

**OKLAHOMA ACCOUNTANCY BOARD**  
**MINUTES OF MEETING AND HEARING**

January 10, 2003

The Oklahoma Accountancy Board convened in regular session on Friday, January 10, 2003 in Suite 165, 4545 N. Lincoln Boulevard, Oklahoma City, Oklahoma. Notice of the meeting was filed with the Secretary of State and the agenda for the meeting was posted in the reception area of the Board's office in compliance with the Open Meeting Act. A tape recording of the meeting is on file in the Board office. Members present at the meeting:

Archer M. Honea, Chairman  
Tom Dugger, Vice Chairman  
Carlos E. Johnson, Member  
E.B. St. John, Member  
J.H. Jay Engelbach, Member  
Jeanette C. Timmons, Public Member

In attendance at the meeting: Edith Steele, Executive Director; David Kinney, Assistant Attorney General and Prosecutor for the Board; John Crittenden, Assistant Attorney General; Barbara Walker, Jim Shepherd and Donita Graves, Board staff members. Daryl Hill and Rusty Hale represented the Oklahoma Society of CPAs. Jim Nolen, Lee Weeden, Peggy Johnson and Dean Taylor represented the Oklahoma Society of Accountants. Rick Chamberlain, Special Prosecutor, Gary Collins with the House of Representatives, and Thomas Blaney with GIT were also present for relevant segments of the meeting.

**Call To Order:** At 8:40 a.m. Chairman Honea called the meeting to order and declared a quorum present. He explained that Secretary Nickles' absence was due to a client matter. He declared the absence to be unavoidable, provided there was no objection.

**Consent Agenda:** The Consent Agenda contained 3 items for the Board's consideration: (1) Approve the minutes of the December 13, 2002 Board meeting; (2) Authorize \$1000 contract with Crawford & Associates, to develop the Management's Discussion and Analysis for FY-01 and FY-02 Audit of the Board's financial statements; (3) Take official notice of the files acted on by the Executive Director since the previous meeting.

Chairman Honea invited Vice Chairman Dugger and member Johnson to explain a Management's Discussion and Analysis for FY-01 and FY-02 Audit of the Board's financial statements. Vice Chairman Dugger explained that it was comments on the operations of the agency during the audit period. Mr. Johnson stated that this was a new requirement under GASB 34 which relates to governmental entities and its affiliates

and component units. He added that it is a discussion of activities during the year to include financial expenditures and revenues that were used to support these activities and possibly discussion of how to use the resources for next year. Vice Chairman Dugger added that its purpose was to expand from giving the numbers to also giving a narrative of the agency.

Dugger moved to accept the Consent Agenda; Engelbach second. Unanimous affirmative vote.

**Administrative Actions Taken:** Vice Chairman Dugger presented a written summary of investigative files and administrative actions taken, with recommendations for the disposition of each.

#### **File No. 1028 - CPA**

A complaint was filed against a CPA alleging professional misconduct. Upon review, the Vice Chairman determined the complaint was actually a fee dispute. Since the Board does not enter into fee disputes, he recommends the file be closed.

#### **File No. 1031 – Reinstatement Applicant**

The Registration Coordinator requested a routine background check on the applicant. The OSBI reported a felony arson charge against the applicant which had occurred over 20 years ago when the applicant was in college. In his letter of explanation, the applicant stated that he had pled guilty and had paid for all damages. He thought that since the 2-year sentence was deferred, that the record would be expunged. His response satisfied the Vice Chairman, and since the charges were extremely old, he recommends the file be closed and the application be approved.

#### **File No. 1033 – CPA**

A complaint was filed because the complainant was unsatisfied with a vehicle sold by the CPA. The Vice Chairman determined that since this complaint was a consumer complaint, not against the CPA's practice, it would not fall within the Board's jurisdiction and he recommends the file be closed.

Dugger moved these recommendations be approved; St. John second. Unanimous affirmative vote.

**Act on Staff's Recommendation on Reinstatement Application of Richard E. Rentsch, Suspended CPA:** Executive Director Steele explained that Mr. Rentsch's certificate was suspended for failure to renew his permit or advise the Board that he was no longer practicing public accounting. She added that he was not actually practicing public accounting and that he was located out of state at the time. She stated that he was now in compliance with the filing of his reinstatement application.

Dugger moved to lift suspension; Engelbach second; Unanimous affirmative vote.

**Act on Staff's Proposed Amended Initial Examination Application:** IT Director Jim Shepherd explained that the purpose of the changes to the application was in preparation for online filing with the portal. The instructions were removed from the application itself and put in the form of an instruction sheet which made them clearer. Ms. Timmons asked how the applicant's ID photos would be sent if applicants are filling out applications online. Mr. Shepherd replied that when the receipt is printed, a list of what documents are required to complete the application will also be printed and the applicant will have 14 days to send pictures and transcripts by mail. Ms. Timmons suggested the applicants could scan transcript and photos as a PDF file and send to the Board electronically. Mr. Shepherd recognized this as a possibility.

Chairman Honea expressed appreciation on behalf of the Board for the amount of time the staff devoted to revising the application. Mr. Johnson asked when this application would be put in place. Mr. Shepherd replied that he would be taking the application to the portal team on Monday and other forms that will be used throughout the year will be sent to the portal team in the order they are used. He stated that he was still hopeful for a May launch date but added that it took approximately one month for all examination applications to be revised. He noted that the permit form posed the biggest problem. Mr. Johnson assured the Board that the state's portal development team were committed to doing whatever was necessary to meet the Board's launch date. Mr. Shepherd explained that the process not only required changing forms but expanding the database. He explained that prior to changing the examination application 80% of the information asked was not being tracked in the database. Chairman Honea asked if items which are used and asked only one time needed to continue to be tracked. Mr. Shepherd cited the residence item as an example and explained how information would be processed through the portal system. He stated that if there is not a field for the data to be placed in, the Board would be unable to see that data at all.

Mr. Johnson raised the question of what resources are needed from the Board to meet the May launch date. Mr. Shepherd replied that the biggest hurdle has been getting the staff together to work on revising the forms. Chairman Honea suggested hiring additional temporary help. Mr. Shepherd explained that the candidate database is being expanded to include re-examinee information and at the same time the registration and permit forms are being reviewed, but the revisions have to be completed before the database can be expanded. Vice Chairman Dugger asked if the framework for the database was currently sufficient. Mr. Shepherd responded in the affirmative and added that tables and data fields need to be expanded.

Executive Director Steele addressed the problem with registrants reporting all of their CPE, citing the example of registrants who take 40 hours of CPE one hour at a time. She added that one hour of CPE could require as many as 200 fields. IT Director Shepherd stated that there are 140 fields on the back of the CPE reporting form. She raised the issue of whether an aggregate total would be sufficient and proposed increasing the audit sample in lieu of complete reporting.

Executive Director Steele reminded the Board that reporting CPE courses have not always been required and that not requiring courses to be reported would cut the CPE form by 2/3. Mr. Shepherd noted that much of the information reported on the CPE form

was only used for the purpose of the audit and suggested that this information be required of registrants at the time of audit.

Chairman Honea asked if eliminating the CPE reporting form would enable the Board to meet the May launch date and could it be changed back on the portal system next year if needed. IT Director Shepherd responded in the affirmative and that the database would have to be expanded 6-7 lines per CPE course entry. Chairman Honea stated that for the purposes of the audit, registrants' CPE courses need to be reported to the Board for a historical basis. Executive Director Steele commented that the Board can ask for this information from a registrant at any time since it is in the Board's rules. Vice Chairman Dugger suggested that any time there is an enforcement action the respondent should be required to send CPE. He added that he supported increasing the sample of the audit. Mr. Johnson agreed. Ms. Timmons expressed concern that registrants need to be notified of the records retention requirement and suggested including a statement to that effect on the form online. Chairman Honea asked if the revised CPE form could be available at the Board's next scheduled meeting. IT Director Shepherd responded in the affirmative.

Engelbach moved to approve the amended initial examination application form; Johnson second. Unanimous affirmative vote.

**Hearing in Case No. 1536 – David Wayne Fletcher, CPA:** This matter came on for hearing at 9:22 a.m. The members of the Board present were seated on the hearing panel. Assistant Attorney General John Crittenden represented the Board. Special Prosecutor Rick Chamberlain represented the State. Respondent was present but not represented by counsel. The purpose of the hearing was to determine whether (1) Respondent violated Section 15.14B(3) of the Oklahoma Accountancy Act by pleading *nolo contendere* or “no contest” to the criminal charge of assault and battery with a dangerous weapon, a felony, in the case of *State of Oklahoma v. David Wayne Fletcher*, Case No. CF-2001-1571, District Court, Tulsa County, Oklahoma; (2) Respondent, in his CPA Biennial Registration filed with the Board on or about July 27, 1998, violated Section 15.14B(6) of the Oklahoma Accountancy Act, OAC 10:15-39-8(a) and/or OAC 10:15-39-9(4) by falsely answering “no” to the question, “Since your previous registration or application filed with the Board have you been charged with . . . a crime . . .?” when, in fact, Respondent had been charged on or about October 2, 1997, with the crime of assault with a dangerous weapon in the case of *State of Oklahoma v. David Wayne Fletcher*, Case No. CF-1997-4643, District Court, Tulsa County, Oklahoma; (3) Respondent violated Section 15.14B(6) of the Oklahoma Accountancy Act, OAC 10:15-39-8(a), OAC 10:15-39-9(2) and/or OAC 10:15-39-9(3) by pleading *nolo contendere* or “no contest” to the criminal charge of domestic assault and battery in the presence of a minor child in the case of *State of Oklahoma v. David Wayne Fletcher*, Case No. CM-2000-3642, District Court, Tulsa County, Oklahoma; and (4) Respondent violated Section 15.14B(6) of the Oklahoma Accountancy Act, OAC 10:15-39-8(a), OAC 10:15-39-9(2) and/or OAC 10:15-39-9(3) by engaging in conduct that resulted in at least three instances in which he was charged with the crime of violating a protective order issued by Tulsa County District Court, and by pleading “no contest” to the criminal charge of violating a protective order in the case of *State of*

*Oklahoma v. David Wayne Fletcher*, Case No. CM-2001-3596, District Court, Tulsa County, Oklahoma.

No witnesses were called by the Special Prosecutor. No witnesses were called by the Respondent, but the Respondent testified on his own behalf.

Johnson moved to go into Executive Session; Engelbach second. Affirmative votes: Johnson, Timmons, Honea, Dugger, Engelbach, and St. John.

Johnson moved to come out of Executive Session; Engelbach second. Affirmative votes: Johnson, Timmons, Honea, Dugger, Engelbach, and St. John.

Assistant Attorney General Crittenden noted that no motions were heard and no official business was taken during Executive Session.

Johnson moved that Counts 3 & 4 regarding David Wayne Fletcher be dismissed, and that the OAB finds Mr. Fletcher guilty by clear and convincing evidence of Counts 1 & 2 and that he be placed on probation, and that he be reprimanded as noted in Count 2 for incorrectly filing a biennial registration form, in addition that Mr. Fletcher be placed on probation for a period to run concurrently with Case noted as CF-2001-1571 District Court Tulsa County Oklahoma and that he be required to file with the OAB on June 30, 2003, 2004 and on November 1st, 2004 a statement that he is in compliance with the requirements of Case CF-2001-1571 District Court Tulsa County Oklahoma; St. John second. Affirmative votes: Johnson, Timmons, Honea, Dugger, Engelbach, and St. John.

Engelbach moved to adjourn the hearing; Johnson second. Unanimous affirmative vote.

The proceedings and the individual votes of the members were conducted in open session and were recorded by a court reporting service. The evidence is contained in Docket File No. 1536.

**Discuss and Act on Proposed Agency Request Bill:** Chairman Honea addressed Draft 5 and emphasized that the most absolutely critical issue of this legislative session for the Oklahoma Accountancy Board is to ask the legislature to pass an increase on the limitation of the amount the Board can charge applicants to take the CPA examination. He explained that the current limit is \$300 and that the Board has never charged more than \$120. He proposed the course of discussion begin with the issues to get a consensus and after all issues have been addressed, then the verbiage can be discussed.

Chairman Honea began with the Regulatory Structure and Legislation Committee's proposal to increase the fee to \$250 per part on initial and subsequent examinations. He explained that the cost to the Board for a candidate to sit for all four parts of the examination will be \$493 per candidate and that this amount had been increased twice since the initial figure of \$458. He added that he anticipated further increases. Mr. Johnson clarified that this amount was what the Board would have to pay to NASBA and/or the AICPA for furnishing the examination to the Board based on using Prometric. He stated that this amount does not include the administrative cost. Chairman Honea noted that there is a jurisdictional testing center fee of \$1500 per site per year. Mr. Johnson commented that he too expected the fees to increase and emphasized that the reason for the cap is to provide for flexibility. He stated that the Board has not charged the full cost for the examination but would like to recover costs in the future. Chairman Honea clarified that it is not the Board's intention to make money on the examination but that it cannot afford to lose any money either. Mr. Johnson commented that these fees are not out of line with what other professional examinations charge and this was looked at by the Regulatory Structure and Legislation Committee.

Chairman Honea addressed the proposed changes in Section 15.1 (Definitions). He noted that the purpose of changing the definition of the practice of public accounting is to make the language compliant with SSARS, which is the AICPA's pronouncements on non-audits. He noted there is proposed language allowing for services to family members. He added that there is a change in the definition of report to add other governmental agency standards. He noted there are added definitions of principal place of business, designee and transmittal. He expressed concern of the change from the term "and other state boards and territories of the United States" to "and other jurisdictions" and whether the definition of jurisdiction included Canada and Mexico. Assistant Attorney General Kinney stated that the definition of jurisdiction provided does include any state or territory in the United States and the District of Columbia, Virgin Islands, Guam, and Puerto Rico but that the definition does not include Canadian provinces or Mexico.

Mr. Johnson explained that the definition of transmittal had been included to enable a non-licensed individual to attach a letter of transmittal with a set of financial statements for the purpose of establishing a record of delivery. He added that this was in compliance with SSARS 8. Assistant Attorney General Kinney noted that the definitions, "Management Consulting Services" and "Management Services" had been removed since these terms were never used in the Act. Chairman Honea expressed concern of having definitions of terms not used in the Act. Mr. Johnson concurred. Executive Director Steele asked if the definition of transmittal needed to be deleted. Chairman Honea and Mr. Johnson responded in the affirmative.

Chairman Honea addressed the definition of principal place of business and whether the proposed definition limited the nexus argument. Assistant Attorney General Kinney replied that this definition mirrored what was commonly found in the Internal Revenue Code and that definition of principal place of business is a fact question that cannot be defined by legislation. He added that there are case laws that establish more than one principal place of business and more than one residence. Chairman Honea asked if this particular definition was rebuttable. Mr. Kinney responded in the affirmative.

Chairman Honea addressed the concept of removing the education eligibility requirements for qualification of applicants sitting for the examination under Section 15.8(C). Mr. Johnson commented that it is no longer relevant. Chairman Honea addressed proposed changes in 15.13(E) Reciprocity. He explained that in the legislation passed last session, the application fee was omitted and this proposal puts the fee back in. Mr. St. John asked what the Board charges. Executive Director Steele explained that the \$120 application fee was the same as the examination application fee. Chairman Honea assured that the Board would not charge more than what would cover its cost. He cautioned that if the Board continues to lose revenue, it could get into serious financial trouble. Ms. Steele noted that the Board receives approximately 80 applications a year.

Chairman Honea addressed proposed changes in 15.14 and 15.15(D) with regard to the registration hearing process for individuals and firms. He explained that other state agencies allow for automatic revocation for those who have no intention of renewing. He added that this would be a cost-saving measure. Assistant Attorney General Kinney noted that the proposed measure would eliminate the show cause hearing and make revocation automatic. Mr. St. John asked if the firms would still be notified. Executive Director Steele replied that firms will still receive 2 certified letters.

Chairman Honea addressed the proposed change in 15.14B (Acts Subject to Penalty) to add a penalty for failure to comply with the audit and compilation standards. Mr. Johnson explained that adding such language was necessary in order for the Act to be in compliance with SSARS 8 which allows for financial statements to be issued without a report being attached with respect to financial statements.

Chairman Honea addressed the elimination of the additional office permit fee under Section 15.15A (Firm Permits) and added that this is a major shift from what has been done previously. Mr. Johnson noted that there had been extensive discussions by the committee on this issue. Executive Director Steele stated that a firm would still be required to register and list each office serving Oklahoma clients but only one permit would be issued to the firm. Chairman Honea asked what impact this would have on revenue in light of the current budget crunch. Ms. Steele estimated that it would be \$5000. Chairman Honea raised the question of whether the Board needs to be reducing its sources of revenue. Mr. Johnson stated that the Board did not always charge firms a permit fee for additional offices. Mr. St. John suggested increasing the permit fee for all firms instead. Chairman Honea remarked that the legislature would not support such a measure on the basis that the previous legislature required the Board to carefully explain the increase in the examination fee. House liaison Gary Collins concurred on the basis that the legislature will again look at the redundancy of fees based on this being a budget cut year and the legislature will be looking at whether agencies are increasing their fees to cover their budget cuts. Chairman Honea asked whether the legislature would be looking at agencies cutting their revenue sources. Mr. Collins commented that the office permit fee was redundant. He stated that \$5000 is a small amount of money.

Chairman Honea expressed concern with regard to enforcement for a nationwide firm. Mr. Johnson explained that the committee had extensive discussions about this issue

and the committee concluded that the Board could impose disciplinary action on the firm and could name a specific office. He added that the Board has jurisdiction on registered firms, which includes all offices. Assistant Attorney General Kinney stated that if the Board has a problem with one office, it could potentially close an entire firm or only that one office.

Chairman Honea expressed concern about the issue of increasing the firm permit fee being unfair toward the smaller practice units, which comprise the biggest part of the Board's registrants. Mr. Johnson expressed that he did not believe it was unfair and he has a sole-proprietorship entity. Jim Nolen, representative of the Oklahoma Society of Accountants (OSA), commented that this proposed measure is unfair to the small practitioner and added that big firms coming into a small town and opening a tax return office might have less overhead. Mr. Johnson stated that the number of accountants employed in each office location is the financial burden. Mr. Engelbach concurred.

Chairman Honea addressed the conceptual issue of Non-CPA ownership of CPA firms and Non-PA ownership of PA firms. Vice Chairman Dugger raised the question of whether or not the policy of the Board would be similar to the concept of taxation using the rule of attribution for control interests within a firm. Mr. Johnson explained that control rests with the CPAs within the firm, which includes financial interest and voting interest, and that non-CPA owners must be active participants within the firm. He added that the intent of the proposed measure was to prevent alternative business services from having any ownership in the firm. He stated that non-CPA ownership extends to individuals, not entities. He added that non-CPA owners must have less than 1/3 financial interest and less than 1/3 voting rights. He referenced line #2 which says that each designated manager in this state is a holder of a valid certificate and permit to practice as a certified public accountant.

Vice Chairman Dugger posed the question of whether the Board would have jurisdiction over a non-CPA with regard to enforcement. Mr. Johnson replied that there had been extensive discussion on this matter by the committee. He assured that the Board would be able to get to the firm, the managing partner, and individuals responsible for signing reports and the Board could render judgment against the certificate holders and the firm. Chairman Honea raised the question of whether a convicted embezzler who was once a CPA could own 1/3 of the firm. He expressed concern about the Board not having control over the ethics and ethics training of non-CPA owners as it does with its registrants. Mr. Johnson replied that the firms and the certificate holders are held to professional standards, which include ethics.

Daryl Hill, representative with the Oklahoma Society of CPAs, commented that firms and their ownership must comply with rules promulgated by the Board. Chairman Honea asked if it was the committee's intent for the Board to have that kind of jurisdiction over non-CPA owners and for the Board to implement rules. Mr. Johnson responded in the affirmative and added that the Board has jurisdiction on the non-certificate holders. Ms. Timmons concurred on the basis that the firm is a legal entity by statute and by regulating permit and certificate holders, the Board is protecting the public and with the 66 2/3 ownership provision of certificate holders, the Board can

indirectly regulate the non-CPAs and directly regulate the permit holder to conduct business.

Chairman Honea returned to the issue of whether it was the committee's intent to preclude a revoked CPA convicted embezzler from being a non-CPA owner in a firm. Mr. Johnson referenced 15.15A(F)(1), which would give the Board authority to make rules that would cover non-CPA owners. Chairman Honea raised the question of whether the Board could revoke the firm permit when a non-CPA owner had been found guilty of embezzlement or an unrelated offense. Mr. Johnson explained that the committee came to the conclusion that the Board could take action against one office or all offices of a firm and added that it was the committee's intent for the Board to have control over the firm, the managing partner, over all the certificate holders, all the offices, and all of the ownership. Mr. Nolen from the OSA expressed concern about the Board proposing a rule which is more restrictive than its statute by singling out revoked CPAs or individuals revoked from any other profession. Mr. St. John suggested that the Board could write the same rules requiring minority ownership to be of moral, ethical character that are currently in place for CPAs and PAs.

Chairman Honea re-stated that the Board's absolute goal regarding this legislation is to increase the examination fee. He cautioned that if this legislation is not passed, this agency might not be able to survive in its current form. He raised the question of whether the issue of non-CPA and non-PA ownership is divisive enough to prevent the bill's passage through the legislature. Mr. Johnson explained that the author of the bill would be making the presentation to a committee to which the bill is assigned and if there were such a situation, the bill could be amended in committee. Chairman Honea raised the question of whether keeping the language regarding non-CPA ownership in the bill is worth the risk. Mr. Johnson replied that 43 states have passed similar legislation with regard to non-CPA and non-PA ownership and added that there are many opportunities throughout the legislative process for the bill to be amended.

Chairman Honea asked if any Board member would object to removing any provision of the proposed bill for the sake of getting the examination fee increase passed. Mr. Johnson replied that if there was a groundswell of opposition by members of the legislature, then removal of any provision would need to be addressed by the Board. Chairman Honea reminded the Board of the last legislative session when one Senator decided not to hear the Board's agency request bill in committee and the bill died.

Peggy Johnson, representative of the OSA, expressed opposition to the concept of non-CPA and non-PA ownership on the grounds that such a measure is not in the public interest unless there is an additional provision for registering all unlicensed people who practice accounting or registering the owners of accounting firms. She affirmed that this is the OSA's official opinion. Mr. Johnson stated that many CPA firms currently have non-licensed employees and the public is already protected through the Board's control of the firm, the managing partner and the other certificate holders. Chairman Honea remarked that a CPA firm is not always a CPA firm but that it could be a CPA and consulting firm or a CPA and law firm. Mr. Johnson asked the Chairman if he were opposed to this provision. He replied that he wanted a good piece of legislation to present to the legislature which would give the Board the best chance to have passed.

Vice Chairman Dugger asked if this draft the committee proposed was appropriate for presentation. Mr. Johnson responded that this entire draft was appropriate for presentation to the Board, to be approved by the Board and be submitted as a legislative act. House liaison Gary Collins suggested that the Board consider two separate bills, one for the fee change and one for the administrative changes.

**The Board adjourned for lunch break at 12:35 p.m. and reconvened at 1:28 p.m.**

Mr. Johnson addressed the proposed changes in 15.9(B) & (C) (Issuance of licenses and certificates) due to changes in the title and number of the examination sections. He expressed concern that the new language “other related subjects” could be read to mean that it refers to the other 2 subjects of the exam. He stated that it was not the intent of the committee to broaden the PA examination. Mr. Johnson suggested changing the language to read “passed an examination in accounting, and auditing and other related subjects not to exceed 75% of the CPA examination subjects.”

Executive Director Steele and CPE Coordinator Barbara Walker raised the question of whether the term *nolo contendere* needs to be italicized throughout the law. Ms. Timmons replied that the term is italicized in brief writing and in law review text for legal purposes.

Chairman Honea stated that all Board members had received and reviewed copies of minority reports submitted by third parties. Mr. Johnson expressed concern about discussing issues in the minority reports which were not specifically addressed by the committee since this draft was being submitted as a committee report. Chairman Honea noted that since there were also non-Board members on the committee, this issue could be discussed and considered by the Board if a Board member wanted to discuss it. Mr. Johnson preferred to pass the draft as presented but expressed a willingness to discuss and make recommendations.

Mr. Johnson addressed the addition of new language in the definition of report. He explained that the AICPA and NASBA in developing safe harbor language for its rules allows a safe harbor report to say that the individual has not audited or reviewed the accompanying financial statements. He explained that although the Board allows a safe harbor report, it prohibits the use of that language. He added that the current safe harbor report promoted by NASBA and the AICPA is for the protection of the public to inform the reader that the non-licensee had not audited or reviewed the accompanying financial statements. He noted that most states has provided for safe harbor language but the Oklahoma Board had not.

Mr. Johnson expressed concern that if the Board provided for safe harbor language it would put the Board in conflict with the last portion of the definition of report that reads: “This definition is not intended to include a report on financial statements prepared by a person not holding a certificate or license. However, such a report shall not refer to “audit”, “audited”, “exam”, “examined” “review or “reviewed”, nor use the language “in accordance with standards established by the American Institute of Certified Public Accountants” or successor of said entity, or other professional body of governmental agency approved by the Board;” He noted that the committee did not address this issue.

Jim Nolen with the OSA proposed the inclusion of the verbiage “except when used in the negative” and added that the public is better served by making the cover letter more understandable. Chairman Honea remarked that the unlicensed want the privilege of using the term compiled but not the terms audited or examined. Ms. Timmons commented that many people do not understand these terms and that the reason for the safe harbor language in the UAA’s rules was to protect the public. Mr. Johnson stated that the definition of report used in the UAA is almost identical to what is currently in the Oklahoma statute except for the language regarding the unlicensed.

Mr. Johnson proposed the inclusion of language “except as provided in the rules, language known as the safe harbor language.” Vice Chairman Dugger recommended including the actual safe harbor language in the statute. Peggy Johnson, representative of the OSA, suggested adding the following sentence to those two areas: “However an unlicensed individual may refer to the terms not audited, not reviewed when disclosing services not performed.” Mr. Johnson suggested taking the currently proposed definition of report and then dropping in the language “except the following language used by an unlicensed individual when associated with financial statements.” Mr. St. John proposed adding the sentence: “Non-licensees may use the following disclaimer language in connection with financial statements not to be in violation of the Act, “we have not audited or reviewed”. Assistant Attorney General Kinney recommended using the term, “non-registrant,” since a licensee can be a PA only.

The final consensus was to use the following amended language from the UAA: “Non-registrants may use the following disclaimer language in connection with financial statements to not be in violation of the Act: “I (we) have not audited, examined, or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.”

Dugger moved that the Board submit the language as an agency request bill subject to the discussed changes that we have covered today and potentially subject to separating administrative items from just the fee increase if necessary for the legislation as our agency request or agency requests plural bill; St. John second. Affirmative votes: St. John, Engelbach, Dugger, Honea, Timmons and Johnson.

**Mr. Johnson and Ms. Timmons left the meeting at 2:12 p.m.**

**Discuss and Act on Proposed Draft of Permanent Rules Promulgation:** Vice Chairman Dugger expressed his appreciation as chairman of the Rules Committee for committee members’ participation.

**Ms. Timmons returned to the meeting at 2:13 p.m.**

Vice Chairman Dugger briefly addressed the summary of changes proposed in each subchapter.

**Mr. Johnson returned to the meeting at 2:15 p.m.**

Chairman Honea offered as a point of clarification that Subchapter 31 was the old standards with the phrase added that those will be effective through December 31, 2003 and Subchapter 32 is the new CPE standards, which would be effective for compliance periods beginning after December 31, 2003.

Chairman Honea invited suggestions about how to proceed with the discussion of this item. Vice Chairman Dugger suggested that Subchapter 22, Substantial Equivalency (SE), be addressed separately and preferably first. Chairman Honea stated that the SE rules as re-submitted by the committee are substantially the same with the exception of Ms. Timmons' suggested rebuttable presumption language. He explained that only 3 of the 5 committee members were present at the last committee meeting and, due to the strong feelings of the three members present, it was not possible to have a motion and second on any substantial change from the committee's previously submitted rules proposal.

Chairman Honea explained that if the Board is not able to come to an agreement on rules for SE, then individuals would still be able to come into Oklahoma under the SE statute. An individual wanting to come in under SE without rules adoption could apply to the Board or a committee appointed by the Board for the purpose of reviewing those applications. Mr. St. John stated that he was a member of the committee and that he was the only one who voted against a 60-day notification period. He favored a 15-30 day notification period after the individual has begun work. Mr. Engelbach concurred that the 60-day rule does not comply with the intent of SE. He maintained that the public will still be protected provided the form is appropriate to include all the necessary information and that a 30-day advance period for notification is difficult to accomplish. Mr. Johnson expressed concern that the Rules Committee's restrictive proposal might make a practitioner coming into the state refuse to comply. He cited the example of Minnesota's SE requirements allowing his firm to respond to a client very quickly. He noted that there are people from the border states who come into Oklahoma to practice who are not in compliance. He maintained that if SE requirements were flexible, the Board and the home state Board could discipline the CPA who does not comply.

Chairman Honea explained that these rules will be presented to the Board again after the public exposure period and subsequent public hearing. He noted that there are valid arguments on each side of this issue of whether or not SE protects the public. Mr. Johnson asked the Chairman to provide examples of how SE does not protect the public. Mr. Honea replied that allowing an individual to come into the state and practice for 15 or 30 days before notifying the Board does not protect the public. He added that another circumstance would be if there is no due diligence process to ascertain whether the applicant is the subject of any disciplinary proceedings in another state. He commented that some states do not always catch discipline problems.

Mr. Johnson explained that the concept of SE went through the same public exposure and rule development process with both the AICPA and NASBA. He commented that this concept was studied thoroughly by both AICPA and NASBA and found to benefit smaller, local practitioners. He was opposed to the issuance of a substantial equivalent credential since such a credential is not required in the statute under Substantial Equivalency. He noted that the statute requires notification, not a credential. He stated

that the only credential an individual must have is to be recognized as a CPA in good standing in their state, that the state entered must be notified, and notification by the suggested rules includes the individual's home state, certificate number and business address.

Chairman Honea noted that in the neighboring states of Arkansas and Kansas, only 50-80 CPAs enter these states on SE per year. Mr. Johnson stated that the reason for the low numbers is that the SE provisions in these states has only been in place for a year. He added that according to Executive Director Susan Somers from the Kansas Board, 60% of Kansas' registrants are Missouri CPAs. Vice Chairman Dugger recommended the following requirements: an SE form be filed each year, the firm be registered with the Board, the form be sent to the Board office within 15 days of entering the state. He proposed the following process: staff would inform the SE individual if he/she must withdraw the application based on findings, the withdrawal would be immediate, the individual can appeal but must first cease all activities, and there would be no automatic fine. He added that if the CPA comes into the state, there would be an automatic enforcement action.

Johnson moved that the term "Substantial equivalent credential" be eliminated and do not adopt the rules in Subchapter 22 as submitted and adopt rules similar to those in the Uniform Accountancy Act; Engelbach second. Affirmative votes: Johnson, Timmons, Engelbach, and St. John. Negative votes: Honea and Dugger. Motion passed.

Chairman Honea addressed the quid pro quo fee. He suggested prohibiting non-residents from applying for a reciprocal certificate if they are eligible to practice under SE, due to the potential financial incentive. He cited the example of Texas charging Oklahoma registrants \$400 under their SE statute and explained that if a Texas CPA is eligible to practice in Oklahoma under SE, the Texas CPA should pay \$400 and not be eligible for a reciprocal certificate at a much cheaper cost. Mr. Johnson raised the issue of those registrants who currently hold reciprocal certificates in Oklahoma. Vice Chairman Dugger replied that these registrants would be allowed to retain their reciprocal certificates. Chairman Honea added that this provision would only apply to the new applicants.

Assistant Attorney General Kinney posed the question of what form of documentation will be provided to those CPAs qualified to practice in Oklahoma under SE for staff tracking purposes. Ms. Timmons proposed using a date stamp with a filing number for administrative purposes. Mr. St. John suggested stamping the SE form approved, dating it and then sending a copy back to the SE applicant. Chairman Honea maintained that there must be a numbering system. Mr. Johnson clarified that it did not have to be a credentialing system. Executive Director Steele explained that a huge database would be required and added that a credential system could be done within the Board's present database. Vice Chairman Dugger distributed a handout of concepts for a compromise position and noted that the committee had considered this alternative as a substitute for the whole section of SE.

Chairman Honea invited the Board to recommend the committee meet again and develop specific language. Mr. Johnson expressed concern that firms be given sufficient time to get registered with the Board in order to be in compliance with the statutory requirement. He suggested developing a rule allowing the firm of staff member entering the state under SE 30 days to get registered. He asked whether the nexus issue will be determined by a third of the days of the year or whether they enter into the state via the internet. Vice Chairman Dugger replied that there are other internet provisions within the statute but if a person has substantial business interest in the state that should be considered.

Mr. Johnson noted that Ohio, Illinois and Virginia require no notification. He explained that the notification requirement was a compromise in the UAA's rules to give the state boards a level of comfort and added that as part of the compromise a short form was developed which could be filed electronically for the purpose of convenience, giving the registrants no reason not to comply.

Mr. Engelbach maintained that the Board would have all the information necessary to track these individuals. Chairman Honea proposed asking SE applicants how many days they intend to practice in the state. Mr. Engelbach opposed such a question because most SE applicants will be returning to the state year after year. Chairman Honea expressed concern that SE will create potential damage to the public. Mr. Johnson urged making the SE process convenient and flexible. Vice Chairman Dugger maintained that an appeals process would be allowed and that due process would be given should a disciplinary action arise from someone coming into the state without applying for SE. Chairman Honea commented that the issue at hand only involved the level of regulation. Mr. Johnson remarked that nexus was just another level of regulation that applicants would be forced to deal with. He noted that a person's practice privileges could be revoked should there be a violation since applicants have affirmed that they agree to comply with Oklahoma law.

Dugger moved to use his compromise position as a concept to allow the rules committee to draft appropriate SE language for presentation to all the Board members and for inclusion in a report; Timmons second. Affirmative votes: Dugger, Honea, Timmons. Negative votes: St. John, Johnson and Engelbach. Motion failed.

Mr. Engelbach suggested using the SE language in the UAA rules in addition to Vice Chairman Dugger's proposals of requiring individuals to withdraw from the state based on findings and there being an automatic hearing should it be found that the individual came into Oklahoma to practice. Mr. Johnson wanted an individual to continue to work in the state during the appeal process. He proposed that if the UAA language was adopted by the Board, there would be time to look at it during the public comment period to make changes to the rules based on other Board members' comments and the public's comments. He added that this measure would be in the public interest.

Ms. Timmons asked if the UAA rules had been considered by the committee and if so, why were the UAA rules not used. Vice Chairman Dugger replied that the UAA rules

were considered; however, a straightforward adoption of the UAA was not in the best interest of the citizens of Oklahoma and the Board. Mr. Engelbach asked why the UAA rules were not modified by the committee. Chairman Honea explained that if the SE language is not passed, an individual can be granted SE by the Board or by a committee appointed by the Board or it could be done administratively. Mr. St. John raised the question of whether a form would still be required.

Engelbach moved to adopt the UAA rules and add to that the first paragraph of Vice Chairman Dugger's proposal indicating that the staff will inform an individual if they must withdraw based on findings; withdrawal must be immediate; individual can appeal but must first cease all activity and file an appeal and still practice while under appeal; Johnson second. Johnson offered the amendment to include the revised draft of the form as submitted dated 5/06/02. Engelbach accepted the amendment. Affirmative votes: St. John, Engelbach, Johnson. Negative votes: Honea and Dugger. Timmons declined to vote until there was further discussion on the suggested notification form.

Ms. Timmons asked if the UAA form or Vice Chairman Dugger's proposed form would be used. Mr. Johnson replied that the UAA form was a starting place. Vice Chairman Dugger remarked that the UAA's form was very simplistic and added that the committee's proposed form gave the Board an opportunity to ask an applicant if he/she has been convicted of a felony, which may or may not be asked on another state's registration form. He noted that very few other states have adopted the UAA's form exactly but have added other items for the protection of the public.

Engelbach withdrew the portion of his motion regarding the form; Johnson accepted the withdrawal.

Engelbach restated his motion. Engelbach moved to adopt the UAA rules and add to that the first paragraph of Vice Chairman Dugger's proposal indicating that the staff will inform an individual if they must withdraw based on findings; withdrawal must be immediate; individual can appeal but must first cease all activity and file an appeal and still practice while under appeal; Johnson second. Affirmative votes: Timmons, St. John, Engelbach and Johnson. Negative votes: Honea and Dugger. Motion passed.

**Ms. Timmons left the meeting at 3:45 p.m. Chairman Honea declared her absence for the remainder of the meeting unavoidable.**

Chairman Honea addressed Section 10:15-20-1 (Requirement to give credential number and expiration date on certain documents) as groundbreaking since this provision is not in any other state's rules. He explained that it was designed as another tool for letting the public know who is properly credentialed in the state, which would be

easily verifiable with the Board. Mr. Engelbach maintained that a CPA's name and his/her firm's name are also easily verifiable with the Board. Mr. Johnson added that names of all registrants are available on the Board's website.

Engelbach moved to remove Section 10:15-20-1; Johnson second. Affirmative votes: Johnson, Engelbach and St. John. Negative vote: Honea. Abstained: Dugger. Motion passed.

Mr. Johnson addressed the proposed changes in Section 10:15-37-1(a) (Initiation of investigation). He stated that having two individuals involved in the enforcement procedure was in the interest of the public. Vice Chairman Dugger stated that the reason for the added language was for the purposes of having a quorum during hearings. He added that there is a review process of the Special Prosecutor and the Attorney General's office. Chairman Honea expressed concern about having too many Board members involved in the investigation process. He favored retaining the proposed language. Mr. Johnson expressed concern of one individual having too much power and offered that having at least two people deciding which cases go to hearing also protects people from being unfairly charged and it protects the Vice Chairman. Chairman Honea stated there is still a provision in the rules for an investigative committee to be appointed which would essentially negate any problems.

Johnson moved to take out "and who may be" from 10:15-37-1 so that it returns to the original language of the current rules; Engelbach second. Johnson offered the amendment to include all like provisions. Engelbach accepted the amendment. Affirmative votes: Johnson, Engelbach and St. John. Negative votes: Honea and Dugger. Motion passed.

Based on the previous motion, Vice Chairman Dugger noted that two people would be assigned by the Board with no one to head a committee. He suggested changing the wording in 10:15-37-1 to specifically designate the Vice Chair as the responsible individual serving on that committee to report items for prosecution. He proposed that the second member must work in concert with the Vice Chairman and once a decision is made it goes to the Attorney General's prosecution or the other Special Prosecutor. He added that all formal complaints must be filed by the Vice Chair. Mr. Johnson noted that the current rules already provide for that.

Executive Director Steele cautioned that if the language "and the designated member of the Board" is retained, both would have to file the complaint. Chairman Honea concurred with Vice Chairman Dugger that it be the Vice Chair's responsibility and not a committee. Mr. St. John interpreted the rules to mean that if all 3 committee members do not concur, the Vice Chairman must send a report to the Board and a complaint could not be filed unless all 3 committee members concur. Vice Chairman Dugger stated that there could be situation where the third party and the Special Prosecutor could issue the formal complaint and expressed concern for this inconsistency.

Chairman Honea raised the question of whether there had been a concern with the way enforcement matters were handled previously. Mr. Johnson expressed a concern of not having a second Board member assigned. He explained that the rules provide for this and there was a specific purpose for this provision and added that there was a problem with the process. Chairman Honea asked if the process had ever failed. Mr. Johnson cited the hearing at this Board Meeting as an example. Chairman Honea commented that the Vice Chairman can consult with anyone he needs to in matters of enforcement.

Dugger moved that the Board designate the Vice Chair specifically as in charge of enforcement effort provide that any charges against a registrant be presented by the Vice Chair for purposes after consultation with the other member and that the other member will not be the referring party; Honea second. Affirmative votes: Dugger and Honea. Negative votes: Engelbach and Johnson. Abstained: St. John. Motion failed.

Engelbach moved to remove in Section 10:15-39-3(b) all of the underlined language in 10:15-39-3(1)(A), 10:15-39-3(1)(B) and 10:15-39-3(2); Johnson second. Affirmative votes: Engelbach, St. John and Johnson. Negative votes: Honea and Dugger. Motion passed.

In discussion of the last motion, Chairman Honea addressed that with passage of the Sarbanes-Oxley bill such a provision will be needed eventually. He added that Oklahoma would have been the second state to enact such a provision. Mr. Johnson remarked that the California provision referred only to public companies while this proposed language refers to all companies. Chairman Honea raised the question as to why this principle does not apply to all. Mr. Johnson replied that there are different stakeholders and added that this was a local firm issue since most small privately held companies get their employees out of CPA firms. Chairman Honea commented that this was more of a matter of international accounting firms placing their employees with audit clients. Mr. Johnson stated that this additional language was more restrictive than the Sarbanes-Oxley Act. He added that this issue had also been discussed in the Regulatory Structure Committee and that the committee decided not to take action on this until the Public Oversight Board decided how to implement the Sarbanes-Oxley Act. Chairman Honea stated that the reason for the language being more restrictive was a matter of being more consistent with the principle involved.

Mr. Johnson asked about the deletion in 10:15-39-3(b)(A)(ii) (Independence). Vice Chairman Dugger replied that as time passes, the January 1, 1993 date is not that determinative.

Mr. St. John raised the question of whether the 5-year records retention period starts on the report date or at the end of that year. Mr. Engelbach asked if it was the year-end date. Chairman Honea suggested that since this is a semantics issue, it be addressed in the final rulemaking process. Mr. Johnson commented that the goal should be to extend and not shorten the time period.

Dugger moved that the Board accept the documents presented today and the changes discussed and voted on by this Board; Johnson second. Unanimous affirmative vote.

Jim Nolen with the OSA asked if third parties would be allowed to give input at the Public Hearing. Chairman Honea suggested that comments be presented at or before the public hearing as opposed to coming up with new issues the Board meeting at such time the rules have to be adopted.

**Report on Personnel Actions:** Executive Director Steele reported that Pam Warren has approved all the personnel issues and added that Paulina Coffman would be official as the Board's Administrative Assistant next Friday.

**Discussion of Staff Salary Increases and Action Resulting from Discussions in Executive Session:**

Johnson moved to go into Executive Session; Engelbach second. Unanimous affirmative vote.

Johnson moved to come out of Executive Session; Engelbach second. Unanimous affirmative vote.

Assistant Attorney General Kinney noted for the record that the during the Executive Session the Board discussed only this item and that no votes were taken.

Chairman Honea reported that there would be no motions and no action taken on this item.

**New Business:** Executive Director Steele asked the Chairman which members planned to attend the public hearing on the rules to be held at 9:00 a.m. at the Board office on February 23, 2003. Chairman Honea preferred that Vice Chairman Dugger be present and that he may also attend. Ms. Steele asked the Chairman if he wanted the members of the Board to be informed about the House subcommittee which Mr. Collins represents and that the Board will be asked to meet with the subcommittee. Chairman Honea responded in the affirmative.

**Next Meeting Date Announced:** The next Board Meeting is scheduled for 8:30 a.m., February 28, at the Board office in Oklahoma City.

**Deceased Registrants: CPAs:** Charles E. Billingsley, Certificate No. 1328, issued February 4, 1959; Patrick Anthony Conner, Certificate No. 2021, issued January 27, 1968; James Louis Durham, Certificate No. 805, issued January 22, 1952; Irvin R. Lumley, Certificate No. 1095, issued January 28, 1956; Wilbur F. Marshall, Certificate No. 767, issued August 2, 1951; Sidney F. Spradlin, Certificate No. 1103, issued January 28, 1956; William McNeil Zumwalt, Certificate No. 1435, issued July 29, 1960.

**PAs:** Willis Noel Clark, License No. 7, issued June 6, 1968; John A. Simmons, License No. 36, issued June 18, 1968

**Applications and Registrations Approved:** The Board took official notice of the following applications and registrations, which have been approved by the Executive Director:

**Applications for Reciprocal Certificates:**

15637-R	William Keith Gauer
15638-R	Cheryl J. McCue
15639-R	Tonya Lynn Rohrbaugh
15640-R	Jacqueline Owen White

**Applications for Reinstatement of CPA Certificates:**

12444	Wenjian Xing
12803	Alan G. Vail

**Initial Registration of a CPA Limited Liability Partnership:**

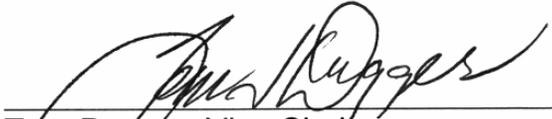
Adami, Lindsey & Company, L.L.P.

**Adjournment:** There being no further business to come before the Board, at 4:39 p.m. Chairman Honea called for a motion to adjourn.

Johnson moved to adjourn the meeting; Dugger second.  
Unanimous affirmative vote.

  
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Archer M. Honea, Chairman

ATTEST:

  
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Tom Dugger, Vice Chairman

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