
TEXAS STATE BOARD REPORT



FEBRUARY, 1985

AUSTIN, TEXAS

VOL. 19

SYMPOSIUM REVIEW... COMMISSIONS, CONTINGENT FEES, INCOMPATIBLE OCCUPATIONS

Seventy licensees from across the state participated in the Board's January 4 symposium in Austin to discuss commissions, contingent fees, and incompatible occupations. The symposium was organized as a means of informing the Board more fully on the topics, though no prior decision had been made by the Board as to whether or not any of the current rules should be modified. The Board has no present intention to change any of its existing rules, and no such action will be taken until there have been public hearings and further deliberations by the Board.

Overview of Problem Areas

STANLEY J. SCOTT, CPA and Vice-Chairman of the Board, opened the conference by providing an overview of the topics, to include a chronology of the development of the rules from their inclusion in the first standards of professional conduct in 1932 to their present wording. Scott attributed the recent significant increase in inquiries and complaints to the higher profile of the Board as a result of the Sunset Review process, the addition of the enforcement staff in 1980, the publication of enforcement violations in THE TEXAS STATE BOARD REPORT, and the development of the computer industry and widespread merchandizing attitude which has developed as part of its growth pattern.

AICPA Position

The position of the American Institute of CPAs (AICPA) was presented by WILLIAM C. BRUSCHI, CPA, Vice-President-Regulation. Regarding commissions, the AICPA position is "to enforce the prohibition against the acceptance of commissions for the referral of sales of products or services to others, regardless of what the situation is."

The AICPA has also continued enforcement of the contingent fee prohibition, Bruschi stated, "primarily because the council was persuaded that relaxing the prohibition would seriously undermine the pro-

fessional reputations and/or the integrity and objectivity of AICPA members in the eyes of the public."

Regarding incompatible occupations, Bruschi stated that it was his impression that "it has not been possible to identify an activity or a function that CPAs can legally undertake that would be in conflict with the definition of the practice of public accountancy as defined by the Code of Professional Ethics," although he added that certain state laws reserve specific activities to licensed professionals, such as the practice of law or medicine.

Experience of the California Board

The California Board, as a result of the state's mandate that each agency insure that it is not "legislating through the regulatory process," has recently reviewed all of its rules. ROBERT BILLINGS, CPA and former Board member, stated that the Board's initial proposal to amend the commission rule was not passed due to the forceful opposition of the California CPA Society. The amendment would have indicated "disclosure" to be the answer to the commission problem.

The contingent fee rule also remained unchanged, he said, but the incompatible occupation rule, cited as unenforceable by the California Attorney General, was amended. The amended rule changed the title to "Incompatible Occupations/Conflict of Interest," and stated that licensees could not engage in "other businesses or occupations which impair independence or objectivity and which create a conflict of interest in rendering professional services."

Experience of the Florida Board

Florida's solutions to problems in the topic areas, as related by JEROME A. SCHINE, CPA and member of the Florida Board, received considerable attention by participants during the afternoon discussion sessions.

Continued on page 2

Symposium (continued from page 1)

The Texas and Florida rules are similar regarding commissions, Schine said, except that the Florida rule adds that "payment of a fee to the referring CPA for services he may render on the engagement does not constitute payment for the referral commission." An example, Schine said, would be "if a CPA refers an engagement to you and you then utilize him or the client utilizes him on the engagement, this does not constitute a commission."

The Florida contingent fee rule differentiates between value billings and contingent fees, with a value billing being one which does not indicate a prearranged formula to determine the fee.

The incompatible occupation problem was handled, Schine said, by revising the definition of the practice of public accounting. The definition was expanded to exclude activities of licensees who do not hold themselves out as certified public accountants, "with an exception being that if the CPA is associated with financial statements, he is considered to be practicing public accounting whether or not he is holding himself out."

"Holding Oneself Out" was then defined as publicizing the licensee as a CPA in such a manner that an uninformed person may not be able to distinguish whether or not the licensee may also be in the practice of public accounting.

Florida has also defined "Other Business Activity," Schine said. The rule specifies in part, that a licensee engaged in the practice of public accounting may concurrently engage in another business activity if the licensee does not hold himself out as a CPA in that activity; the activity is conducted under a name which the public will not associate with licensee's practice of public accounting; the activity is not used to promote the public accounting practice; and the entity does not interpret financial statements, forecasts or projections audited, reviewed, compiled or prepared by others.

Points of View ... Industry

JOHNNIE RAY SEALE, CPA, stressed the constant pressure from outside sources to involve licensees in other business activities and gave examples of the "double discipline" resulting from a licensee's being forced to follow both the rules of the employer and the rules of the Board, which might in some instances be contradictory.

... Government

DANIEL PAUL, CPA and City Auditor of Dallas, indicated that when government entities require an auditor to be a CPA and when the individual has independent audit responsibility, "we have the same problems as a practitioner would have and are subject to all of the same concerns."

... Education

CHARLES T. ZLATKOVICH, Ph.D., CPA, questioned the rationale in prohibiting contingent fees relating to services as an expert witness. He also noted that in a comparison he had conducted between academics shown as CPAs in an educational

roster and those listed by the Board as licensed, only slightly more than half held licenses to practice. "Under the broad definition of the practice of public accountancy used by the Texas Board," he said, "I expect that nearly all of us dispensing advice about fiscal or financial matters are in the practice of public accountancy."

... Public Practice

The trend toward firms' participating in management consulting services was noted by *OSCAR E. REEDER, CPA*, Fort Worth. Getting too involved in financial services, he said, might lead to a problem with a client regarding independence. "The decision must soon be made as to whether we're in a profession or a business; hopefully we can be in both. I think the reason many of us wanted to maintain the code of ethics is so that we can still be called a profession." He indicated that while the taking of prearranged contingent fee would not be acceptable, the changing of higher than standard fee under certain circumstances would probably be permissible under current rules.

Legal Ramifications

HOWARD ROSE, Austin attorney, identified "independence" as the prime legal test of a Board rule. "In Texas," he said, "rules are generally valid as long as they are consistent with the Statute and as long as they don't limit or extend it beyond what it states."

Discussion Group Topics

During the afternoon, participants were divided into three discussion groups, with *FRANK T. REA, CPA*, Board Chairman; *WALTER D. DAVIS III, CPA*, Board member; and *JAMES F. DUNN, Jr., CPA*, Board member, moderating.

Questions discussed by the groups were:

- Is the current definition of the practice of public accountancy accurate?
- Within the definition of the practice of public accountancy, does the phrase "perform or offering to perform" need to be amplified?
- Does the use of "Certified Public Accountant," "CPA," or "Public Accountant" constitute an offer to perform in every case? If not, what constitutes "holding out"?
- If a licensee is holding out as a CPA or Public Accountant, should the licensee be permitted to concurrently engage in activities other than public accounting? ... accept a commission? ... accept a contingent fee?
- If a licensee is **not** holding out as a CPA or Public Accountant, should the licensee be permitted to accept a commission? ... a contingent fee?
- Should the Board establish and disseminate a list of incompatible occupations and, if so, what occupations should be listed?
- Should the Board vigorously pursue violators of rules regarding commissions, contingent fees, and/or incompatible occupations, or hold off until a position is decided at the national level?

From the Chairman . . .

An increasing number of complaints are being processed by the Board against both licensees and non-licensees. In many instances, a simple step by the individual or firm would have precluded both the complaint and the necessity for Board investigation and action.

I am devoting my column this issue to a review of more frequent and/or serious types of complaints in the hope that if you fall in any category mentioned, you will correct the situation and forestall complaint action.

Complaints Involving Individuals

The Enforcement Section currently has 24 open files regarding failure of a licensee to return records to a client when requested to do so. There are few instances when such a refusal is proper, and the matter has been addressed frequently in the BOARD REPORT.

The lack of sufficient work paper backup, particularly in engagements with county, state, or national agencies, is another frequent violation. Technical standards must be complied with, and oral backup is not considered to be sufficient.

Even more obvious violations — there are 39 open cases at the present time — involve drug traffic, embezzlement, and other discreditable acts.

Complaints Involving Firms

The failure of firms to include "Professional Corporation" or "P.C." (when not a part of the firm name) each time the firm name is used is the most frequent type of complaint regarding firms. An obvious source for complain backup is yellow page advertisements.

Failure to register with the Board a partnership or professional corporation, to register a branch office of a firm, or to maintain a resident manager at each branch office is probably the next most numerous complaint.

The "incompatible occupation" rule is also violated, often in obvious ways. For example, at least a third of the open cases in this type of violation specifically involve the CPA's use of a company selling computer hardware as a feeder for the licensee's CPA practice.

Less obvious are instances of firms organized under the provisions of The Texas Business Corporation Act practicing public accountancy e.g., management advisory services. The Board's definition of public accountancy is broad, and most services performed by a licensee would fall within the definition.

Constructive Enforcement

It is obvious that inappropriate action in most of the above examples could have been easily corrected. The Board continues to support the policy of "constructive enforcement," whereby correction and education are encouraged and used, where appropriate, rather than disciplinary sanctions.

FRANK T. REA, CPA, Chairman

MAY, 1985 EXAM SCHEDULE

The May, 1985, Uniform CPA Examination will be conducted as follows:

Examination Sites

Austin	Lester E. Palmer Auditorium
Corpus Christi	Bayfront Plaza Convention Center
El Paso	University of Texas at El Paso Special Events Center
Fort Worth	Tarrant County Convention Center
Galveston	Moody Convention Center
Houston I, II	Albert Thomas Convention Center East and West Halls
Lubbock	Lubbock Civic Center
San Antonio	San Antonio Convention Center

Examination Times

May 8	1:30 p.m. - 6:00 p.m. Accounting Practice, Part I
May 9	8:30 a.m. - 12:00 Noon Auditing 1:30 p.m. - 6:00 p.m. Accounting Practice, Part II
May 10	8:30 a.m. - 12:00 Noon Business Law 1:30 p.m. - 5:00 p.m. Accounting Theory

The deadline for submission of applications to sit for the May, 1985, examination is February 28, 1985. Grades from the November, 1984, examination were released February 4, 1985.

MEETINGS

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

February 21 - 23, 1985
MARCH MEETING CANCELLED
April 25 - 27, 1985 (Annual Meeting)
May 31 - June 1, 1985
August 1 - 2, 1985 (changed from
July 25 - 27, 1985)

CPA SWEARING-IN CEREMONY

June 1, 1985 (changed from May 25, 1985)
November 16, 1985

NATIONAL ASSOCIATION OF STATE BOARDS OF ACCOUNTANCY (NASBA)

June 14 - 15, 1985
Southwest Regional Meeting, Nashville

UPDATE TO CE SPONSOR LIST ...

The following sponsors of CE courses have been registered with the Board since publication of the

last updated list in the November, 1984, BOARD REPORT:

Abilene Audit Clubb, Abilene, TX	01300	Criswell Development Co., Dallas, TX	01378
Abney and Company, Marshall, TX	01323	Custom Designed Pensions, Inc., Dallas, TX	01442
Academy of Real Estate, Austin, TX	01274	DB Scholl, Inc., Paoli, PA	01290
Affiliated Hospital Systems, Houston, TX	01253	Darrell B. Lane, Dallas, TX	01236
AG Edwards & Sons, Inc., St. Louis, MO	01329	Deltaus Corporation, Tyler, TX	01389
Ainsworth & Lambert, CPAs, Commerce, TX	01279	Don Woodliff, Jr., CPA, Waco, TX	01278
Alan F. Lucke, Corpus Christi, TX	01420	Eastern New Mexico University, Portales, NM	01247
Alexander Grant & Company, Austin, TX	01229	Eastfield College, Mesquite, TX	01234
Alicia Smith Inst. of Real Estate, Austin, TX	01305	EDP Audit Assoc-Austin Chapter, Austin, TX	01409
American Bar Association, Chicago, IL	01403	EDP Audit Assoc-North Texas Chapter, Dallas, TX	01294
American Center-Cash Mgmt. Studies, Clearwater, FL	01273	EF Hutton, Dallas, TX	01334
American Finance Group, Inc., Boston, MA	01443	Eilers and Jones, P.A., Raleigh, NC	01428
American Heart Association, Dallas, TX	01306	Engineering News Record, New York, NY	01298
American Hospital Association & (ASHRM), Chicago, IL	01340	Entre Computer Center, Dallas, TX	01433
American Hotel & Motel Asso. Audit Sub., Seattle, WA	01286	Eppler Guerin & Turner, Inc., Dallas, TX	01353
Anadarko Production Company, Houston, TX	01293	Erisa Study Group of Austin, Austin, TX	01494
Angelina College, Lufkin, TX	01339	Fancher & Company, CPAs, Corpus Christi, TX	01424
Arnold, Hancock, Roye & Company, Midland, TX	01342	Faske, Lay, Ryon, Singhaus & Sweat, Austin, TX	01374
Arthur Andersen & Co., New Orleans, LA	01315	Finser Investment Company, San Antonio, TX	01439
Arthur Andersen & Co., Tulsa, OK	01365	Florida Bar, Tallahassee, FL	01276
Arthur D. Little, Inc., Cambridge, MA	01277	FMC Corporation, Chicago, IL	01324
Arthur Young & Company, Australia	01272	Foundation for Accounting Education, New York, NY	01416
Association of CPAs in Government, Kelly AFB, TX	01406	Fred Pryor Seminars	01397
Association of Legal Administrators, Glenview, IL	01336	Gant and Toombs, PC, Wichita Falls, TX	01392
Assoc. of Metropolitan Sewerage Agencies, Washington, DC	01383	Gathers Software, Inc., Houston, TX	01281
Automatic Data Processing, Inc., Houston, TX	01388	General Micro, Dallas, TX	01271
Becker CPA Review Course, Houston, TX	01259	Georgia State University, Atlanta, GA	01330
Berry Smith Duke & Co., CPAs, Dallas, TX	01307	Gilliam, Brewer & May, Dallas, TX	01316
Blankenship Livings Lamar & Co., Montgomery, AL	01332	Globex Trade Finance Club, New York, NY	01343
Brazos Capital Company, Houston, TX	01380	Government and Nonprofit Section-AAA, Houston, TX	01423
Breedlove & Co., PC, Houston, TX	01368	Gruithandler Nussbaum Schwartz; Et Al, El Paso, TX	01317
Brock, Buchholz & Stow, P.C., Longmont, CO	01363	Guilford Company, Inc., Montgomery, AL	01333
Brooks Wilson & Company, Amarillo, TX	01415	H&R Block-South Texas, San Antonio, TX	01230
Burlington Northern, Inc., Seattle, WA	01413	Hall Real Estate Institute, Salado, TX	01418
Burnett Oil Co., Inc., Fort Worth, TX	01280	Hampton Associates, Inc., Dallas, TX	01319
Business Data Services, Inc., Jackson, MS	01369	Hannibal-Lagrange College, Hannibal, MO	01371
Cabot Corporation, Houston, TX	01314	Harrison, Norwood & Company, Bellaire, TX	01302
Caltex Petroleum Corp., Dallas, TX	01372	Haynes Wolfe & Co., Houston, TX	01194
Caper Group, Dallas, TX	01421	Healthcare Financial Management Assn. El Paso, El Paso, TX	01398
Cash Management Academy, Atlanta, GA	01346	Howard College, Big Spring, TX	01393
Cedar Valley College, Lancaster, TX	01282	IBM, Midland, TX	01356
Center Advanced Professional Education, Santa Ana, CA	01431	Informatics General Corp. MCS Division, Atlanta, GA	01359
Central & South West Services, Inc., Dallas, TX	01348	Inter Assn. Fin. Plan-West TX Chpt., Lubbock, TX	01390
Cessna Aircraft Company, Wichita, KS	01266	Interfirst Bank Harlingen NA, Harlingen, TX	01338
Chamber of Commerce/North Dallas, Dallas, TX	01328	J.B. Davis, Jr., CPA, Houston, TX	01327
Champlin Petroleum Company, Fort Worth, TX	01391	Jerry Decelle, Inc., CPA, Cheyenne, WY	01291
Charles T. Gregg, CPA, Whitewright, TX	01355	Jones Real Estate Colleges, Inc., Houston, TX	01312
Cheshier & Fuller, Inc. P.C., Dallas, TX	01322	Laredo State University, Laredo, TX	01435
Cristmann & Company, Houston, TX	01269	Lawrence M. Adler, Houston, TX	01373
Cobb Group, Inc., Louisville, TX	01258	Levitz Zacks and Ciceric, San Diego, CA	01235
Coca-Cola Foods, Houston, TX	01326	Lincoln Property Company, Dallas, TX	01249
Collier, Johnson & Woods, Corpus Christi, TX	01301	Longview Bank & Trust Co., Longview, TX	01257
Communispond, Inc., Dallas, TX	01414	Louisiana Dept-Revenue & Taxation, Baton Rouge, LA	01285
Community Service Program, Fort Worth, TX	01128	Mayrath, Seale & Company, Dallas, TX	01250
Comptroller of the Tres State of Tenn., Nashville, TN	01412	MBank Dallas, Dallas, TX	01400
Computer Aspects, Houston, TX	01270	McCormack & Dodge, Irving, TX	01351
Computerland, Houston, TX	01308	McLennan Community College, Waco, TX	01344
Computerland, Richardson, TX	01385	Meck, Lawrence R., CPA, Austin, TX	01244
Consolidated Capital, Emeryville, CA	01248	Medical Group Mngt. Association, Denver, CO	01377
CPA Managemen Systems, Inc., Frederick, MD	01396	Michael Wallace & Company, Dallas, TX	01242

Microtel Learning Services, Irving, TX	01311	Teleprocessors, Inc., Houston, TX	01381
MOK-Bledsoe International, Dallas, TX	01434	Temple Junior College, Temple, TX	01399
MSI Corporation, Monroe, CT	01407	Texas Assoc. Homes for the Aging, Austin, TX	01441
Mutual Benefit Financial Service Co., Providence, RI	01361	Texas Municipal Finance Officers Assoc., Richardson, TX	01237
Natale Institute, Houston, TX	01303	Texas Tech Univ-Div of Cont. Educ., Lubbock, TX	01362
National Assoc. Black Accountants, Houston, TX	01240	Texas Utilities Services, Inc., Dallas, TX	01289
National Assoc. CPA Firms, Columbia, SC	01364	Thomas A. Schulte & Associates, Northbrook, IL	01404
National Assoc. for Bank Cost Analysis, Dallas, TX	01275	Touche Ross & Co., San Francisco, CA	01350
National Assoc. for Accountants, Fort Worth, TX	01309	Travis & Associates PC, Dallas, TX	01401
National Association of Accountants, Abilene, TX	01411	Tulsa Junior College, Tulsa, OK	01313
National Management Assoc. Dallas Chapt., Richardson, TX	01384	Tymshare Dynatax Data Center, Houston, TX	01254
Nitty-Gritty Tax Seminars, Grand Rapids, MN	01310	US Air Force/Employee Trng & Dvlp., Randolph AFB, TX	01252
NU Comp Systems, Inc., St. Paul, MN	01410	United Capital Group of Texas, Inc., Dallas, TX	01243
Oakerson Arnold & Co., Mt. Pleasant, TX	01287	United Savings Assoc. Texas, Houston, TX	01426
Our Lady of Lourdes Reg. Med. Center, Lafayette, LA	01405	Univ. Arizona/Conference Dept., Tucson, AZ	01382
Pace Associates, Dallas, TX	01436	Univ. California San Diego, La Jolla, CA	01349
Paine Webber Jackson & Curtis, Dallas, TX	01422	Univ. Chicago Law School, Chicago, IL	01335
Pan Amer. Univ-Brownsville, Brownsville, TX	01233	Univ. of Alabama-Birmingham, Birmingham, AL	01299
Pan American Univ. Edinburg, Edinburg, TX	01296	Univ. of California/San Diego, La Jolla, CA	01357
Panfled, Edelman & Stein, San Antonio, TX	01284	Univ. Oklahoma Continuing Legal Educ., Norman, OK	01239
Parkland College, Champaign, IL	01360	Univ. South Carolina-Business Admin., Columbia, SC	01255
Parkland Memorial Hospital, Dallas, TX	01337	Univ. South Carolina-Dept. of Accounting, Columbia, SC	01367
Peak Consultants, Amarillo, TX	01325	Univ. Texas Arlington, Arlington, TX	01432
Peat Marwick Mitchell & Co., Shreveport, LA	01427	Univ. Texas/College of Bus. Admin., Austin, TX	01251
Permian Basin Chapter of CPAs, Midland, TX	01238	Univ. West Florida, Pensacola, FL	01408
Person/Wolinsky CPA Review Courses, Houston, TX	01304	US Air Force/Extension Course Institute, Montgomery, AL	01358
Philip Vogel & Co., CPA, Dallas, TX	01232	US Dept. Labor-Office Inspector Gen-Audit, San Francisco, CA	01265
PLFS, Inc., Austin, TX	01262	US Office Personnel Management, Washington, DC	01087
Plummer, Plummer and Welch, Brenham, TX	01148	USDA-Rural Electrification Admin., Washington, DC	01430
Portland State University-CPE/BA, Portland, OR	01417	Vanderslice & Davila, Austin, TX	01386
Private Ledger Financial Service, Inc., Austin, TX	01267	Venture Corporate Finance, Inc., Houston, TX	01341
Proquest Corporation, Houston, TX	01395	Victor J. Marino, Beaumont, TX	01241
Prudential Bache Securities, Austin, TX	01437	Wegmann, Dazet & Company, New Orleans, LA	01321
Readex Educational Services, Inc., Houston, TX	01387	Western Tech, Fort Worth, TX	01347
Real Estate Financial Executives Assoc., Dallas, TX	01320	Westwood Community School, Austin, TX	01231
Reynolds, Snyder & Company CPAs, Sherman, TX	01354	William A. Jaco & Associates, Sherman, TX	01260
Richland College, Dallas, TX	01264	William G. Neil CPA, Cypress, TX	01345
Riggs, Wootan & Brown, P.C., CPAs, Sweetwater, TX	01261	Wyoming Department of Education, Cheyenne, TX	01295
Rio Grande Valley CPE Foundation - TSCPA, Edinburg, TX	01283	Zales Corporation, Irving, TX	01227
Robert H. Gardner Association, Inc., Seguin, TX	01288	Zapata Corporation, Houston, TX	01419
Robert S. Marquez, CPA, Albuquerque, NM	01376		
Robinson Grant & Co., P.A.	01425		
Rockwell Intl. Career Dev/Training Dept., Dallas, TX	01370		
Roger Bettis Clark, Stamford, TX	01352		
Rose Geistweidt & Co., Kerrville, TX	01429		
Safeguard Business Systems, Inc., Irvine, CA	01438		
Scientific Methods, Inc., Austin, TX	01375		
Sheshunoff & Co., Inc., Austin, TX	01440		
Sisters of Charity Health Care Systems, Houston, TX	01246		
Southern Gas Association, Dallas, TX	01245		
Southwestern Bell Telephone Company, Dallas, TX	01263		
Speakeasey Inc., Atlanta, GA	01402		
Squier Computer Services, Austin, TX	01318		
SRI International, Menlo Park, CA	01379		
State Examiner, Cheyenne, WY	01292		
Stewart, Ferguson & Robinette, Wichita Falls, TX	01297		
Sun Exploration & Production Company, Dallas, TX	01268		
Synergy Works, Inc., Arlington, TX	01256		
T.E. Lott and Company P.A., Columbus, MS	01366		
Teagarden & Teagarden, CPAs, Dallas, TX	01166		

ENFORCEMENT ...

REINSTATEMENTS: None

DISCIPLINARY ACTIONS:

Respondent: Unnamed by Board

Date of Committee Report: September 27, 1985

Committee Recommendation: The committee found that Respondent had been convicted of holding out as a CPA in the State of Kansas while not being licensed in that state in violation of Section 501.41 of the Rules of Professional Conduct. Respondent agreed to a private reprimand to be printed without name in the TEXAS STATE BOARD REPORT. The Board ratified the Agreed Consent Order on January 25, 1985.

Respondent: Unnamed by Board

Date of Committee Report: February 8, 1984

Committee Recommendation: The committee found that the Respondent made an oral fee estimate to a utility district in violation of Section 501.45(b). Respondent agreed to a private reprimand to be published without name in the TEXAS STATE BOARD REPORT. The Board ratified the Agreed Consent Order on January 25, 1985.

Respondent: Unnamed by Board

Informal Conference: August 15, 1985

Committee Recommendation: The committee found that the Respondent utilized promotional advertising by way of unauthorized solicitation which stated, "As a doctor, you should be able to save a fortune on taxes, send kids to college with tax deductible dollars, and retire with a fat nest egg." Such conduct was found to be in violation of Sections 501.44 and 501.43A(4) of the Rules of Professional Conduct. The Respondent agreed to a private reprimand to be published in the TEXAS STATE BOARD REPORT without name. The Board ratified the Consent Order on January 25, 1985.

Respondent: Unnamed by Board

Informal Conference: November 15, 1985

Committee Recommendation: The committee found that the Respondent published in a newspaper an advertisement which implied that Respondent could render services which would result in a reduced burden for every client and used the plural pronoun "us" when Respondent was a sole practitioner, all in violation of Section 501.43 of the Rules of Professional Conduct. The Respondent agreed to a private reprimand to be published without name in the TEXAS STATE BOARD REPORT. The Board ratified the Consent Order on January 25, 1985.

Date of Panel Hearing: January 24, 1985

Panel Ruling: The panel found that Respondents* had failed to renew their licenses for the past three (3) consecutive years. Further, that such failure to renew was basis for revocation of their certificates under the provisions of Section 21(b)(9) of the Public Accountancy Act of 1979, as amended. The Panel recommended that the certificates be revoked without prejudice. The Board approved the recommendation on January 25, 1985. NOTE: Following the revocation, several individuals have taken action to be reinstated.

***Respondents:** Charles A. Melhorn, James P. Sullivan, Cecil S. Baldwin, Grady C. Starnes, Morris J. Goldberg, William R. Kuttner, Edgar J. Battles, Varian J. Fuller, Robert W. Marshall, Richard J. Boland, Clinton O. Power, Woodrow W. Gavenda, Dewey G. Glasscock, Jr., James A. Mahalec, Alphonso S. Barre, Ralph B. Roberts, Albert Emery Brown, James Calvin Cohrs, Lyddell Laurence, John C. Elliott, Bobby C. Lynch, David Alan Tosh, James F. Hughes, Ivan Frank Burrows, Billy G. Davis, William Freeman Smith, Frank Eugene Zarsky, Ronnie Dale Badley, Fredrick Eugene Shahan, Michael Steven Rabor, Steven M. Franklin, Ruth M. Chapman, Edgar Irion Newstadt, Constantine H. Tseronis, David Robert Hall, Martha Frances Early, Ben F. Meador, Charles Louis Carpenter, Tracy J. Scott, Mike Edward Miles, Raymond E. Moore, Jr., Stephen Yongjick Cho, Leighton J. Stephenson, Alvin Lee Barker, Bobby J. Fogle, Ernest Charles Gere, John Ellis Obrien, Earl E. Odal, William Lafayette Boyd III, Wendi E. Bratcher, Lester Earl Murry, Jr., Hugh Charles Pennington, King Fai Tsui, Enriqueta Mercado-Gutierrez, George Calvin Harris, Neill Nash McKinney, Margaret A. Warrow, Jacquelyn Christine Treese, Richard H. Janss, Steven Jerome Fredrickson, Jane E. Ritzinger, Neil Alan Beals, Rudolph A. Straka, Bruce E. Dayhuff, James Thomas Elkin, Daniel J. Brown, Richard Long, W.J. Haley, Eugene Porter Graves, Diane Kay Geary, Carl Prelate Simpson, David Grant Howard II, William Stuart Meyer, Daniel Onwuzuruibgo Akaluso, Neal Slansky, Arthur Zarnowski, Matthew Stephen Hughes, William Hooper Kiernan, Edward G. Armistead, Dewitt T. Wallace, William M. Merritt, Sr., Henry A. Smith, Mace B. Thurman, Jr., Paul G. Burchell, H. Morris Stevens, A.V. Chambers, W.M. Hilley, V.E. Owens, Wright A. Stanley, Jr., C.A. Powell, Jr., Alberto Wenceslao Salada, Bryan Brewster, Edgar Clifford Barlow, Keith O. Peterson, Harold J. Thompson, Charles Howard Moses, Jr., Richard Huey Phillips, George Auston Young, Jr., Philip Joseph St. Germain, Daniel Julien Brannon, Jon Michael Lavine, Charles B. Fox, Mark S. Bigler, Deborah Beth Odell, Nora Waterloo Cotten, Claire Marie Mestayer, Kim Oanh Nguyen, Laura Rowny, John Alan Startz, Paul Michael Baker, Peter Gregory Wolfsehr, Charles Christopher Blake III,

Thomas Lester Dickens, Mario Alberto Mata, Alan Frederick Beyer, Daniel B. Lynch, Joseph F. Hornick, Nancy Sun Marsh, Matthew M. Roy, Patricia McCombie Archer, Louie A. Mukai, Jr., John Stanley Paroske, Jr., William James Winkler, Richard J. Emerick, Richard G. Maier, Elberta Wiginton Burba, Malcolm Crow, Leonard E. Huckabay, Joseph C. Ingram, Homer H. Jackson, Sr., Leonard Jones, Will G. Knox, Howard Martin.

Two suits, one in State District Court and one in Federal District Court, have been brought against the Board by unlicensed individuals contesting the Constitutional validity of the Public Accountancy Act of 1979, as amended, in the area of restriction of the use of the term "accountant" by non-licensees in advertising their services.

The requested injunction against the Board enjoining the Board from prosecuting or threatening to prosecute unlicensed individuals who hold themselves out to the public as accountants or describe their services as accounting was denied in the State District Court.

Updates on this continuing litigation will be provided in future issues of the BOARD REPORT.

ENFORCEMENT ACTIVITY

October 31, 1984 - January 31, 1985

Active Files	Rules	Act	Total
Oct. 31, 1984	201	265	466
Files opened during period	336*	55	391
	<u>537</u>	<u>320</u>	<u>857</u>
Files closed during period**	71	28	99
	<u>466</u>	<u>292</u>	<u>758</u>

* Includes 265 CE cases

** 25 via voluntary compliance, 66 via Board action, and 8 otherwise (unlicensed individuals who have ceased doing business, cannot be located, or died)

SUBSTANTIVE RULES

No changes to substantive rules have been proposed or passed since the last issue of the BOARD REPORT.

BOARD HISTORY

Over 700 CPAs, public accountants, and firms have pre-ordered copies of the *History of the Texas State Board of Public Accountancy*.

The history, which traces the Board's activities from its creation in 1915 through 1981, will be a pictorial as well as a written account by Dr. James A. Tinsley of the Gulf Coast Historical Association. Dr. Tinsley also authored the *Texas Society of Certified Public Accountants: A History*.

The Board History Committee is looking into publishing options, and will make a report to the Board in the near future. Further developments will appear in subsequent issues of the BOARD REPORT.

LICENSE STATISTICS

As of February 6, 1985:

Certified Public Accountants:

23,027 male
7,287 female
604 retired (male/female)

Public Accountants:

165 male
24 female
212 retired (male/female)

Section 14 Registrants:

72 male
12 female
1 retired

Partnerships: 512

Professional Corporations: 709

LETTERS TO THE EDITOR

The Board will be pleased to review (and print in future issues of the BOARD REPORT) "Letters to the Editor" with comments regarding matters discussed at the symposium on commissions, contingent fees, and incompatible occupations.

QUESTIONS AND ANSWERS

- Q. When must the words "Professional Corporation" or the initials "P.C." be used with the incorporated name?
- A. The name or designation any firm may assume or use shall contain the personal name or names of one or more individuals presently or previously members thereof, and the name or designation any individual may assume or use shall contain his name. No trade name or descriptive words indicating character or grade of service offered may be used or included. If the firm is incorporated, the firm name must include "Corporation," "Incorporated," "Professional Corporation," or "Company" or an abbreviation thereof, and the words "Professional Corporation" or "P.C." must appear in or with the firm name each time it is used. **Section 501.47-Firm Names of The Rules of Professional Conduct.**

Check Your Yellow Page & Newspaper Ads

- Q. May a CPA use a "blind" advertisement utilizing a telephone number and/or post office box number only?
- A. No. To comply with Section 501.43A(2) of the Rules of Professional Conduct, the advertisement must contain the name of the CPA or registered firm.
- Q. If there is only a change in name of a partnership, must the new name be registered?
- A. Yes. See Section 512.26(G) - Partnership Names - Texas State Board of Public Accountancy - Substantive Rules.

- Q. If a new firm is formed or branch office established during a registration period, must such be registered before the next registration period?
- A. Yes. Application should be made to the Licensing Division for proper registration **PRIOR TO COMMENCING** business under the new firm or at the branch office.

TEXAS STATE BOARD REPORT

Published by the **Texas State Board of Public Accountancy**
1033 La Posada, Suite 340
Austin, Texas 78752-3892

Current Info.:

(512) 451-3060

Admin. and Enforcement:

(512) 451-0241

Licensing, Exam and CE

(512) 451-6576

EDITOR Jane I. Johnson

BOARD MEMBERS

Frank T. Rea, CPA, Chairman
 Stanley J. Scott, CPA, Vice-Chairman
 William H. Quimby, Secretary
 Robert S. Driegert, CPA, Treasurer
 Sue W. Briscoe, CPA
 Walter D. Davis III, CPA
 James F. Dunn Jr., CPA
 James D. Ingram, CPA
 Joel P. Kay, Attorney
 Earl C. Lairson, CPA
 Oscar C. Mascorro, CPA
 Barbara Shimaitis

EXECUTIVE DIRECTOR Bob E. Bradley



TEXAS STATE BOARD REPORT



Texas State Board Report of Public Accountancy
 1033 La Posada, Suite 340
 Austin, Texas 78752-3892

U.S. POSTAGE
BULK RATE
 PERMIT NO. 834
 AUSTIN, TEXAS