINUTES OF THE
FEBRUARY 19, 2009
BOARD MEETING

The Fairmont Hotel
 4500 MacArthur Blvd.
 Newport Beach, CA 92660
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Roll Call and Call to Order.

Board President Robert Petersen called the meeting to order at 9:40 a.m. on Thursday, February 19, 2009 at The Fairmont Hotel, and the meeting adjourned at 3:15 p.m.

Board Members

February 19, 2009

Robert Petersen, President	9:40 a.m. to 3:15 p.m.
Manuel Ramirez, Vice President	9:40 a.m. to 3:15 p.m.
Lorraine Hariton, Secretary-Treasurer	9:40 a.m. to 3:15 p.m.
Sally Anderson	9:40 a.m. to 3:15 p.m.
Rudy Bermúdez	9:40 a.m. to 3:15 p.m.
Michelle Brough	9:45 a.m. to 3:15 p.m.
Angela Chi	Absent
Donald Driftmier	9:40 a.m. to 3:15 p.m.
Herschel Elkins	9:40 a.m. to 3:15 p.m.
Louise Kirkbride	Absent
Leslie LaManna	9:40 a.m. to 3:15 p.m.
Marshal Oldman	9:40 a.m. to 3:15 p.m.
David Swartz	9:43 a.m. to 3:15 p.m.
Lenora Taylor	Absent
Stuart Waldman	Absent

Staff and Legal Counsel

Marisa Becerra-Garcia, Executive Analyst
 Patti Bowers, Executive Officer
 Gary Duke, Legal Counsel, Department of Consumer Affairs (DCA)

Dominic Franzella, Renewal Coordinator
Scott Harris, Deputy Attorney General, Department of Justice
Deanne Pearce, Acting Chief, Licensing Division
Dan Rich, Assistant Executive Officer
Matthew Stanley, Legislation/Regulation Analyst

Committee Chairs and Members

Harish Khanna, Chair, Administrative Committee (AC)

Other Participants

Jim Brackens, American Institute of Certified Public Accountants (AICPA)
Mike Duffey, Ernst & Young, LLP
Tracy Logan, Center for Public Interest Law (CPIL)
Linda McCrone, AICPA
Thomas Parry, California Society of Certified Public Accountants (CalCPA)
Richard Robinson, E&Y, DT, PWC, KPMG, GT
Gregory Santiago, Analyst, Department of Consumer Affairs (DCA)
Hal Schultz, CalCPA
Jeannie Tindel, CalCPA
David B. Tolkan, Society of California Accountants (SCA)

I. Report of the President.

There was no report on this agenda item.

II. Considerations Regarding Peer Review Legislation.

Mr. Stanley provided the Board with policy issues the Board may wish to consider, along with a time frame of the legislative process **(see Attachment 1)**. He reported that the March 2009 Board meeting represents the final opportunity the Board has to shape the peer review legislation prior to the first legislative hearing.

Mr. Bermúdez stated the importance of keeping to the timeline, and requested Board member commitment to testify before the Legislature. He further stated that amendments cannot be agreed to or stipulated solely by the Board President and that an emergency Board meeting would need to be scheduled to discuss any proposed amendments to the bill.

Mr. Stanley reported that Mr. Ross Warren, Chief Consultant of the Assembly Business and Professions (B&P) Committee, will write a bill analysis for the committee members, and this analysis is extremely important. He further stated that subsequent committees will use this first analysis as a guideline, and it tends to reflect the views of the chair of the committee and the committee consultant. Mr. Stanley stated that any amendments adopted by the Board on or before the March 2009 meeting

will be included in this bill analysis.

Ms. Bowers stated that Board staff will remain actively involved in providing assistance to the committee consultant in the process of writing the bill analysis.

Mr. Stanley indicated he anticipated that there will be a Peer Review Team, comprised of four Board members to be appointed by the Board President. Mr. Petersen stated that he envisioned two teams, each consisting of one licensee and at least one public member. Mr. Driftmier, Mr. Swartz, Ms. Hariton, Mr. Oldman and Mr. Elkins volunteered.

Mr. Stanley gave a brief time frame of when the teams will need to be available. He reported that the teams will need to spend the entire day before the hearing visiting with the B&P committee members. He further reported that only two team members are needed to testify before the Legislature. He also reported that two team members will be needed in May to testify before the Assembly Appropriations Committee. Mr. Stanley reported that four members are needed to meet with the Senate B&P Committee, two members are needed to testify before the committee, and two members will be needed to meet with the Governor's staff in December.

Mr. Bermúdez stated the importance of developing subject matter experts on this bill to build continuity and trust.

Mr. Stanley reported that Assembly Bill (AB) 138 is not the version that was given to the Legislative Counsel, and that the Legislative Counsel drafted it in a confusing manner (**see Attachment 2**). He further stated that the bill needs to be amended to read how the Board intended it to, and that staff was working with Mr. Warren to achieve this.

Mr. Stanley reported that it is possible to pass AB 138 with solely Democratic support; however, it would be extremely important to achieve Republican support as well to demonstrate bipartisan support to the Governor, and the strategic use of compromise is important in passing legislation.

III. Overview of Peer Review and Past Peer Review Policy Decisions.

Mr. Franzella provided an overview of peer review and past peer review policy decisions (**see Attachment 3**).

Mr. Franzella reiterated that the Board intended to stress the educational component of a mandatory peer review program, and that 42 other states have implemented a peer review program. Ms. Anderson stated that providing examples of the program a reviewer would use may prove especially helpful, and thought that labeling it as a "system review of audits" may prove misleading.

Mr. Swartz stated that it may prove beneficial to market the program as an enforcement tool, as well as an educational tool, and that both aspects should be included in the Board's presentation to the Legislature.

Ms. Hariton stated her concern that bringing focus to the Board's current issue of the Investigative Certified Public Accountant staffing problem may undermine peer review.

Mr. Ramirez agreed with Ms. Hariton, and suggested stressing peer review as an educational tool while allowing the Board flexibility to determine when to implement the enforcement component.

Ms. Brough stated that marketing peer review as an enforcement tool may incite those firms under review to become defensive and unwilling to participate. Mr. Elkins stated that the enforcement aspect of peer review should not be ignored.

Mr. Bermúdez reiterated that emergency Board meetings may need to be scheduled to discuss any proposed amendments, and requested legal counsel's guidance on establishing emergency Board meetings. Mr. Duke stated emergency Board meetings would be exempt from the 10-day public meeting notice requirement, but these meetings would still be open to the public.

Ms. Anderson inquired into whether the time frame for firms to submit fail peer review reports would be 30 or 45 days. Mr. Franzella stated his belief that a 45-day submission requirement would not be detrimental.

Mr. Brackens stated the submission requirements for peer review reports vary between states.

Ms. Anderson inquired into whether other states operate solely from licensing fees, or if they charge an additional fee for firms required to undergo a peer review. Mr. Franzella reported to his knowledge Washington is the only state that charged a fee, and that is for operation of a Quality Review Program. He further stated that he is unaware of any other states that charged beyond the AICPA program cost. Mr. Franzella stated that draft regulations for peer review will be presented to the Board at the March 2009 Board meeting.

Mr. Ramirez stated that Mr. Ed Howard, CPIL's Senior Counsel, commented to him that he felt the enforcement language in the bill was missing, and that CPIL would like the bill to be more of an enforcement vehicle.

IV. Update on Standards for Peer Review.

Mr. Stanley reported the standards are currently being drafted in regulation form by staff counsel, and this issue was tabled for discussion at the March 2009 Board meeting.

V. Proposed Legislative Intent Language Regarding Peer Review.

Mr. Stanley stated that the purpose of legislative intent language is to clarify and define the purpose of a bill with findings and declarations. He further stated this may be useful in getting ideas into the bill to clearly explain concepts. Mr. Stanley further relayed Mr. Howard's suggestion of including intent language to reduce the various misconceptions of peer review. He stated that he, along with Mr. Petersen and Ms. Bowers, met with Mr. Howard to address his concerns.

Board staff recommended that the Board adopt legislative intent language for inclusion into AB 138 **(see Attachment 4)**.

Mr. Stanley further stated that the enforcement aspect may be included in the legislative intent section, but that it may not be specific enough to satisfy any concerns.

Mr. Bermúdez stated that since the Board is promoting peer review as an educational tool, the intent language should promote continuing education rather than enforcement. Mr. Elkins stated his belief that the language should stay as it is.

It was moved by Mr. Ramirez, seconded by Mr. Elkins and carried by those present to adopt the legislative intent language for inclusion into AB 138. Mr. Bermúdez opposed.

VI. Discussion of Offsetting the Cost of Peer Review for Small Firms and Sole Proprietors.

Mr. Franzella provided three options for offsetting the cost of peer review for small firms and sole proprietors, which include reducing the continuing education requirement, reduction of the license renewal fee, and institution of a grant or scholarship program **(see Attachment 5)**.

Ms. McCrone stated that the California peer review program charges an annual administrative fee of \$150 for the first professional and \$50 for each additional professional, up to \$1,500. She further stated that there is an additional charge by the peer reviewer for conducting the peer review.

Mr. Tolkan stated that his own engagement review cost \$1,000, and that he believed most sole proprietor firms would encounter a \$1,000-\$1,500 cost to undergo a peer review. He further stated his belief that the rising cost of peer review may be attributed to the experience of the peer reviewer. Mr. Swartz stated that this amount would not necessarily present a hardship, and that the cost of undergoing peer review is a "cost of doing business".

Ms. LaManna suggested offering free continuing education via a webcast on what to expect and how to prepare for a peer review.

Mr. Bermúdez inquired into a possible budgeted amount to establish a scholarship program. Mr. Rich reported that a budget would depend upon a cap which would be set by the Board. He further reported that there are no firm numbers due to the unknown number of engagement reviews and individuals who would qualify for this scholarship program. Mr. Rich further reported the Board has limited resources, and it would cost approximately \$1.5 million to administer the program. Mr. Bermúdez stated that firm numbers are necessary to present before the Appropriations Committee, and not having firm numbers may ultimately kill the bill. He further stated his belief that a scholarship fund is unnecessary, but will fully support providing additional continuing education.

Mr. Oldman suggested establishing a Board-sponsored foundation, and request donations in a mailer to be sent along with annual notices. Mr. Duke stated that the Board may possibly become liable if a scholarship program is instituted. Mr. Driftmier stated his belief that a foundation is unnecessary.

It was moved by Ms. Hariton, seconded by Mr. Driftmier, and unanimously carried by those present not to establish a scholarship or grant program.

Mr. Petersen stated that the Board should be able to provide the number of practitioners who are currently subject to peer review to reference at any future meetings and/or hearings. Ms. Hariton stated that the average income of peer review participants should also be presented. Ms. Bowers stated that information is not collected from licensees, but that a voluntary survey may be constructed. Mr. Bermúdez stated that the Board should have some type of knowledge of what small practitioners are earning. Mr. Petersen stated his belief that conducting a survey would be too intrusive, and that the Board should instead research public information that is currently available.

Mr. Bermúdez proposed conducting presentations throughout the state and inviting practitioners to attend to offer additional education on peer review, and that the Board needed an official informative piece to communicate to its constituents. He further suggested advertising peer review in the Board's newsletter. Ms. LaManna reiterated her desire to offer continuing education via a webcast. Mr. Petersen suggested offering video presentations regarding the public's expectations of peer review.

VII. Discussion of Codifying Established Peer Review Enforcement Policy Decisions.

Mr. Franzella gave an overview of the memorandum provided for this agenda item (**see Attachment 6**). He reported that during a December meeting with Board staff and the Board President, Mr. Howard reiterated comments made at the November 2008 Board meeting that the proposed legislation lacked sufficient clarity related to the Board's peer review

enforcement policy and that the present legislation does not clearly define the time frames in which licensees must report substandard peer review reports to the Board. He further reported staff's belief that codifying elements related to the Administrative Committee and the Board's ability to impose additional remedial measures or discipline into the peer review legislation are unnecessary as they already exist in code. Mr. Elkins provided draft language to the Board regarding established peer review enforcement policy decisions **(see Attachment 7)**.

Mr. Harris stated that the issue is not the authority to act on discipline for gross negligence, but how to use the peer review report to find a licensee in violation of the Accountancy Act. He suggested including in subsection (e) of the proposed legislation that "... Nothing in this section shall prohibit the Board from initiating an investigation of a complaint and/or information received from a peer review report ...". He stated the addition of this language would extend authority to initiate enforcement action and may appease CPIL's concerns related to enforcement.

Mr. Ramirez suggested including some of Mr. Elkins' language, specifically the term "other remedial measures".

Mr. Bermúdez stated his belief that this amendment is unnecessary and premature. He stated the need to gauge the view of the committee members, as well as the opponents of this bill.

It was moved by Mr. Swartz, seconded by Mr. Bermúdez, and unanimously carried by those present to accept Mr. Harris' revisions as related to enforcement.

Board staff was directed to work with Mr. Harris on the language as it pertains to enforcement to be presented at the March 2009 Board meeting.

VIII. Consideration of Requiring Immediate Notification by Peer Reviewer to the Board Regarding Findings.

Mr. Franzella reported that Board staff, along with the Board President, conducted a series of meetings with various interested parties related to the peer review legislation. He reported that during a December 2008 meeting with Mr. Howard, it was suggested that the Board may wish to consider statutory or regulatory language that would require a peer reviewer to immediately report to the Board any matter which he/she determines, based on their initial review of either work papers or system documents, may cause or has caused significant consumer harm **(see Attachment 8)**. He further stated that Board staff did not have a recommendation, but that the purpose/scope of peer review, the adjudication process, and the levels of departure or identified matter should be considered by the Board.

Mr. Brackens stated he is unaware of any statute or regulations requiring a peer reviewer to notify the Board in the other 42 states with peer review programs. He further stated that a fail report would be issued if a firm opposed undergoing a peer review; however, those would not necessarily be reported to the Board.

Mr. Harris raised the issue that requiring a peer reviewer to immediately report to the Board any matter which he/she determines may cause potential harm may be detrimental, ultimately causing a loss of peer reviewers. He stated that it places liability upon the peer reviewer to use his/her subjective judgment of what may or may not be a cause for alarm, as well as possible discipline by the Board if the peer reviewer deems there is no cause for potential consumer harm.

Ms. Brough raised the point that the draft legislation lends some type of oversight of the peer review process.

Ms. LaManna inquired as to how the Board would know that firms underwent the peer review process, since it is a requirement for renewal. Mr. Brackens stated that AICPA would be implementing the Facilitated State Board Access Program this year, which will provide state boards the ability to access peer review information. He further stated that Louisiana is currently conducting a slight change in the submission requirement to allow those agencies administering the peer review process to automatically post peer review information without the firm's consent. He stated that AICPA will begin posting the information and will require the firm's consent to post the information in order to undergo the peer review process. Mr. Petersen inquired when this database will be available, and Mr. Brackens stated that it will be available by the time the Board implements the peer review process.

IX. Discussion of the Peer Reviewer Population.

Mr. Franzella reported that although measures have been employed by the AICPA in an attempt to mitigate the reduction in the peer reviewer population, it appears the reduction is an ongoing trend. He provided statistical information specific to the estimated number of California-licensed firms, as well as the number of firms that will be required to undergo peer review (**see Attachment 9**).

Board staff offered two options for Board consideration. One was to not incorporate language into the peer review legislation, but revisit the issue at such time the peer reviewer population reached a level where firms could not secure a peer review, and the second option was to develop statutory language to address the issue and contained two alternatives. Those alternatives would be developing statutory language authorizing the Board to offer extensions to a firm unable to secure the services of a peer reviewer, or developing statutory language authorizing the Board to temporarily suspend the peer review requirement should the number of peer reviewers reach a

level where firms are unable to secure peer reviews.

Mr. Brackens stated that there is currently more of an issue with the number of available reviews than the actual number of reviewers, and he did not foresee this to be a problem. The Board concurred.

Mr. Bermúdez stated the need to identify potential emergency meeting dates in April regarding amendments to the peer review legislation. Mr. Petersen stated emergency meetings may also be held via telephone conference calls, as long as each location is made available to the public. Ms. Bowers stated that Board staff will identify locations to hold emergency public meetings throughout California.

X. Update on Investigative Certified Public Accountant Series Salary Increase Legislation.

Mr. Stanley reported that staff have been unsuccessful in finding an author for this legislation, with the principle reason being that the bill would circumvent the collective bargaining process (**see Attachment 10**). He stated that staff was informed by the Legislative Counsel's Office that any changes to the unbacked bill staff currently have in hand would be considered "post-deadline" changes. He further stated the Legislative Counsel's Office will accept "post-deadline" changes; however, it cannot guarantee that the language will be ready before the February 27, 2009 deadline to introduce legislation. Board staff presented four options for Board consideration: 1) sponsoring a spot bill, 2) sponsoring a Legislative intent bill, 3) sponsoring a study bill, or 4) not sponsoring any legislation regarding this topic in 2009 and to await the results of the assessment of the Enforcement Program, which Board staff is currently in the process of contracting.

Ms. Anderson suggested reaching out to those audit partners recently laid off in an attempt to recruit and fill the Investigative Certified Public Accountant positions at the Board. Mr. Petersen agreed, and stated his opposition to a bill that would instruct the Department of Personnel Administration to solve this issue. He stated his inclination is to allow the bill to die.

Ms. Bowers stated that conducting a civil service examination for these positions is a lengthy process. She stated that it could take approximately six to nine months to offer the examination. She further stated that a consultant will be selected and contracted for early next week and the evaluation of the Enforcement Program should take approximately four to six months. She further stated that the consultant will give status reports at various Board meetings, and that it will be approximately eight to nine months before a final report is generated.

Mr. Petersen stated that it may prove beneficial for Board staff to request the examination from DCA.

Mr. Bermúdez stated his wish to proceed with option one because it would place pressure on both the DCA and the Governor, as well as provide leverage for the Board. He further stated that proceeding with option one would demonstrate that the Board is committed to providing consumer protection. Mr. Petersen stated proceeding with option one may be premature, and that the Board should await the results of the consultant's study.

It was moved by Mr. Oldman, seconded by Mr. Swartz, and carried by those present to proceed with option four as recommended by staff. Mr. Ramirez and Mr. Bermúdez were opposed.

XI. Adoption of Minutes.

A. Draft Board Minutes of the January 16, 2009 Board Meeting.

It was moved by Mr. Driftmier, seconded by Mr. Bermúdez, and carried by those present to approve the draft minutes of the January 16, 2009 Board meeting. Mr. Petersen abstained.

XII. Other Business.

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

1. Nomination for NASBA Vice Chair for 2009-2010.

It was moved by Mr. Bermúdez, seconded by Mr. Swartz, and carried by those present to adopt the nomination of Michael T. Daggett for the position of NASBA Vice Chair for 2009-2010 (see Attachment 11). Mr. Elkins abstained.

B. Board Member Comments.

Mr. Driftmier stated his appreciation for the work performed by Board members and staff.

Mr. Petersen stated that it would be premature to reappoint the Committee on Professional Conduct (CPC) without analyzing the use of committees. He stated that he will appoint members to the task force that was created at the January 2009 Board meeting to analyze the committees' structures, and that this task force should meet immediately before the March 2009 Board meeting. He then stated that he would not constitute reappointment of the CPC.

Mr. Bermúdez stated that it would be in the best interest of the Board to not appoint members to a task force analyzing committee structures and scope of activities. He further stated that it would be best to coordinate with a facilitator to assist the Board in working through the process of analyzing committee structures for discussion at the March 2009 Board meeting. Mr. Swartz stated his belief that the use of committees is beneficial, but may be improved upon.

Mr. Petersen stated he would appoint a task force to handle the sunset review process.

Mr. Petersen stated his belief that the use of committees has hindered the Board and inhibited discussion in the past. He stated the benefit of full Board participation, and would be happy to discuss the role of committees, as well as the role of Board members, at the March 2009 Board meeting.

Ms. Bowers stated the need to constitute a peer review team. Mr. Petersen appointed Mr. Swartz, Mr. Elkins and Mr. Oldman to this team, and Ms. Hariton volunteered to assist.

Ms. Bowers extended a hearty thank you to Mr. Stanley for his hard work.

C. Comments from CalCPA Representative.

No comments were received.

D. Comments from SCA Representative.

No comments were received.

E. Public Comments.

No comments were received.

F. Agenda Items for Future Board Meetings.

Mr. Ramirez requested that a discussion regarding strategic marketing and media communications be placed onto the agenda for the March 2009 Board meeting, and he would like to issue press releases following each Board meeting relaying the Board's activities focusing on consumer protection.

Mr. Bermúdez requested the Board contemplate and analyze each committee's structure and their roles, as well as the roles of the Executive Board (Board leadership), at the March 2009 Board meeting.

Adjournment.

Board President Petersen adjourned the meeting at 3:15 p.m. on Thursday, February 19, 2009.

Robert Petersen, President

Lorraine Hariton, Secretary-Treasurer

Marisa Becerra-Garcia, Executive Analyst, and Patti Bowers, Executive Officer, California Board of Accountancy, prepared the Board minutes. If you have any questions, please call (916) 561-1718.