

**STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
BUREAU OF COMMERCIAL SERVICES  
LICENSING DIVISION**

2501 Woodlake Circle, Okemos, Michigan 48864-5955

**Board of Accountancy**

**BOARD MEETING MINUTES**

January 23, 2009

In accordance with the Open Meetings Act, 1976 PA 267, as amended, the Board of Accountancy met in Regular Session on January 23, 2009, at the Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, 2501 Woodlake Circle, Conference Room 1, Okemos, Michigan. The business meeting was called to order by Chairperson Beth Bialy at 9:05 a.m.

**1. ROLL CALL**

Present:	Beth Bialy, Chair	Professional Member
	Richard G. David	Professional Member
	Mary Miller	Public Member
	Stephen H. Epstein	Professional Member
	Sally Fedus, Secretary	Public Member
	Neil DeBoer	Professional Member
	Carla Sledge	Professional Member
	Thomas R Weirich	Professional Member
Staff:	Carol Flores	Licensing Administrator
	Joyce Karr	Licensing Director
	Stacie Bayes	Assistant Licensing Administrator
	Melody Duwe	Board Secretary
	Ann Paruk	Enforcement Staff
	Barrington Carr	Enforcement Manager
	Stephen Gobbo	Legal Affairs Director
	Conrad Tatnall	Legal Affairs
	Paige Colley	Testing & Education
	Sue Sherman	Testing & Education Manager
Visitors:	Peggy Dzierzawski	MACPA
	John Lindley	MACPA
	Julie Kosovec	Attorney for Glenn Sheets

## **2. ADDITIONS TO OR DELETIONS FROM AGENDA**

There were no additions or deletions to the agenda.

## **3. APPROVAL OF MINUTES FROM MEETING HELD NOVEMBER 21, 2008**

Ms. Fedus requested that a correction be made regarding Joseph D. Sambaer and Robert Bassman; specifically, she requested that the minutes reflect the Board member's recusal statement prior to discussion and place the abstaining statement after the motion. Mr. David pointed out that the first sentence in Item 9, should read "150" to "120". Further, the second sentence should note that AICPA prefers the 150 requirement.

**MOTION** It was moved by Ms. Fedus and seconded by Mr. DeBoer to approve the minutes for the November 21, 2008 Board meeting with the above changes.

## **4. OLD BUSINESS**

### **A. Randy K. Lane**

Ms. Flores provided the Board with an update regarding their previous request for further information and investigation. Specifically, the Board requested the Department audit Mr. Lane's compliance with his CPE credits during the 2005 renewal period and review allegations related to Mr. Lanes' firm license. Ms. Flores indicated that on January 9, 2009, the Department notified Mr. Lane of the request for CPE documentation. She further indicated that the Enforcement Division is pursuing its review regarding Mr. Lane's firm. Further status will be provided to the Board once information is obtained.

### **B. Enforcement Fund Balance**

Ms. Flores indicated that the Enforcement Fund balance as of November 2008 is \$918,116.59. Discussion was held regarding the availability of these funds. Ms. Bialy requested information regarding expenditures. Ms. Karr indicated that Licensing Division staff did not have control over spending; however, Board members could send a travel request to staff for Departmental approval. She stated that three levels of approval must be obtained before the use of any fees or funds are allowed. Those approvals must be obtained from the Bureau Director, Department Director, and Department of Management and Budget. Discussion was held regarding MACPA's agreement to support the legislative increase of fees with the understanding that the use of these fees would include staff and board member participation at national accounting organization meetings. Ms. Karr indicated staff would research this issue further. A reference was made to review the State License Fee Act.

Mr. Weirich made an inquiry regarding the timeline for travel approval and Ms. Karr indicated that department staff needed at least a two to three month lead. Further discussion was held regarding travel to the upcoming NASBA Regional Conference on June 17, 18, and 19, 2009. It was noted that new Board members, Carla Sledge and Neil DeBoer were eligible to attend the NASBA Regional meeting. This is due to the fact that there is a special one-time reimbursement of expenses to attend NASBA's new

board member orientation that is held during the Regional Conference. Ms. Flores indicated that staff would begin completing the necessary paperwork for Ms. Sledge's and Mr. Deboer's travel approval to the June Regional Conference. It was noted that the Regional Conference will be held in Indianapolis, Indiana and the Annual Meeting will take place November 1, 2, 3, and 4, 2009 in Phoenix, Arizona.

### **C. Travel Procedures**

Travel form C-100 was provided to all Board members. Ms. Karr stated that Board members may submit travel requests to staff on the provided form. She indicated that staff would assist in completing the form and obtaining any other necessary information. It was explained that regardless of whether reimbursement is obtained by a third party, individuals representing themselves as a member of the Michigan Board are required to complete a travel request and obtain Department approval. Ms. Karr explained that the Board members were also covered by liability insurance while attending meetings. Mr. David inquired that if Board members are covered at national meetings, were they also covered driving to and from Board meetings. Ms. Karr stated that members were covered during Board meetings. She indicated that staff would conduct additional research to determine if members are covered while driving to and from Board meetings.

### **D. Craig Mills, AICPA Presentation**

Ms. Flores indicated that due to a scheduling conflict, Mr. Mills is unable to attend the May Board meeting and is scheduled to make his presentation at the August 2009 Board meeting.

### **E. Board Approval of Reinstatements for Nonpayment of Fees**

An excerpt outlining the provisions of MCL 339.411(5), MCL 339.420(b), and MCL 339.515 was provided to all Board members. Ms. Flores provided historical information regarding previous Board action under Section 708(g) of the Occupational Code, 299 of 1980, as amended, which was repealed, effective May 16, 1997. She further explained that since the previous Board revoked certain licensees, the licensee is now required to file a reinstatement application under MCL 339.402(b) and MCL 339.411(5). Once the Department receives a reinstatement application, the Board and the Department are required by statutory mandate to review the petition.

### **F. Method to Expedite SEC Related Complaints**

Ms. Flores stated that a meeting with Administration and Enforcement staff has been scheduled in February to discuss ideas to better handle SEC complaints. Mr. Weirich asked Mr. Gobbo if the Department had adequate staff and could the Board use the enforcement fund to have additional staff hired to handle these types of complaints. Mr. Gobbo deferred to Mr. Carr. Mr. Carr stated that at this time, no additional staff was necessary in Enforcement. He indicated; however, that he did not know the status of the Audit Division. Ms. Sherman commented that funding was not the only Department concern as the Department is also limited to a particular number of full-time employees. Ms. Bialy requested that staff provide feedback regarding this issue at the next Board meeting.

### **G. New Board Member Training**

Ms. Flores reported that the Department is reviewing costs and alternative methods to conduct board member training including the use of technology vs. holding a large group meeting. Mr. DeBoer stated that he received a CD upon his appointment and indicated that he found it enlightening.

### **H. 2009 Board Meeting Dates**

Board members were provided with a copy of the 2009 Board Meeting schedule. It was confirmed that the scheduled dates were all acceptable.

## **5. NEW BUSINESS**

### **A. REINSTATEMENTS**

#### **i. Ernest Joseph Gargaro, Jr.**

Mr. Gargaro Jr. applied for reinstatement for his CPA certificate, which had been revoked on May 25, 1989, for nonpayment of fees.

**MOTION:** It was moved by Ms. Fedus and seconded by Mr. DeBoer to approve Mr. Gargaro's application for reinstatement. The motion passed unanimously. The Department concurred.

#### **ii. David Trzybinski**

Mr. Trzybinski filed for reinstatement of licensure on November 25, 2008. Department staff pointed out the applicant's answer to the application question, "Have you ever had disciplinary action taken against any license, registration or permit you now hold or have ever held." Applicant indicated "No." In point of fact, on June 23, 1998 a Final Order was issued, Mr. Trzybinski's license was revoked, and he was ordered to pay a fine of \$1,500 and to cease and desist from engaging in unlicensed activity. It was noted that Mr. Trzybinski paid his fine and complied with the Final Order.

Discussion: Mr. David and Mr. Epstein voiced their concern regarding Mr. Trzybinski's negative response to the Departments question regarding disciplinary action.

**MOTION:** It was moved by Ms. Miller and seconded by Ms. Sledge to deny the reinstatement due to the fact the Mr. Trzybinski did not disclose the previous board action in response to the disciplinary action question on his reinstatement application. The motion passed unanimously. The Department concurred.

## **B. STIPULATIONS**

### **i. Curt A. Redinger**

A signed stipulation and formal complaint were presented to the Board in the matter of Curt A. Redinger for violation of a provision of Article 7 of the Occupational Code, 1980 PA 299, as amended; contrary to MCL 339.734(g).

Discussion: Ms. Fedus inquired whether the violation in US District Court was a felony or misdemeanor as she wished to refer to the Board's Minimum Sanctions guideline for felony convictions. Mr. Gobbo reminded the Board that a stipulation could only be accepted or rejected. Ms. Flores indicated that the Stipulation contained an error in that MCL 339.734(g) should read MCL 339.734(b). Mr. Weirich indicated another error, in that the words "Seven Thousand Five" should read "Seven Thousand Five Hundred". Mr. Gobbo indicated that a motion could be made to accept the stipulation with a condition of the noted corrections.

**MOTION:** It was moved by Ms. Miller and seconded by Mr. Weirich to accept the stipulation on the condition that an addendum be issued striking reference to MCL 339.734(g) and inserting MCL 339.734(b) and striking the words "Seven Thousand Five" and inserting "Seven Thousand Five Hundred". It was further moved that acceptance of the stipulation was also conditioned on the Department receiving a signed addendum within 30 (thirty) days from the date of the Board meeting. The motion carried with Ms. Fedus opposing.

### **ii. Benedict Peter Rybicki**

A signed stipulation and formal complaint were presented to the Board in the matter of Benedict Peter Rybicki, for violation of a provision of Article 7 of the Occupational Code, 1980 PA 299, as amended, contrary to MCL 339.734 (f) and (i).

Discussion: Board members discussed the timing issue as it relates to SEC complaints. Members expressed a desire to have the suspension period run concurrently with the SEC's suspension period. Ms. Flores reminded the Board that Bureau staff will be exploring all possibilities including promulgation of rules when it meets internally in February. Mr. Carr reminded the Board that Department policy is to rely on the fact that SEC suspended the Respondent. He further indicated that the Department does not develop evidence regarding the allegations that lead to the SEC's suspension.

**MOTION:** It was moved by Ms Fedus and seconded by Mr. Weirich to accept the stipulation as written. The motion carried with Ms. Miller opposing.

Discussion: Mr. Epstein commented that the SEC relies on its ability to suspend individuals from the privilege of appearing or practicing before the Commission as an accountant. He further stated that the AICPA has advocated a Bench-Shadow-Door policy in that the firm agrees to "bench" an individual's practice, "shadow" the individual's practice or show the individual the "door".

### **iii. Marvin J. Morris**

A signed stipulation and formal complaint were presented to the Board in the matter of Marvin J. Morris, for violation of a provision of section 604 of the Michigan Occupational Code, 1980 PA 299, contrary to MCL 339.734(f) and (i).

**MOTION:** It was moved by Mr. Epstein and seconded by Ms. Fedus to accept the stipulation as written. The motion carried with Ms. Miller opposing.

## **C. HEARING REPORTS**

Chair Bialy acknowledged Mr. Michael Lockman, Assistant Attorney General as being present in the room to provide advice to the Board regarding the Hearing Report Agenda, Item C (i) Glenn Sheets. Mr. Lockman provided the Board with a background of the Hearing process and indicated that ordinarily administrative hearings officers who preside at contested case hearings are required to make findings of fact and conclusions of laws pertaining to the allegations in a Formal Complaint. Mr. Lockman indicated that in the case before the Board today, the Formal Complaint alleges several violations of professional standards of practice. He advised that the administrative hearings officer in this matter made determinations of fact and law related to standards of professional practice of which the hearing officer lacked the authority to make. He further advised that the Board of Accountancy is to make the findings of fact as it relates to professional standards of practice pursuant to Section 513(3) of the Occupational Code, as amended. He advised that there were three alleged violations of professional standards in the Formal Complaint as follows: (1) paragraph 7 – concerning ET Section 57 – Article VI,.03 of the AICPA Code of Professional Conduct, (2) paragraph 14 – concerning ET Section 54 – Article V, .04 of the AICPA Code of Professional Conduct; and, (3) paragraph 15 – concerning ET Section 56 – Article V, .05 of the AICPA Code of Professional Conduct. Mr. Lockman further advised that the Board had the duty to make its own findings of fact and conclusions of law with regard to those items and could do so by review of the transcripts of the hearing that pertained to those items.

### **i. Glenn C. Sheets**

**MOTION:** It was moved by Mr. David and seconded by Mr. Weirich to receive the Hearing Report on Glenn C. Sheets. The motion failed unanimously. Ms. Bialy and Mr. Epstein abstained and recused themselves from discussion. The Hearing Report was not received.

**MOTION:** It was moved by Mr. David and seconded by Mr. DeBoer to request the hearing transcript and request that each party provide a written proposal or brief concerning the three violations of professional standards set forth in the Formal Complaint as follows: (1) paragraph 7 – concerning ET Section 57 – Article VI,.03 of the AICPA Code of Professional Conduct, (2) paragraph 14 – concerning ET Section 54 – Article V, .04 of the AICPA Code of Professional Conduct; and, (3) paragraph 15 – concerning ET Section 56 – Article V, .05 of the AICPA Code of Professional Conduct. The motion passed with Ms. Bialy and Mr. Epstein abstaining.

Discussion: Mr. David commented that an individual, Jeffrey Risius, was named in the Formal Complaint and questioned whether staff investigated any allegations with respect to Mr. Risius' license. Mr. Carr indicated he would look into the matter. Mr. David questioned why this complaint had been re-opened. Mr. Carr indicated that although he was unable to report on the specifics of this particular case, he addressed the general question of procedure. Mr. Carr indicated that Article 5 of the Occupational Code, as amended, provides that a Complainant may resubmit additional evidence upon notification that a complaint will be closed. This additional evidence may lead to a Department decision to reopen a case.

## **6. ITEMS FOR CONSIDERATION FROM BOARD MEMBERS OR DEPARTMENT**

### **A. TRAVEL REIMBURSEMENT REQUIREMENT: MEAL EXPENSES**

Ms. Flores discussed the policy change regarding reimbursement of meals. An itemized receipt listing what was purchased for lunch is required when claiming lunch on travel vouchers.

## **7. PUBLIC COMMENT**

Julie Kosovec, attorney for Glenn Sheets, spoke on behalf of Mr. Sheets stating her client would like the Board to accept the findings of facts in this case. She indicated that this complaint is eight years old and her client, Mr. Sheets would like to have a conclusion.

Peggy Dzierzawski from MACPA stated that the Maddock/Ponzi scheme had no bearing on the State of Michigan. The three partners provided false information on the application to the AICPA, indicating that the firm did not conduct audits. She noted that peer review is not mandatory in the State of New York. Ms. Dzierzawski also thanked Ms. Karr for her participation and presentation at the MACPA meeting held January 22, 2009.

## **8. NEXT MEETING DATE**

The next scheduled meeting of the Board of Accountancy will be held on May 15, 2009 at 9:00 a.m.

**9. ADJOURNMENT**

There being no further business to be brought before the Board at this time, Ms. Bialy entertained a motion to adjourn.

MOTION: It was moved to adjourn the meeting by Mr. DeBoer and seconded by Mr. Weirich. The motion passed unanimously. The meeting was adjourned at 11:36 p.m.

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Sally Fedus, Secretary

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Date

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Recording Secretary

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Date