**State of Tennessee**
**Department of Commerce and Insurance**
**Tennessee State Board of Accountancy**
**Davy Crockett Tower**
**500 James Robertson Parkway**
**Nashville, TN 37243**
**615-741-2550 or 888-453-6150**

# Board Minutes

***July 19, 2013***

The meeting of the Tennessee State Board of Accountancy convened in Davy Crockett Tower, Nashville, TN on Friday, July 19, 2013 at 8:33 am.

Board members present were: Trey Watkins, Chair; Casey Stuart, Vice-Chair; Bill Blaufuss (telephonic presence), Secretary; Vic Alexander; Troy Brewer; Jennifer Brundige; Stephen Eldridge; Henry Hoss; Gabe Roberts; and Don Royston.

Staff members present were: Mark Crocker, Executive Director; Don Mills, Investigator; Ray Butler, Investigator; Jesse Joseph, Litigation Counsel; Chris Whittaker, Board Counsel; Karen Condon, and Kristy Burton.

Also present were Wendy Garvin, TSCPA and Brad Floyd, TSCPA.

Mr. Watkins called the meeting to order and made the following announcements:

This meeting was properly noticed by placing information concerning the meeting on the Board's website on Monday, July 8, 2013.

The scheduled formal hearing was settled pending board approval to the agreed order.

Mr. Blaufuss and Mr. Stuart have been reappointed to the Board by the Governor. Mr. Blaufuss will serve a three-year term as one of the CPA representatives from Middle Tennessee. Mr. Stuart will serve as one of the CPA representatives of East Tennessee.

Mr. Watkins introduced Kristy Burton as the new Complaint Coordinator.

Mr. Hoss moved to adopt the Robert's Rules of Order. With Mr. Roberts seconding, the motion passed.

Board members were asked to review the minutes from the May 2013 meeting. Mr. Stuart moved to approve the minutes. With Mr. Eldridge seconding, the motion passed and the minutes were approved.

Mr. Crocker was called upon to present the Executive Director's Report. A copy of the report is included as Attachment A. Mr. Crocker stated that proposed changes to the UAA have been released by NASBA and the AICPA. The Exposure Draft contains revisions which are designed to incorporate a change in the definition of "Attest." Comments on are due by October 17, 2013.

Mr. Crocker stated he had talked with Paul Barger to set up a meeting with those who can make the State Specific Ethics two-hour webcast happen within the next few weeks, with an October launch date. The webcast will be free of charge. Promotion of the SSE course will be advertised on the TNSBA's website and when people call in requesting information about ethics courses.

Mr. Brad Floyd, TSCPA, then made a presentation in conjunction with David Morgan, CPA, on Financial Reporting Framework for SMEs.

Mr. Hoss moved to pass the resolution in support of TSCPA with Mr. Alexander seconding, the motion passed. The resolution was read into the minutes and adopted unanimously:

**Resolution**

The Tennessee State Board of Accountancy does hereby adopt the following resolution:

WHEREAS, the American Institute of Certified Public Accountants has issued the Financial Reporting Framework for Small and Medium-size Entities (FRF for SMEs) as Other Comprehensive Basis of Accounting (OCBOA) alternative for entities that do not require financial statements prepared using Generally Accepted Accounting Principles (GAAP); and

WHEREAS, the Tennessee State Board of Accountancy is authorized to regulate all attest services provided by certified public accountants in Tennessee as defined in the Tennessee Accountancy Law (TCA 62-1-101); and

NOW, THEREFORE, be it resolved that Tennessee State Board of Accountancy formally recognize FRF for SMEs as an OCBOA that is appropriate to be used as an alternative to GAAP when GAAP-based financial statements are not required and the owners of private companies and their users of their financial statements deem FRF for SMEs to be appropriate.

IN WITNESS WHEREOF, the Tennessee State Board of Accountancy has adopted the above resolution by unanimous vote of its members this 19th day of July, 2013.

Mr. Stuart thanked Mr. Morgan for his presentation to the Board.

Formal Hearing - Settled

The Board addressed the formal hearing that was settled pending their approval of the Agreed Order for L12-ACC-RBS-2011032501, Ms. Tracy Wright. Mr. Whittaker, Board Counsel, and Mr. Joseph, Litigation Counsel, detailed the case and the proposed settlement along with their recommendation. The total civil penalty proposed is $4000 and would cover the outstanding balance of the 2007 Consent Order. The $4000 penalty has been received and will be posted at the Cashier's office pending Board approval. Mr. Eldridge moved to accept the recommendation as stated. With Mr. Roberts seconding, the motion passed and the order was accepted. Mr. Watkins, Board Chairman, signed the final order.

Rule-Making Hearing

The Board then conducted the Rule-Making Hearing on Friday, July 19, 2013. The hearing was held in pursuant to TCA 4-5-204, in Conference Room 1A of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, TN 37243.

Present for the Rule-Making Hearing were Mr. Whittaker, Board Counsel; Mark Crocker, Executive Director, Board of Accountancy; Mr. Roberts, Board Member; Mr. Eldridge, Board Member,; Mr. Brewer, Board Member; Mr. Stuart, Board Member; Mr. Watkins, Board Chair; Mr. Royston, Board Member; Ms. Brundige, Board Member; Mr. Hoss, Board Member; Mr. Alexander, Board Member; and Mr. Blaufuss, Board Secretary (telephonic presence).

The purpose of the hearing is to solicit comments on proposed rules the Tennessee State Board of Accountancy has made public in order to clarify certain language within the rules, to amend certain educational and continuing professional education requirements for licensees, to reduce the biennial licensing fee for CPAs, and to set forth the accounting activities that a CPA whose license is in inactive status may perform, and to make other rule changes more clearly specified during the hearing.

A rule is defined as an agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of the agency. The proposed rules are filed with the office of The Secretary of State, notice is given to the public for comment, and a rule-making hearing is held. Upon conclusion of the hearing and adoption of the proposed rules, the rules are forwarded to the Attorney General's office to be reviewed for legality. If approved, they are then filed with the Secretary of State, which is responsible for publication, and with the Government Operations Committee of the General Assembly. The rules must stay in the Secretary of State's office for 75 days, at the end of which time that will be the effective date.

*No members of the public were present to speak.*

The Notice of Rule-Making Hearing including the entire text of the proposed rules was filed on May 23, 2013 and was listed in the May 2013 edition of the Tennessee Administrative Register. Additionally, the Board approved the hearing and the regulatory flexibility analysis relative to these rules, the latter of which is required under TCA 4-5-401 on May 3, 2013. Additional notice was given to affected individuals or

groups by a posting on the Tennessee Secretary of State's website on May 30, 2013 and posted on the Tennessee State Board of Accountancy's website on May 31, 2013. Additionally, for licensees who have opted in under TCA 4-3-1306(d) to be notified electronically via email of changes which may affect their licenses, an email opt-in notice which included a link to the hearing and charges was posted and sent on May 31, 2013.

Proposed Rule Changes

Mr. Whittaker read the substance of the proposed changes to the Board.

1. 0020-01-.04(1) FEES - Reduces the biennial licensing fee from the current $120 due every two years to $110 due every two years.

2. 0020-01-.05 APPLICATIONS - Amends paragraph 3 to state "A candidate who fails to appear for the examination shall forfeit all fees charged for both the application and the examination. All applications for initial licensure shall expire one year from the date of the application for initial licensure."

3. 0020-01-.06 EXAMINATIONS - Amended by adding a new paragraph, 11, "All CPA exam scores shall expire 10 years after the first passing score is earned, however, upon written request by the applicant, the Board may, in its sole discretion, grant an extension of the score expiration date for good cause shown."

4. 0020-04-.03 GROUNDS FOR DISCIPLINE AGAINST LICENSEES - Amended to state that "The Board has no jurisdiction over fee disputes between a licensee and a client. The Board shall not seek to impose discipline against a licensee solely on the basis of a dispute between the licensee and the client regarding payment of fees by the client for professional services rendered by the licensee."

5. 0020-05-.03 BASIC REQUIREMENTS - Subsection (A) will state "For purposes of disciplinary action the Board shall retain jurisdiction over all certificate holders whose license is in Active status."

Subsection (B) "Certificate holders who are granted Inactive status by the Board shall be required to place the word 'Inactive' adjacent to their CPA or PA designation when using such designation for any lawful purpose, including, but not limited to, the use of such designation on any business card, letterhead, resume, or biography."

Subsection (C) "A certificate holder who has been granted Inactive status may not for compensation, perform or offer to perform for the public, including the providing of accounting services from a licensed accounting firm, any of the following services: any accounting or auditing services which involves the issuance of reports on financial statements, including opinions, reviews, compilations, or attest engagements; any consulting engagement which would constitute the attest function; or furnishing advice on tax matters."

Subsection (D) "A certificate holder who has been granted Inactive status may perform the services set forth in subsection (C) above if the services are provided without

compensation to the certificate holder if the services are provided solely for the certificate holder's employer and such employer is not a licensed accounting firm or if the certificate holder does not use the CPA or PA designation in association with his or her name while providing such lawful services."

Subsection (E) "A certificate holder who is 65 years old or older and possesses a certificate in an Active status shall not be required to pay the biennial license renewal fee required for licensees as set forth in these rules."

Subsection (F) "Certificate holders who are granted Inactive status must complete 80 hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services during the 24-month period preceding the date of their request for reactivation of their license. The CPE hours required to reactivate a license may also be used as credit toward the renewal requirement so long as those hours are completed within the two-year window prior to the licensee's next December 31st renewal date."

0020-05-.03 - BASIC REQUIREMENTS - Amends paragraph 6 to "An applicant for renewal whose license has expired as set forth under Rule 0020-1-.08(7) shall complete no less than eighty (80) hours of CPE in the accounting, accounting ethics, attest, taxation, or management advisory services during the six month period preceding the date of reapplication. CPE hours required to reinstate an expired license are considered penalty hours and may not be used to offset the CPE hours required for the renewal of the license."

*Economic Impact Statement*

*The Economic Impact Statement requires that the following factors be considered and with responses on the record accordingly.*

*1. The type or types of small businesses and identification and estimate of number of small businesses subject to the proposed rule or rules that would bear the cost of or directly benefit from the proposed changes.*

In this case, CPA firms, smaller firms, run by sole practitioners will benefit from the reduced license fees. Individual CPAs will benefit from clarification of the scope of permissible services to be performed by inactive licensees.

*2. The projected recording, recordkeeping, and other administrative costs required for compliance with composed rule, including the type of professional skills necessary for preparation of the report or record.*

The projected administrative recordkeeping or recording costs are expected to be minimal.

*3. A statement of probable effect on impacted small businesses and consumers.*

Small businesses would benefit from the reduced license fees. Consumers would benefit from being able to have CPAs with an inactive license perform certain services

that are permissible under the right circumstances, for example, nonprofits and things of that nature.

*4. A description of any less burdensome, less intrusive, or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.*

Not applicable.

*5. A comparison of the proposed rule with any federal or state counterparts.*

Not applicable.

*6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.*

If small businesses were somehow to be exempted, they would not benefit from these changes because their cost of business would be higher.

Mr. Royston moved to approve the Economic Impact Statement. With Mr. Blaufuss seconding, the motion passed.

*Local Government Impact Statement*

These proposed changes are not expected to have any impact on any local governments.

Mr. Alexander moved to approve the Economic Impact Statement. With Mr. Roberts seconding, the motion passed.

Mr. Royston moved to approve the Local Government Impact Statement. With Mr. Blaufuss seconding, the motion passed.

A roll call vote for the proposed rule changes was made with each member present identifying themselves, to include Mr. Blaufuss via telephonic presence. Each member voted in favor of the proposed rule changes.

The Board then heard the Board Committee reports.

<u>NASBA Committee Reports</u>

<u>State Board Relevance and Effectiveness Committee</u>

Ms. Brundige reported the following items discussed by the Committee:

The next committee meeting will be in August. Work is ongoing by the Legislative Affairs Committee to build networks of and relationships with legislators for a Legislative Affairs Network. Some of the associations that have been identified and coalitions that are being built are: Accountants Coalition, CPA State Executive Association, and the

AICPA State and Federal Legislative Teams. There has also been Bipartisan Congressional Caucus formed by two congressmen. NASBA, AICPA, and the TAC will be meeting quarterly with that caucus.

Uniform Accountancy Act Committee

Mr. Brewer reported the following items discussed by the Committee:

A conference call was held in June. Mr. Brewer distributed a flyer to the Board regarding the current definition of attest and the revised statement. Compilations are an exclusion from both the current definition and the revised statement. Below the revised definition is the expanded definition of attest.

Tennessee has individual and firm mobility. Mobility will be discussed on the next conference call.

Board Committee Reports
Law and Rules Committee

Mr. Brewer reported the following items discussed by the Committee:

A penalty for not completing the State-specific ethics CPE requirement was clarified by adding wording to Rule 0020-05-.03 (1) and to Rule 0020-05-.08.

The Committee is considering a rule amendment to allow the Board to handle delinquent Professional Privilege Tax (PPT) with discipline by amending Rule 0020-04-.03. Currently, the Board is not notified that a licensee is delinquent in the payment of their PPT until after they are already two years delinquent. The Board is seeking a stronger ability to discipline licensees for not paying the PPT. Currently, failure to pay PPT is called a discreditable act. The issue is to make sure the Board has clear authority in its Law and Rules to discipline for failure to pay PPT under a specific rule of "Failure to pay Professional Privilege Tax subjects you to discipline" versus using discreditable acts. The Department of Revenue reporting period to the Board will still remain two years or more of failure to pay PPT.

Licensing Committee

Ms. Brundige reported the following items discussed by the Committee:

The Committee recommended approval of the CCH and Dennis Dycus CPE State-specific ethics.

The Committee recommended that Accounting Tools strengthen their course.

The Committee recommended approval of the CFA Society of East Tennessee's request for exemption of registering with NASBA as a CPE sponsor.

The Committee recommended approval of Jan Sylvis' request for CPE credit for attending GADSB board meetings.

The Committee recommended deferring a vote on James Walden's request for CPE credit for courses completed for the Graduate School of Banking program in order to obtain a course outline and course description.

The Committee recommended approval of an extension for candidate Jennifer Siebels due to a calculation mistake made by NASBA.

Mr. Hoss moved to approve all of the Committee's recommendations with the exception of the Dennis Dycus CPE course which was voted on separately.

Mr. Royston moved to approved Dennis Dycus' CPE course. With Mr. Stuart seconding, the motion passed. Mr. Eldridge abstained from discussion and voting on the motion.

Mr. Roberts moved to accept the Law and Rules Committees recommendations. With Mr. Eldridge seconding, the motion passed. Mr. Whittaker and Mr. Crocker will work on some language related to the recommendations prior to the next Board meeting.

Executive Committee

Mr. Watkins reported the following items discussed by the Committee:

The Committee discussed the Financial Statements. Mr. Crocker projects an approximate $47,000 surplus.

Mr. Stuart moved to allow an Administrative Law Judge (ALJ) to hear PPT delinquency and CPE delinquency with the caveat to not allow the ALJ to sit alone on revocation cases. With Ms. Brundige seconding, the motion passed.

Probable Cause Committee

Mr. Mills presented his report on the status of open complaints. A copy of the report is included as Attachment B.

Mr. Royston invited Mr. Whittaker to present the Supplemental Legal Report. A copy of the report is included as Attachment C.

Mr. Whittaker then presented the Legal Report. A copy of the report is included as Attachment D. The Board reviewed the report and discussed the items presented.

Regarding Items 6-12, Mr. Whittaker recommended Letters of Warning. Mr. Stuart moved to approve the recommendations. With Ms. Brundige seconding, the motion passed.

Regarding Items 13, 14, and 15, Mr. Whittaker recommended dismissal without prejudice along with a requirement for Board approval if reinstatement is desired.

Mr. Alexander asked for clarification on Item 5. Mr. Butler stated that the licensee concerned in Item 5 admitted to willfully chose to not contact his client. Mr. Hoss made a motion to approve discipline for Items 1-5. With Mr. Stuart seconding, the motion was passed with all in favor.

Mr. Alexander made a motion to approve Items 13-16 and Item 18. With Mr. Roberts seconding, the motion was passed with all in favor.

Mr. Roberts made a motion to approve Item 17. With Mr. Alexander seconding, the motion was passed with all voting members in favor. Regarding Item 17, Mr. Eldridge recused himself from discussion and voting.

The voting on all recommendations resulted in the following:

Civil Penalties Authorized: 4
Amount of Civil Penalties: $ 9,000.00
Letters of Warning: 6
Letters of Instruction: 1
Consent Orders for Suspension, Surrender, or Revocation: 1
Dismiss: 6

Mr. Whittaker discussed the Edwin Osborne appeal and stated that a hearing would be held July 30, 2013 and that the Chancery court has no set time to make a decision.

This concluded the Board Committee reports.

Old Business

Jim Michie has agreed to serve on the PROC Hiring Committee as the former PROC member. The Committee will consist of Mr. Alexander, Mr. Blaufuss, Mr. Crocker, and Mr. Michie.

Resumes have been received from Middle Tennessee and East Tennessee, but nothing from West Tennessee for members of the Committee.

New Business

The Board held elections for the officers. The following are the election results:

Vice Chair - Casey Stuart
Secretary - Bill Blaufuss
Chairman - Trey Watkins

With no further business before the Board, the meeting was adjourned at 10:32 am.

Chair

Secretary

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**www.tn.gov/commerce/boards/tnsba**

Board Meeting will be held at 500 James Robertson Parkway
Conference Room 1A in the Davy Crockett Building

Agenda for July 19, 2013

8:30 AM

Call to Order
Announcements
Adopt Robert's Rules of Order
Adopt Minutes from Meeting on May 3, 2013
Executive Director's Report

9:00 AM

Rule-Making Hearing
Formal Hearing
TSCPA Presentation on Financial Reporting Framework for SMEs

NASBA Committee Reports
- Board Effectiveness and Legislative Support Committee – Jennifer Brundige
- Uniform Accountancy Act Committee – Troy Brewer

Board Committee Reports
- Law and Rules Committee – Troy Brewer
- Licensing Committee – Jennifer Brundige
- Executive Committee – Trey Watkins
- Probable Cause Committee – Don Royston

Old Business
- Report from PROC Hiring Committee

New Business
- Election of Officers

Adjourn

Commission/Board meetings will be conducted by permitting participation of the Commission/Board members by electronic means of communication, if necessary. Any member participation by electronic means shall be audible to the public at the location specified above.

Those persons interested in attending these meetings may do so.

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# Tennessee State Board of Accountancy

## Executive Director's Report

**19 July 2013**

1. NASBA Activities

   ALD Committee Meeting

   I am planning on attending a meeting of the Accountancy Licensing Database (ALD) Committee on August 6, 2013 to be held here in Nashville.

2. State Board Committee

   I'll be attending a meeting of the AICPA's State Board Committee on October 2, 2013 to be held in Washington, D.C.

3. Personnel Matters

   Ms. Kristy Burton has been hired as our Complaint Coordinator. Kristy has a background in paralegal work and served in the U.S. Army. She served six (6) years in Reserves and twelve (12) years in active duty. She has served in various locations in the United States and a deployment to Kuwait.

4. Record Retention Research

   At the last meeting I was asked to provide information on record retention policies for other entities. I researched PCAOB, the SEC and the IRS. My findings are as follows:

   PCAOB – The auditor should adopt reasonable procedures for safe custody of his working papers and should retain them for a period sufficient to meet the needs of his practice and to satisfy any pertinent legal requirements of record retention.

   SEC – Rules have been adopted requiring accounting firms to retain for seven (7) years certain records relevant to their audits and reviews of issuers' financial statements. Records to be retained include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.

   IRS – The IRS broke their requirements down into different categories because the requirements differ depending upon individual situations.
   1) You owe additional tax and situations (2), (3), and (4) do not apply to you; keep records for three (3) years.

2) You do not report income that you should report, and it is more than 25% of the gross income shown on your return; keep records for six (6) years.
3) You file a fraudulent return; keep records indefinitely.
4) You do not file a return; keep records indefinitely
5) You file a claim for credit or refund after you file your returns; keep records for three (3) years from the date you filed your original return or two (2) years from the date you paid the tax, whichever is later.
6) You file a claim for a loss from worthless securities or bad debt deduction; keep records for seven (7) years.
7) Keep all employment tax records for at least four (4) years after the date that the tax becomes due or is paid, whichever is later.

Unless otherwise stated, the years refer to the period after the return was filed. Returns filed before the due date are treated as filed on the due date.

It appears that seven (7) years appears to be the longest stated period of time for which to keep records unless one files a fraudulent tax return or does not file a return at all.

5. Proposed Future Meeting Dates

Friday, 18 October 2013

Friday, 17 January 2014

Friday, 02 May 2014

Friday, 18 July 2014

Friday, 17 October 2014

Friday, 16 January 2015

6. Webcast Update

The Manager in IT with whom I was talking concerning doing a webcast has changed jobs. I am now dealing with the Director of Information Systems and he is setting up a meeting (to take place in a couple of weeks) with IT people outside the Department of Commerce and Insurance to arrange an interactive webcast. Since this webcast will be offered for CPE, we must be able to track those attending and ensure that they are "logged on" for the full time. This is something that our IT Director has indicated he would feel more comfortable doing with some outside assistance. I will keep you all updated on this meeting and hopefully be able to give you a timeline as to when we can start webcasting!

**STATE OF TENNESSEE**
**DEPARTMENT OF COMMERCE AND INSURANCE**
OFFICE OF LEGAL COUNSEL
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# MEMORANDUM

TO: TENNESSEE BOARD OF ACCOUNTANCY

FROM: CHRISTOPHER R. WHITTAKER, Assistant General Counsel

SUBJECT: JULY 2013 LEGAL REPORT

DATE: July 19, 2013

**Civil Penalties Authorized: 4**
**Amount of Civil Penalties: $ 9,000.00**
**Letters of Warning: 6**
**Letters of Instruction: 1**
**Consent Orders for Suspension, Surrender, or Revocation: 1**
**Placement of Complaints into Litigation Monitoring Status: 0**
**Informal Conferences Authorized: 0**
**Dismiss: 6**

## 1. L12-ACC-RBS-2012026301

The complaint alleges that the Respondent provided accounting services from an unregistered firm with an expired CPA license, that the Respondent failed to perform professional services in a competent and timely manner, and that the Respondent failed to return a client's records. The investigation revealed that the Respondent previously signed a Consent Order in which he admitted to issuing a substandard report and for which he paid a $ 1,000.00 civil penalty. The Respondent admitted in the affidavit provided to the investigator relative to this complaint that he has been providing consulting services, which constitutes providing accounting services.

**Recommendation:** Formal hearing for the revocation of the Respondent's license with authority to settle via Consent Order upon payment of a $ 5,000.00 civil penalty by the Respondent. Alternatively, the Respondent may sign a Consent Order providing for the voluntary revocation of his license.

2. **L13-ACC-RBS-2013000061**

The complaint alleges that the Respondent CPA failed to timely pay professional privilege tax as required by law for at least two (2) years. The investigation revealed sufficient evidence to support this allegation.

**Recommendation:** Formal hearing for the revocation of the Respondent's license with authority to settle via Consent Order upon Respondent's agreement that his CPA license be suspended until all past due professional privilege tax (including interest and penalties) is paid or until the Respondent provides evidence to the Board reflecting a payment plan with the Tennessee Department of Revenue to pay all past due professional privilege tax (including interest and penalties). Alternatively, the Respondent may sign a Consent Order providing for the voluntary revocation of his license.

3. **L13-ACC-RBS-2013004491**

The complaint alleges that the Respondent CPA pled guilty to eight (8) felonies, including embezzlement, on or about August 20, 2008. As a result of the Respondent's guilty plea, the Oklahoma Board of Accountancy revoked the Respondent's Oklahoma CPA license and assessed a $ 5,000.00 civil penalty. The Respondent's Tennessee CPA license has been expired since 12/31/2000, and it does not appear that the Respondent has practiced in Tennessee in many years.

**Recommendation:** Formal hearing for the revocation of the Respondent's license with authority to settle by Consent Order upon the payment of a $ 2,500.00 civil penalty by the Respondent and upon the Respondent's agreement to the voluntary revocation of her Tennessee CPA license.

4. **L13-ACC-RBS-2013005711**

The complaint alleges that the Respondent's North Carolina CPA license was revoked for one (1) year for failure to comply with CPE requirements in that state and that the Respondent failed to report said revocation to this Board as required by law. The investigation revealed that the Respondent has an active Tennessee CPA license, that the Respondent has not contacted the North Carolina Board in any way regarding his disciplinary action in that state, and that he has failed to respond in any way to Board communication relative to this complaint.

**Recommendation:** Formal hearing for the revocation of the Respondent's license with authority to settle by Consent Order upon the payment of a $ 1,000.00 civil penalty by the Respondent and upon the Respondent's agreement to the suspension of his Tennessee CPA license for two (2) years. Additionally, the Respondent may apply for reinstatement of his Tennessee CPA license at any time upon providing proof to the Board that he has fully complied with the disciplinary order issued by the North Carolina Board.

5. **L13-ACC-RBS-2013007051**

The complaint alleges that the Respondent CPA failed to promptly communicate with a client regarding the subject matter of an engagement, thereby resulting in potential financial penalties from the IRS. The Respondent admitted to failure to promptly and appropriately

communicate with the Complainant, but he did ask that the Board consider the personal and professional issues he was dealing with at that time as a mitigating factor. After this complaint was filed, the Respondent contacted the Complainant regarding a potential settlement of the issues arising from the professional services provided by the Respondent to the Complainant. The Complainant has executed an affidavit stating that he and the Respondent have reached a mutually agreeable resolution of all issues which led to this complaint, including an agreement that the Respondent has completed an amended tax return for the Complainant free of charge and that the Respondent has reimbursed the Complainant in advance for any potential amounts the Complainant may owe the IRS (with an agreement that the Complainant will refund to the Respondent any sums paid/advanced by the Respondent that the Complainant does not owe to the IRS). It is also noteworthy that the Respondent CPA has been a licensee for 25 years with no prior complaints against him.

**Recommendation:** Formal hearing for the revocation of the Respondent's license with authority to settle by Consent Order upon the payment of a $ 500.00 civil penalty by the Respondent.

**6. L13-ACC-RBS-2013003551**

The complaint alleges that the Respondent CPA failed to notify the Tennessee Board of the revocation of her CPA license in Texas and that she failed to maintain her Tennessee CPA license in good standing. After being contacted by the investigator relative to this complaint, the Respondent completed an affidavit to surrender and close her Tennessee CPA license. As such, a Letter of Warning is recommended.

**Recommendation:** Close with a Letter of Warning.

**7. L13-ACC-RBS-2013004171**

The complaint alleges that the Respondent CPA failed to notify the Tennessee Board of the revocation of his CPA license in Texas. After being contacted by the investigator relative to this complaint, the Respondent advised that he was not aware of the requirement that he notify the Tennessee Board of what he referred to as the "non-renewal" of his Texas license, especially since he also seemed to be unaware that not renewing a Texas CPA license typically results in revocation. The Respondent has no prior complaint history, apologizes for any inconvenience, and requests leniency from the Board. As such, a Letter of Warning is recommended.

**Recommendation:** Close with a Letter of Warning.

**8. L13-ACC-RBS-2013004441**

The complaint alleges that the Respondent CPA failed to notify the Tennessee Board of the voluntary surrender of her Oklahoma CPA license pursuant to a disciplinary proceeding. The Respondent stated that she was unaware that she was required to report the surrender of her Oklahoma CPA license to the Tennessee Board, apologizes for the oversight, and requests leniency from the Board. Because the Respondent has no prior complaints against her Tennessee CPA license, a Letter of Warning is recommended.

**Recommendation:** Close with a Letter of Warning.

**9. L13-ACC-RBS-2013005751**

The complaint alleges that the Respondent CPA failed to notify the Tennessee Board of the revocation of his CPA license in Texas and that he failed to maintain his Tennessee CPA license in good standing. After being contacted by the investigator relative to this complaint, the Respondent completed an affidavit to surrender and close his Tennessee CPA license. As such, a Letter of Warning is recommended.

**Recommendation:** Close with a Letter of Warning.

**10. L13-ACC-RBS-2013007011**

The complaint alleges that the Respondent CPA failed to notify the Tennessee Board of the revocation of her CPA license in Texas and that she failed to maintain her Tennessee CPA license in good standing. After being contacted by the investigator relative to this complaint, the Respondent completed an affidavit to surrender and close her Tennessee CPA license. As such, a Letter of Warning is recommended.

**Recommendation:** Close with a Letter of Warning.

**11. L13-ACC-RBS-2013009891**

The complaint alleges that the Respondent CPA, whose license was in "Inactive" status at all times relative to this complaint, appeared to be offering accounting services online via LinkedIn through an unregistered accounting firm. After being contacted by the investigator relative to this complaint, the Respondent advised that he had made some errors in calculating the dates during which he was practicing accounting, and that those errors did not accurately represent the dates he was actively holding out and/or practicing accounting. The Respondent immediately corrected the erroneous dates on his LinkedIn profile. It is noteworthy that the Respondent has held his Tennessee CPA license for approximately forty (40) years, and that this is his first complaint. As such, a Letter of Warning is recommended.

**Recommendation:** Close with a Letter of Warning.

**12. L13-ACC-RBS-2013007021**

The complaint alleges that the Respondent CPA timely self-reported the revocation of his North Carolina CPA license and firm permit due to the non-payment of payroll taxes for his CPA firm. The Respondent requests that the Board consider the following mitigating factors: that the non-payment of the taxes was based on financial difficulties and was in no way intentional, that he now has a payment plan in place to pay the past due taxes, that the North Carolina Board's attorney did not seek and was not requesting the revocation of his North Carolina CPA license and firm permit, that he timely self-reported this issue to the Tennessee Board even before the North Carolina Board's disciplinary process was complete, and that the IRS appears to be willing to only issue him a Letter of Reprimand (thereby allowing him to continue to file tax returns). Based on the totality of the circumstances, the Respondent has agreed to surrender his Tennessee

CPA license. As such, a binding Letter of Instruction is recommended once the Board has received the Respondent's license surrender paperwork.

**Recommendation:** Close with a binding Letter of Instruction that includes language stating that the Respondent may apply for the reinstatement of his Tennessee CPA license after five (5) years or upon the reinstatement of his North Carolina CPA license, whichever occurs first.

**13. L13-ACC-RBS-2013000421**

The complaint alleges that the Respondent CPA failed to timely pay her professional privilege tax as required by law for at least two (2) years and that she failed to maintain her Tennessee CPA license in good standing as required by law. The investigation revealed no evidence that the Respondent is currently practicing accounting at this time, and the investigator was unable to locate the Respondent or a valid address at which to serve the Respondent. Because the Board is unable to locate the Respondent, service of process for this complaint and/or a formal hearing is not possible at this time.

**Recommendation:** Dismiss the complaint without prejudice and place a notation in the Respondent's licensing file that the Respondent's Tennessee CPA license may not be reinstated without Board approval.

**14. L13-ACC-RBS-2013004161**

The complaint alleges that the Respondent CPA failed to notify the Tennessee Board of the revocation of her CPA license in Texas and that she failed to maintain her Tennessee CPA license in good standing. The investigation revealed no evidence that the Respondent is practicing accounting anywhere in the U.S., and the investigator was unable to locate the Respondent or a valid address at which to serve the Respondent. Because the Board is unable to locate the Respondent, service of process for this complaint and/or a formal hearing is not possible at this time.

**Recommendation:** Dismiss the complaint without prejudice and place a notation in the Respondent's licensing file that the Respondent's Tennessee CPA license may not be reinstated without Board approval.

**15. L13-ACC-RBS-2013005931**

The complaint alleges that the Respondent CPA failed to notify the Tennessee Board of the revocation of his CPA license in Texas and that he failed to maintain his Tennessee CPA license in good standing. The investigation revealed no evidence that the Respondent is practicing accounting anywhere in the U.S., and the investigator was unable to locate the Respondent or a valid address at which to serve the Respondent. Because the Board is unable to locate the Respondent, service of process for this complaint and/or a formal hearing is not possible at this time.

**Recommendation:** Dismiss the complaint without prejudice and place a notation in the Respondent's licensing file that the Respondent's Tennessee CPA license may not be reinstated without Board approval.

## 16. L12-ACC-RBS-2012018821

The complaint alleges that the Respondent failed to remit proper pay to a client's employee. The investigation revealed that the true nature of the dispute was between the employee/Complainant and her employer regarding whether the Complainant should have been paid overtime or not. The employee/Complaint was not initially paid the overtime pay because she allegedly did not obtain proper authorization to work overtime in accordance with company policy. The employee/Complainant was ultimately paid the overtime with a warning to obtain proper authorization prior to working any overtime in the future. The investigation revealed no evidence of any legal violation(s) by the Respondent in the performance of professional services to his client (the employer).

**Recommendation:** Dismiss the complaint.

## 17. L13-ACC-RBS-2013004691

The complaint alleges that the Respondent provided misleading testimony while providing testimony in a deposition as part of a court case. The investigation revealed that the court case in question was a domestic relations case in which the Respondent was involved personally and which did not involve any accounting or professional services provided by the Respondent. As part of the deposition, the Respondent was asked if he had ever cohabited with anyone to whom he was not married in the presence of his then girlfriend's minor children. The Respondent initially answered that he had not, but within 24 hours of his deposition testimony, he contacted the opposing attorney and advised him that he wished to amend his testimony to reflect that he had cohabited with his then girlfriend (now his wife) in the presence of her minor children. The investigation further revealed that the Respondent was not charged with perjury and that the deposition was never filed in court (in either its inaccurate or its amended form). The Respondent advised the Board's investigator that his inaccurate testimony represented a grievous error in judgment which arose from his desire to protect the woman who would eventually become his wife, but did not attempt to excuse his initially inaccurate testimony on that basis. Moreover, in addition to the Respondent having no prior complaint history with the Board, it appears that the opposing attorney (who is also the Complainant in this matter) used the threat of filing a complaint with the Board against the Respondent's now wife in an inappropriate attempt to leverage a better settlement for his client in the domestic relations lawsuit. Finally, because the Respondent has taken full responsibility for his momentary lapse in judgment and because that lapse is in no way related to the performance of accounting services, dismissal is recommended. Mr. Eldridge recused himself from the consideration of and voting on this matter.

**Recommendation:** Dismiss the complaint.

## 18. L13-ACC-RBS-2013007341

The complaint alleges that the Respondent firm failed to exercise due professional care by not filing a client's tax return in a timely manner. The investigation revealed that the Respondent timely completed the client's return, that the Respondent sent the necessary documents to the client with specific filing instructions, and that this practice is consistent with the firm's longstanding policy to send extensions requiring tax payments to the client to file. As

such, the investigation revealed insufficient evidence of lack of due professional care by the Respondent.

**Recommendation:** Dismiss the complaint.

Chapter 0020-01
Board of Accountancy, Licensing and Registration Requirements

Amendments

Rule 0020-01-.04(1) Fees is amended by amending subparagraph (c) to read as follows:

(c) Renewal of certificate or registration One hundred ten dollars ($110.00) biennially

Authority: T.C.A. §§ 62-1-105 and 62-1-107.

Rule 0020-01-.05 Applications is amended by amending paragraph (3) to read as follows:

(3) A candidate who fails to appear for the examination shall forfeit all fees charged for both the application and the examination. All applications for initial licensure shall expire one (1) year from the date of the application for initial licensure.

Authority: T.C.A. §§ 62-1-105 and 62-1-106.

Rule 0020-01-.06 Applications is amended by adding a new paragraph (11) to read as follows:

(11) All CPA Exam scores shall expire ten (10) years after the first passing score is earned. However, upon written request by the applicant, the Board may, in its sole discretion, grant an extension of the score expiration date for good cause shown.

Authority: T.C.A. §§ 62-1-105 and 62-1-106.

Chapter 0020-04
Board of Accountancy, Disciplinary Action and Civil Penalties

Amendments

Rule 0020-04-.03 Grounds for Disciplinary Action Against Licensees is amended by adding a new paragraph (3) to read as follows:

(3) The Board has no jurisdiction over fee disputes between a licensee and a client. The Board shall not seek to impose discipline against a licensee solely on the basis of a dispute between the licensee and the client regarding payment of fees by the client for professional services rendered by the licensee.

Authority: T.C.A. §§ 62-1-105, 62-1-111, 62-1-113, and 62-1-117.

Chapter 0020-05
Board of Accountancy, Continuing Education

Amendments

Rule 0020-05-.03(3) Basic Requirements is amended by amending subparagraphs (a) and (b) and by adding new subparagraphs (c), (d), (e), and (f) to read as follows:

(a) For purposes of disciplinary action, the board shall retain jurisdiction over all certificate holders whose license is in inactive status.

(b) Certificate holders who are granted inactive status by the board shall be required to place the word "inactive" adjacent to their CPA or PA designation when using such designation for any lawful purpose, including, but not limited to use of such designation on any business card, letterhead, resume, or biography.

(c) A certificate holder who has been granted inactive status may not for compensation perform or offer to perform for the public, including the providing of accounting services from a licensed accounting firm, any of the following services: any accounting or auditing services which involves the issuance of reports on financial statements (including opinions, reviews, compilations, or attest engagements), any consulting engagement which would constitute the attest function, or furnishing advice on tax matters.

(d) A certificate holder who has been granted inactive status may perform the services set forth in (c) above if: the services are provided without compensation to the certificate holder, if the services are performed solely for the certificate holder's employer and such employer is not a licensed accounting firm, or if the certificate holder does not use the CPA or PA designation in association with his or her name while providing such lawful services.

(e) A certificate holder who is 65 years old or older and possesses a certificate in inactive status shall not be required to pay the biennial license renewal fee required for licensees as set forth in these rules.

(f) Certificate holders who are granted inactive status must complete eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services during the twenty-four (24) month period preceding the date of their request for reactivation of their license. The CPE hours required to reactivate a license may also be used as credit toward the renewal requirement so long as those hours are completed within the two (2) year window prior to the licensee's next December 31 renewal date.

Authority: T.C.A. §§ 62-1-105, 62-1-107, and 62-1-111.

Rule 0020-05-.03 Basic Requirements is amended by amending paragraph (6) to read as follows:

(6) An applicant for renewal whose license has expired as set forth in Rule 0020-1-.08(7) shall complete no less than eighty (80) hours of CPE in the areas of accounting, accounting ethics, attest, taxation, or management advisory services during the six (6) month period preceding the date of reapplication. The CPE hours required to reinstate an expired license are considered penalty hours and may not be used to offset the CPE hours required for renewal of a license.

Authority: T.C.A. §§ 62-1-105, 62-1-107, and 62-1-111.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 5/23/2013

Signature: [signature]

Name of Officer: Chris Whittaker, Esq.

Title of Officer: Asst. General Counsel, Regulatory Boards Division, TN Dept. of Commerce and Insurance

Subscribed and sworn to before me on: May 23, 2013

Notary Public Signature: [signature]

My commission expires on: 5-15-15

PATRICIA A. TURNER NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

**Department of State Use Only**

Filed with the Department of State on: 5/23/13

[signature]

Tre Hargett
Secretary of State

2013 MAY 23 AM 10:44

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
TENNESSEE STATE BOARD OF ACCOUNTANCY
500 James Robertson Parkway
Nashville, Tennessee 37243-1141
(615) 741-2550 or (888) 453-6150
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# Memorandum

**To:** C. Don Royston, CPA, Chairman
William Blaufuss, CPA
Stephen Eldridge, CPA
J. Gabe Roberts, Attorney-at-Law

**From:** Donald A. Mills, CPA, Investigator

**Date:** 18 July 2013

**Re:** Status of Open Complaints

Attached is my report with regard to the status of open complaints as of today's date, along with data from three prior meeting dates. If you have any questions or need additional information, please ask.

cc: Mark H. Crocker, CPA
Executive Director

Raymond Butler, CPA
Investigator

# STATUS OF OPEN COMPLAINTS
## October 18, 2012 to July 18, 2013

| Status | 2012 | | 2013 | |
|---|---|---|---|---|
| | 18-Oct | 24-Jan | 2-May | 18-Jul |
| Litigation Monitoring | 4 | 6 | 7 | 9 |
| Formal Charges Authorized | 22 | 17 | 4 | 3 |
| Formal Hearings Set | 4 | 4 | 3 | 2 |
| Consent Order Outstanding | 8 | 5 | 1 | 8 |
| Legal | 19 | 14 | 31 | 17 |
| Investigation | 9 | 8 | 15 | 5 |
| Open | 3 | 15 | 2 | 4 |
| **Total- All Cases** | 69 | 69 | 63 | 48 |

**STATE OF TENNESSEE**
**DEPARTMENT OF COMMERCE AND INSURANCE**
**OFFICE OF LEGAL COUNSEL**
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750

**TO:** **Tennessee State Board of Accountancy**

**FROM:** **Jesse D. Joseph, Assistant General Counsel-Litigation**

**DATE:** **July 17, 2013**

**SUBJECT:** **Supplemental Legal Report on Formal Proceedings**

**1. L12-ACC-RBS-2011032501**
**Docket No. 12.19-120253J**
**Notice of Hearing and Charges Filed 3/4/13**

The complaint in this matter was opened by the staff in December of 2011, and involved the allegation that on December 1, 2011, staff called Respondent's office and received a voicemail message which answered: "you have reached the office of Tracy Wright, CPA…".

Within an August, 2007 Consent Order approved by the Board, Respondent agreed to pay the State of Tennessee a $2,000 civil penalty at the rate of $166.67 per month for twelve (12) months. Respondent only made a total of four (4) monthly payments toward this obligation, amounting to $666.68, through February 25, 2008, instead of the 7 payments of $166.67 which should have been made as of that time.

On March 7, 2008, Respondent's CPA License and her firm permit were revoked for failing to make payments as specified in the August, 2007 Consent Order.

During an investigation into this complaint in the spring of last year, it was found that as late as April 4, 2012, Respondent still displayed the designation "CPA" on her exterior office door sign at her 218 Peters Road, Suite 209 address, in Knoxville, TN, although the CPA designation on the marquee lobby sign had been removed.

Respondent still owes an unpaid balance of $1,332.32 toward the civil penalty obligation set forth in the August, 2007 consent order.

By way of explanation and not offering excuses, Respondent would state that she recalls having had a $600 payment toward the August, 2007 civil penalty obligation returned to her by the State's cashier's office several years ago without being deposited, and that she did not inquire further about the reason for the returned payment. Respondent states that she assumed the State was refusing to accept further payments, and allowed other more pressing personal obligations to take priority over complying with the 2007 consent order.

Respondent would also state that she did not intend to mislead the public and had not given a thought to changing her voice mail when she lost her license in 2008. Respondent had not changed her office's voice mail since 2000 when she moved into the 218 Peters Road office, at a time when her CPA license and firm permit were active. Respondent also apologizes to the Board for allowing the outside door signage at her office to state "C.P.A." for so long after her licenses were revoked.

Respondent would also state that she has a small business preparing tax returns and doing bookkeeping, which does not require a CPA license, and that she has not engaged in unlicensed practice.

Over the past few months, she has recommitted herself to complying with this Board's statutes and regulations, and after retaining her own attorney, she has cooperated with the Department's Office of Legal Counsel. Respondent intended no disrespect to the Board. Further, Respondent has changed her voice mail in early 2012, and has removed the exterior door signage identifying herself as a CPA by early 2013.

She has agreed, in an Agreed Final Order, that her conduct violated Tenn. Code Ann. §§ 62-1-111(a)(6) & (12), and 62-1-113(c) & (d)(1), and has agreed to pay the State a total civil penalty and costs assessment in this matter of $4,000 (this check has already been received from her lawyer), computed as follows:

(a payment in full of the $1,332.32 balance of the 2007 consent order civil penalty assessment;

(b a two thousand four hundred sixty-seven dollar and sixty-eight cent ($2,467.68) additional civil penalty for continuing to hold herself out as a CPA and conveying to the public that she maintained a valid CPA firm permit since March of 2008; and

(c two hundred dollars ($200.00) as reimbursement to the State for the State's investigatory and hearing costs incurred in filing the Notice of Hearing and Charges.

She intends to apply for the reinstatement of her licenses at some point in the future, and has also agreed to, at her expense, notify in writing all of her clients that she does

not possess an active Tennessee CPA license nor an active Tennessee CPA firm permit, and shall provide proof of having provided said notification to the office of the Board's Executive Director no later than sixty (60) days after this Agreed Final Order is executed by the Board. Further, she agrees that she must continue to cease and desist from using the CPA designation, holding herself out as a CPA firm, and/or providing attest and/or accounting services to the public until and unless she has obtained from this Board the appropriate licensure to do so. She agrees that when she applies for the reinstatement of her CPA license or firm permit, she must appear before the Board in person at a future Board meeting as condition of her reapplication.

The prior consent order approved by the Board in this case provided for a $500 civil penalty, and even after deducting the unpaid balance of the 2007 civil penalty, her agreement to pay a $2,467.68 additional civil penalty for holding herself out as a CPA since March of 2008 is a reasonable penalty and an appropriate deterrent to other.

Counsel for the State believes that the Respondent will comply with the Board's statutes and rules in the future.

**Recommendation:** Litigation Counsel for the Department recommends that the Agreed Final Order recently negotiated after the filing of the notice of charges and signed and paid by Respondent, be approved.

**Vote:**