

**CALIFORNIA BOARD OF ACCOUNTANCY**

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

**FINAL**

**MINUTES OF THE**  
**FEBRUARY 25, 2008**  
**BOARD MEETING**

Marriott Courtyard Sacramento Cal Expo  
 1782 Tribute Road  
 Sacramento, CA 95815  
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## I. Call to Order.

President Donald Driftmier called the meeting to order at 9:30 a.m. on Monday, February 25, 2008, at the Marriott Courtyard Sacramento Cal Expo and the meeting adjourned at 12:24 p.m.

Board MembersFebruary 25, 2008

Donald Driftmier, President	9:30 a.m. to 12:24 p.m.
Robert Petersen, Vice President	9:30 a.m. to 12:24 p.m.
Rudy Bermúdez, Secretary-Treasurer	10:09 a.m. to 12:24 p.m.
Sally Anderson	9:30 a.m. to 12:24 p.m.
Richard Charney	9:30 a.m. to 12:24 p.m.
Angela Chi	9:30 a.m. to 12:24 p.m.
Lorraine Hariton	Absent
Leslie LaManna	Absent
Bill MacAloney	Absent
Marshal Oldman	9:30 a.m. to 12:24 p.m.
Manuel Ramirez	9:30 a.m. to 12:24 p.m.
David Swartz	9:30 a.m. to 12:24 p.m.
Lenora Taylor	9:30 a.m. to 12:24 p.m.
Stuart Waldman	Absent

Staff and Legal Counsel

Patti Bowers, Chief, Licensing Division  
 Paula Bruning, Office Technician  
 Don Chang, Supervising Senior Staff Counsel, Department of Consumer Affairs  
 Dominic Franzella, Peer Review Analyst  
 Scott Harris, Deputy Attorney General, Department of Justice  
 Greg Newington, Chief, Enforcement Program

Deanne Pearce, Exam and RCC Manager  
Dan Rich, Assistant Executive Officer  
Carol Sigmann, Executive Officer  
Theresa Siefert, Manager, Administration Division  
Jeanne Werner, Deputy Attorney General, Department of Justice

Committee Chairs and Members

Harish Khanna, Chair, Administrative Committee  
Tracy Garone, Chair, Qualifications Committee

Other Participants

Bruce Allen, California Society of Certified Public Accountants  
G.V. Ayers, Senate BP & ED Committee  
James Brackens, American Institute of Certified Public Accountants  
Conrad Davis, California Society of Certified Public Accountants  
Mike Duffey, Ernst & Young LLP  
Michelle Elder, Society of California Accountants  
Kenneth Hansen, KPMG LLP  
Ed Howard, Center for Public Interest Law  
Linda McCrone, California Society of Certified Public Accountants  
Carl Olson  
Richard Robinson, E&Y, DT, PWC, KPMG  
Gregory Santiago, Legislative Analyst, Department of Consumer Affairs  
Hal Schultz, California Society of Certified Public Accountants  
Phil Skinner, Center for Public Interest Law  
Jeannie Tindel, California Society of Certified Public Accountants  
David Tolkan, Society of California Accountants  
Mike Ueltzen, California Society of Certified Public Accountants  
Kitty Williamson, Deputy Director, Administrative Support Services, Department of Consumer Affairs

II. Board Minutes.

**It was moved by Mr. Swartz, seconded by Ms. Anderson, and carried unanimously to adopt the draft Board minutes of the January 17 - 18, 2008. Mr. Bermúdez was temporarily absent.**

III. Report of the President.

Mr. Driftmier welcomed the group and introduced Mr. Don Chang, Supervising Senior Counsel for the Department of Consumer Affairs, and indicated he was filling in during Mr. Ritter's absence.

A. Mobility Resolution.

Mr. Driftmier talked about the reasons he developed the *Mobility Resolution* (**see Attachment 1**). He stated that there is not a lot of positive media attention given to CPAs as there is to doctors and lawyers. He added that he is a member of a Board of Directors of a major southern California hospital. As a corporate Board, they hire auditors to audit the hospital. Due to Sarbanes-

Oxley rules, he indicated that he is often called upon as a licensed CPA to be the financial professional on the audit committee. Although his peers on the Board are intelligent individuals, they defer to the CPAs on the Board the in-depth discussions about the audit report. The non-CPA members do not understand what that report does and how it affects the hospital. He indicated that he believes that the members of the Legislature have similar issues. Unless they are a licensee, or in a business that regularly interfaces with an accountant, there is not a lot of interplay about what CPAs do.

Mr. Driftmier stated that CPAs make the headlines if they make mistakes, but beyond that, he believes that the resolution approach to what the Board is trying to accomplish in legislation would be a simple way to historically layout where the Board was, where it has been, and what it is trying to accomplish.

Mr. Driftmier explained that all CPAs have to proceed through an education process, which is universal and the movement is toward substantial equivalency. The Board has a long history of accepting educational credits from institutions outside of California. He noted that the issue is accreditation and the Board had addressed that. Mr. Driftmier additionally stated that all boards offer the computer-based examination that is offered many times each year by the AICPA.

Mr. Driftmier reported that after the Board had looked at what other states have done, and at the National Association of State Boards of Accountancy (NASBA) along with the Uniform Accountancy Act (UAA), it appeared that there can be a uniform way to operate as a licensed professional that is similar to the education and examination processes. He noted that these issues summarize what the Board is trying to do with non-notification for all states, and have all jurisdictions perform their professional diligence and work with consumers and licensees to have multi-state and global practices. Mr. Driftmier indicated that this is the basic preface for the resolution to be put before the Board.

**It was moved by Mr. Swartz, seconded by Mr. Ramirez, and carried unanimously to adopt the Mobility Resolution. Mr. Bermúdez was temporarily absent.**

Mr. Ed Howard, Senior Counsel for the Center of Public Interest Law (CPIL), indicated that Mr. Driftmier's explanatory comments were helpful. However, he indicated that CPIL had a separate viewpoint. He provided an example using the National Association of Insurance Commissioners (NAIC). In his hypothetical situation, the NAIC went to the current Insurance Commissioner in California and indicated that there were several states that are doing an excellent job at insuring the solvency of insurance companies. In addition, the NAIC stated that even though California has some unique requirements to allow insurers who are licensed out-of-state to examine their liquidity and solvency before they are allowed to sell insurance policies in the state, they would like to pass a policy to remove any effort on behalf of the California Insurance Commission to look at the underlying solvency of insurance companies before they are allowed to practice in California because it impairs the ability of insurance companies to be able to sell freely in California. Mr. Howard indicated that the separation in his viewpoint is not whether or not that is a good or bad policy, but whether or not the Insurance Commissioner in that hypothetical situation would be serving the public well if it just said "yes" without

actually looking on a state-by-state basis where each insurance company is licensed as to whether those claims were accurate.

Mr. Howard continued his explanation of the separation in viewpoints as to the question of whether the Board should recommend a policy relying on other states' disclosure and enforcement policies before it actually looks at what those disclosure and enforcement policies are on a state-by-state basis. He noted that the question is not having to do with the expertise of a CPA versus a layperson, but has to do with the responsibilities of a regulatory board prior to recommending a policy to the Legislature.

Mr. Howard highlighted areas on the resolution that he thought inaccurately portrayed the state of the record in front of the Board. Mr. Howard referred to the seventh point on the first page, and the final bullet point on the second page. He stated that he believed the enforcement information is inaccurate because the Board does not yet have an enforcement procedure as a part of its legislation, and he does not know how the Board can characterize a proposal that it has not yet reviewed, let alone approved. Mr. Howard next referred to and quoted the sixth bullet point on the second page. He said he considered this to be accurate without being true. He then indicated that an Orange County Register reporter looked at all 50 state Web sites and concluded that only 19 of them provide disclosures that are comparable to the state of California.

Mr. Howard indicated that he believed that the sixth bullet point was accurate without being true because the "Whereas" implies that you could go to all state boards' Web sites and find comparable information to what California provides. He stated that he tested the system by searching for a convicted felon on the California Board's Web site, and a separate felon on the Washington Board's Web site, both of which had been barred from practicing in their perspective states. Mr. Howard reported that the Washington licensee's record was clean, however, the California licensee's revocation was reflected on the Web site with an explanation. He stated the idea that Californians will be able to go to another state's Web site and get information comparable to what is on the Web site in California is either untrue or sufficiently untested so that no hint of it should be in the Board's resolution.

Mr. Swartz stated that he does not believe that the individual from Washington that Mr. Howard mentioned would apply for a Practice Privilege in this state, and he indicated that he believed the people that will qualify will apply, and the people that will not qualify will not apply. He asked Mr. Howard what the benefit would be to the consumer at that point.

Mr. Howard replied that Mr. Swartz was hypothesizing his scenario in the absence of a single person that had been dissuaded from practicing in California because of the three page notification form. Mr. Howard then referred to a conversation from the last Committee on Professional Conduct (CPC) meeting, wherein Mr. Ritter discussed the legal problems that are endemic of the tough new standards the Board is saying already exist, but the standards have yet to be considered or approved. He then stated that during that conversation, Mr. Newington observed the problems with having no notice is that the Board does not know who is practicing in this state. Mr. Howard indicated that if you have someone who has been banished from practice by the

Securities and Exchange Commission (SEC), the SEC will not know to send a notice informing California regulators and consumers that this person has been barred from practice with the SEC. Mr. Howard indicated that CPIL does not like the underlying proposal, however, that is a separate question from whether it fulfills the responsibility of the Board. He indicated that when the Board forwards this proposal, he believes that the homework should be done to check all states' Web sites.

Mr. Swartz stated that in the years since implementation of Practice Privilege, the Board has yet to find a person like the individual from Washington trying to come into California and applying for Practice Privilege. He further stated that the Orange County Register article was not very factual. He asked Mr. Howard to respond to the fact that the Board has yet to identify a problem licensee through the Practice Privilege Program in California.

Mr. Howard stated that he was being asked to prove a negative. To say that the existence of the three-page notification form has prevented people who would otherwise practice here from doing so because they have to fill out the form, then the form is a good thing. He indicated that he believed that the problem is that nobody knows the definitive answer to this question. He stated that the Board should task the staff with questioning and documenting the assumptions under which the Board is operating.

Mr. Swartz responded that he believes the Board has done its research regarding the Practice Privilege Program. He stated that NASBA has determined that there will be 40 states that have passed mobility legislation by 2009. He noted that this is not just a California issue, but an issue that has been discussed by almost every state legislature in this country.

Mr. Howard stated that he was not aware of any individual who has come forward and indicated that they are discouraged or impaired from working in the world's sixth largest economy because of its three-page notification form. He indicated that he believed that the Board should take time to test its assumptions and not automatically take NASBA's word for it.

Mr. Driftmier acknowledged the passionate beliefs of both sides. He stated that the Board does not offer consumer protection by having someone fill out a piece of paper and file it with the Board. He noted that it is not the same type of review that is performed when licensing someone in the state of California.

#### IV. Continued Consideration of Key Policy Issues Related to Mandatory Peer Review.

Mr. Driftmier stated that his practice and others have chosen to belong to professional societies and become part of the peer review process. In addition, some have chosen, because they audit companies that have publicly traded stock, to be subject to Public Company Accounting Oversight Board (PCAOB) review. He further noted that there are some practicing accountants that have chosen to prepare financial statements without subjecting themselves to the cost of a peer review. A mandatory peer review is to ensure that the consumer knows that CPAs are following accounting principles and standards by having those firms and practitioners reviewed at least once every three years. Mr. Driftmier invited staff to address the Board.

Mr. Franzella provided an oral summary of his issue paper regarding oversight of the mandatory peer review program (**see Attachment 2**). He then asked if the Board had any questions or comments.

Mr. Driftmier thanked Mr. Franzella for a well written report. He stated that the Board currently has the Qualifications Committee (QC) and the Administrative Committee (AC) which are made up of all licensees. The QC performs a tremendous duty to the consumers of California by determining if the applicant's experience is sufficient to meet licensing requirements. He indicated that the AC reviews and discusses enforcement related issues. He stated that he believes that the Peer Review Oversight Committee (PROC) will be a similar committee made up of licensees. Mr. Driftmier indicated that peer review has become a standard in both private and public industry. He asked Mr. Franzella whether staff for this committee would be rerouted from other areas, or if new staff would be hired.

Mr. Franzella responded that it is not anticipated that given the staff's current situation, it could absorb the new committee's responsibilities. He stated that there will be a fiscal impact and staffing needs report to the Board at its May 2008 meeting.

Ms. Anderson stated that Mr. Franzella did an excellent job on this report, and that she agreed with all of the responsibilities and duties that would be assigned to the new committee. However, she stated that she fears there will be a lot to do for the committee members. She inquired if Mr. Franzella had calculated the amount of time required and the difficulty in recruiting committee members.

Mr. Franzella responded that this had been considered and it was estimated that five to seven people would be needed for the committee to fulfill its various responsibilities. The essential functions have been identified to have a robust program oversight component, but until they actually perform those functions it will be difficult to gauge the time that would be required.

Mr. Petersen shared Ms. Anderson's concern in finding people to dedicate the time to this. He asked Mr. Franzella if the staff have looked at what some of the other larger states have done in establishing their oversight structure, particularly with the number of hours involved.

Mr. Franzella replied that approximately 19 other states have some type of oversight. It ranges from the state Board actually performing the oversight to committees made up of one to seven members, as well as some states using consultants. The problem that the California Board faces is its size in comparison to many other states. For example, Mississippi has a standing committee of three people, but they do not have nearly the volume of reviews that California will have. California's PROC is going to require a large commitment from its members, which could possibly mean that the PROC would need to expand to a larger number to accommodate the workload.

Mr. Oldman noted that the report left open the possibility of having public members on the PROC. He inquired as to what public members would be able to contribute. Mr. Franzella responded that the idea had been considered but the requirements were not outlined. He noted that the public member would have to be relatively

knowledgeable of accounting fields and that it was an option up for the Board's consideration.

Mr. Driftmier responded to Mr. Oldman that even the licensees would be required to have expertise in what was being reviewed by the PROC. He added that public members may be able to act as liaisons to the Board.

Ms. Sigmann indicated that based on the qualifications for these programs, a Board member could not act as a liaison to the PROC. The process requires that Board members not be involved in this process so they can be impartial to any cases that the PROC may forward to the Board for hearing.

Mr. Petersen inquired if there is anything in the American Institute of Certified Public Accountants (AICPA) Rules that addresses regulator's involvement in this process.

Mr. Brackens indicated that the concern of the AICPA would be having Board members involved in the actual deliberations of a firm's report. This becomes a confidentiality issue and puts the Board members in conflict with their fiduciary responsibilities.

Mr. Franzella clarified that an additional staff person would need to be hired for committee functions, such as coordinating schedules, packages, meeting facilities, and preparing meeting minutes. This would be in addition to any work received for enforcement to review. He indicated that the issue of additional staff would be discussed at the Board's May 2008 meeting.

**It was moved by Mr. Driftmier, seconded by Dr. Charney, and carried unanimously to move forward with the framework for the Peer Review Oversight Committee.**

V. Continued Discussion of Administrative Suspension and Other Enforcement Options Related to Cross-Border Practice

This agenda item was deferred to the March 20-21, 2008, CPC and Board Meetings.

VI. Understanding the Role of State Government Related to Resolving the Board's Enforcement Division's Staffing and Recruitment Crisis.

Ms. Sigmann introduced and welcomed Ms. Kitty Williamson, Deputy Director of Administrative and Support Services at Department of Consumer Affairs (DCA). Ms. Williamson started at DCA in September of 2007. Ms. Sigmann commented that she has had the opportunity to work with Ms. Williamson several times, respects her highly, and is excited about the work she is doing for all the boards of the Department. Ms. Williamson's background includes a Master's Degree from the Goldman School of Public Policy at U.C. Berkeley, and her Bachelor's of Arts degree is from Duke University. Ms. Sigmann noted that she has had a long duration of service with the state in numerous positions.

Ms. Sigmann referred to the materials included in the agenda packet (**see Attachment 3**), which provided a background of the steps the Board has taken in

an attempt to establish a salary increase for the Investigative Certified Public Accountant (ICPA) classification series. Ms. Sigmann summarized the information and indicated that the Board has made four requests in the last five years that have been unsuccessful. Furthermore, in August 2006, the Board submitted a 20 percent salary adjustment request to the Department of Personnel Administration (DPA). In July 2007, the raise was denied, but DPA indicated that the Board would receive a structure of bonuses. The bonus system resulted in a financial disincentive for the ICPAs to promote to the supervising classifications because they would receive a cut in pay for a number of years, as they can only receive the bonus when they have been at the top of the pay structure in that classification for one year.

Ms. Sigmann reported that the Board included a survey in its recent recruitment flyer. The recruitment materials were sent to more than 40,000 active licensees that were eligible for the positions. Responses received from the survey included statements that the lack of interest was due to non-competitive salaries. She noted that the few applicants for the recruitment examination that did participate had minimal or outdated skills and the Board ended up with only two individuals passing the examination. A primary goal of the recruitment process was to attract personnel to ultimately establish a southern California field office, however, the dismal exam results will not allow that for the foreseeable future.

Ms. Sigmann provided additional comments related to the road blocks the Board is experiencing in attempting to obtain a salary adjustment by utilizing the bargaining process for the ICPA classifications and referred to the handout titled "Establishing Salary Increases for Represented and Non-Represented Employees" (**see Attachment 4**).

Mr. Driftmier then commented that the Board is self-funded and does not take any monies from the General Fund. He indicated that he believed it is important that the Board be allowed to spend its money towards something that is so important for consumer protection. He stated that he appreciated Ms. Williamson being at the meeting and asked her to respond to why the Board cannot spend its money how the Board thinks it should best be spent for consumer protection.

Mr. Swartz reported that the requested 20 percent increase has been the same amount since he has been on the Board. He indicated that he does not believe that 20 percent would allow the Board to recruit an individual that is being paid a true "market value." He would like to see the Board request "market value" instead of an arbitrary percentage.

Ms. Sigmann commented that the DPA does not consider "market value" but they compare salaries with other entities outside of the state. She indicated government entities are not designed to compete with the private sector, but will always have salaries that are lower than private industry due to the benefit packages. She reported that the Board was requesting a 30 percent increase in proposed legislation and Ms. Williamson would be addressing this issue later in the discussion.

Ms. Williamson thanked the Board for allowing her the opportunity to come and meet everyone. She stated that the DCA is very supportive of the Board's proposal. She indicated that Mr. Scott Reid went to DPA last summer to discuss

the need for the proposal. She said that although the Board described the proposal as being denied by DPA, they lack the authority to solely set salaries. Salaries have to be bargained and negotiated by the respective unions. Ms. Williamson reported that DPA granted salary differentials, which is what the bonuses were considered. However, the bonuses did not work, as Ms. Sigmann previously described. DCA has now forwarded the Board's salary proposal package to the State and Consumer Services Agency (Agency). The proposal package is very comprehensive and provides all of the data of the Board's attempt to hire and recruit ICPAs. She indicated that Mr. Reid wrote a cover memo on the package strongly endorsing it, and stating that the increase should be no less than 20 percent.

Ms. Williamson then referred to the Governor's Executive Order S-01-08. She stated that although it does not affect DCA, Agency Secretary, Ms. Rosario Marin, has requested that DCA consider funding only essential services. Mr. Reid's cover memo stressed that the Board's request should be considered an essential service. Therefore, DCA is in agreement regarding the salary increase needed to recruit and retain staff in the Enforcement Division.

Ms. Williamson stated that the Dills Act makes the bargaining process the driving force in setting salaries in state service. She stated that in her management experience, she has found that salaries above the Rank and File level, the supervisory level, trail the Rank and File bargaining process. Therefore, the ICPA salary is the driving force and needs to be addressed first in the bargaining process. Ms. Williamson indicated that historically, salary adjustments for supervisors and managers are then made to be consistent with the salary increases given to Rank and File employees.

Ms. Williamson added that there is a larger problem. She stated that many state salaries are lower than the private sector or even other local or federal government agencies. This is a problem affecting a large number of professional salaries, for example; auditors, nurses, doctors, and pharmacists. Therefore, the Board is caught in a problem that is much larger than just this one classification. Ms. Williamson indicated that this is a general problem within the state system.

Ms. Taylor inquired as to why there was not a distinction between General Fund and Special Fund entities.

Ms. Williamson clarified that all state entities go through the same process. DPA and the bargaining process with the unions is where salaries are set. DPA looks at equity across state service and wants to have the best salaries to attract and retain quality people in state service. She reported that because of the current budget issues of the state, many technical positions' salary increases have been affected.

Ms. Taylor inquired as to whether a distinction could be created between Special Fund and General Fund entities to allow Special Fund agencies to proceed with their funding needs.

Ms. Williamson stated that DPA does not consider funding sources. They are looking at it from a personnel perspective and they have a work force of 237,000 people in over 4,000 classifications. DPA wants those salaries to be consistent with each other regardless of their funding source. Therefore, the fact that the

Board can pay for an increase in ICPA salaries is less important to DPA than the fact that they are facing a whole civil service system that it needs to keep in sync with itself. She stated that the Board has an argument for an increase in ICPA salaries over other investigators because the Board's statutes require its investigators to be a CPA. This gives the Board a reason for a higher salary, and that is more compelling to DPA than the Board's funding source.

Mr. Swartz inquired as to why DPA has made the bonus process so restrictive and whether they had the authority to change it so the ICPAs could receive the bonus in the middle of a salary bracket. He noted that if it could be changed, it may take care of the Board's short term problem until the bargaining problem can be resolved. Ms. Williamson indicated that she did not have the answer but would be glad to check out that option with DPA.

Mr. Williamson stated that she believed that there is an opportunity to obtain a higher salary for this classification group because the Board has the licensure requirement and there is significant data behind the recruitment and retention issue. She said that she cannot speculate as to how long it will take, but she is hopeful that it can occur in this round of bargaining with the unions.

Mr. Howard, Senior Counsel for Center for Public Interest Law (CPIL), stated that in his efforts while he was in the Capitol and since working for CPIL in trying to address this issue, one of the questions that keeps coming up is why this is a problem. This Board is the only DCA board that requires its investigators to be licensees. The Medical Board does not require its investigators to be doctors and, as a consequence, you have to pay more. He indicated that this has been a problem in the past.

Ms. Sigmann stated that one of the obstacles that the Board would face would be paying consultants at much higher rates to assist the peace officers in preparing the reports. The other problem is that there is a tremendous problem in retaining peace officers in the state of California. She noted that recruitment and retention of peace officers is near impossible, and many of them go to the Department of Corrections.

Mr. Howard stated that he is not sure if that is consistent with the experience of the other boards. For example, he indicated that the Medical Board is having a "brain drain" of experienced investigators because they do not pay as much as the Attorney General pays. He suggested adopting the model in use by the other DCA boards by using line investigators that are not licensees and having the Attorney General's Office work the case up at an early phase, along with providing the file to an expert reviewer. He noted that it may not be ideal in the eyes of the Board, but perhaps it would be worth the discussion with one of the boards that uses this model.

Mr. Swartz stated that it was his understanding that the Board has investigators that are not CPAs. Ms. Sigmann indicated that all of the Board's investigators are CPAs, with the exception of the Associate Governmental Program Analysts (AGPA) that the Board uses for drafting documents for Cite and Fine or similar issues. The Board needs CPAs for those complex issues that cannot be handled by analysts.

Ms. Taylor inquired about hiring experts and whether that needs to be approved through the state process, or if the Board can do that out of its budget.

Ms. Williamson confirmed that the Board can hire consultants through the Request for Proposal (RFP) contract bidding process.

Ms. Sigmann stated that the Board has a statute that allows it to recruit without having to go through the bidding process. However, in the contracting process the Board has to comply with Department of General Services' (DGS) requirements. Mr. Bermúdez indicated that he believed that the point that Mr. Howard raised in regards to restructuring the Board's Enforcement Unit should be an item to be addressed along with the overall budget at the retreat that the Board is planning. He indicated that he believed that it is necessary to force the hand of the Administration and let DCA and DPA challenge the Board or not support its legislation.

Mr. Bermúdez also indicated that he believed that it would be an advantage to have the Governor veto a bill because it would bring attention to the matter of consumer protection in California. Mr. Bermúdez indicated that the Board should introduce two types of bills. One would be through budget bill language, and then a regular bill that is not tied to a budgetary move. He stated that the Board also needs to educate the legislators who chair those budget subcommittees. Mr. Bermudez indicated that the Board needed to use consumer groups as well as individuals from the industry to help move the Board's enforcement issue forward.

Mr. Ramirez inquired as to the current amount of investigators the Board is authorized to have. Mr. Newington indicated that the Board is currently authorized to have seven ICPAs, two Supervising ICPAs, and one Chief. He noted that there are presently two ICPA positions and one Supervising ICPA position vacant. He reported that the Board has hired another AGPA who will start on March 3, 2008. That AGPA will be totally dedicated to investigations of less technical matters. In addition, the two non-licensed AGPAs already on staff handle the investigative file processing efforts and most of the probation monitoring.

Mr. Ramirez inquired as to whether the Board is currently outsourcing.

Mr. Newington reported that the Board has outsourced some major cases. He noted that in the future, absent some significant shift, the Board will be outsourcing a much more significant portion of the workload. He indicated that outsourcing is expensive and there is inefficiency in the contracting process. Although the Board does not have to go out for bid, the Board still has to go through the contracting process, which takes approximately three to six months. In addition, the contract has to be case specific, so one contract consultant cannot investigate several cases that are identified later. Further, each contract includes a substantial burden in terms of "clearing" individuals to ensure contractors have no conflict of interest. The "good" contractors have often worked with the law firms involved or for the subject firms that are the target of the investigations.

Ms. Werner stated that an additional problem is the education curve that the Board faces related to outsourcing talent. Even with outsourced talent, there is a heavy reliance on in-house staff's understanding of the state administrative and legal processes.

Mr. Ramirez stated that he would like to move forward with the legislative solution Mr. Bermúdez proposed. He inquired if Mr. Newington agrees that the Board should look at a way of outsourcing more readily. Perhaps changing the current requirements so that outsourcing is not case specific, in order to provide more flexibility in hiring people when workload increases. Mr. Ramirez stated that he would like to make this a motion if there are no comments.

Mr. Petersen stated that he is in favor of outsourcing to the extent the Board is able. However, when Mr. Newington retires, the Board cannot outsource the position of Chief, and, additionally, the Board would also require two or three salaried investigators. He stated that the Board should look at outsourcing, but would like Ms. Sigmann to explain the contracting problems in terms of hourly rates, etc. Mr. Petersen stated that regardless of the contracting issues, the Board still needs to solve the salary problem, as that is where the Board is going to be in trouble.

Mr. Oldman inquired if the Board can contract with other state agencies to provide investigators. For example, if Corrections is hiring all the investigators, can the Board request assistance from Corrections to enable the Board to do its job?

Ms. Williamson replied that two agencies can enter into an interagency agreement to have an exchange of services. She indicated that this would be an interesting approach, but does not know whether or not it would be feasible. It would require approaching the other department to find out. She further explained that state agencies' personnel is based on workload, therefore, other departments may not have excess staff services to contract out.

Mr. Oldman asked if this solution would have to go through a legislative or contract review process. Ms. Williamson responded that interagency agreements can be done more readily than contracts. Mr. Oldman stated that this may be a short term fix if the Board needed investigators tomorrow.

Ms. Williamson responded that another option would be to hire retired annuitants, which is a group of people who may like to come back to work on a less than full time basis. She further explained that State Personnel Board (SPB) has recently developed a growing database titled "Boomerang," which is a register of retired annuitants who wish to return to work on a project basis. DCA is one of the first participants in this database, but she did not know how many people with investigator backgrounds are available. She indicated that the database is readily searchable and annuitants can be employed without going through typical hiring, contracting, or bidding processes. These individuals can be hired as temporary help quite readily.

Ms. Sigmann stated that there are investigators within the DCA's Division of Investigation, however, that office has its own problems with retaining and recruiting. The Board has previously used those investigators, but there were significant delays in their availability and the investigators didn't have the specialized subject matter knowledge required. Ms. Sigmann asked Ms. Williamson if there might be a solution where the Board can have more flexibility than such a focused contract with a limited-case situation for a limited period of time to deal with enforcement matters. She inquired whether there was any flexibility in the state contracting process and if the Department could work with the Board so it could do more outsourcing until this problem is solved.

Ms. Williamson replied that the DGS maintains two approved lists of contractors, which are titled CMAS and MSA. If there were individuals on either of these listings that could offer the type of investigative services the Board needs, they could be readily reached as they are considered pre-approved vendors.

Ms. Chi inquired if the Board can hire a permanent subcontractor, someone who does not care about the state benefit package and that the Board can pay as much as necessary. Ms. Williamson replied that the state generally allows up to three year contracts with vendors, which may include options to renew. Ms. Chi asked whether or not there is a limit to the salary the Board can pay should the Board hire a subcontractor.

Ms. Williamson responded that vendors are subject to the contracting process, which includes sending out a proposal and considering qualifications. The contract does not necessarily go to the lowest bidder, but a combination of factors are considered to determine the best value. Ms. Williamson then confirmed to Ms. Chi that the Board can offer three year contracts and that the Board is not bound to state salaries when contracting outside vendors.

Mr. Bermúdez asked whether a contractor can be a substitute for a vacant position. Mr. Newington responded that there are rules on employees versus independent contractors and a body of law within the U.S. Treasury regulations and the California Employment Development Department. A contract would need to be structured in a way that would satisfy the criteria for independent contractors. For example, a contracted individual cannot work at the Board office on a permanent basis.

Mr. Oldman stated that he believes that the Board not only has to proceed with the legislative option that is being developed, but there also needs to be further consideration of alternatives in case the legislative solution doesn't work in time for the Board. Those alternatives may include contracting, interagency agreements, or finding retirees on a part-time basis so that the Board can do its job one way or another.

Ms. Taylor asked Mr. Bermúdez what the timeframe would be on the legislative solution.

Mr. Bermúdez replied that the Board has some time, and that the Board can inquire with the chairs of both Assembly and Senate Business and Professions to find out what bills are being held in their committees. He stated that the Board could request a "gut and amend" to a bill being held and then move it through that house. He stated that the Board would know if its bill was signed by the Governor by the end of September.

Mr. Swartz indicated that the Board tried to get a bill through the last legislative session and no legislator would author it. He recognized that this was prior to Mr. Bermúdez joining the Board and that his presence may make a difference.

Ms. Sigmann commented that the Board was told its attempt to sponsor a bill was a little late in the legislative process last year. The timing for sponsoring a bill this year should not be an issue.

**It was moved by Mr. Ramirez, seconded by Dr. Charney, and unanimously carried to proceed with Mr. Bermúdez's proposed legislative solution, and additionally to direct staff, specifically Ms. Sigmann, to look at the requirements which may allow the Board to hire independent contractors and/or other subcontractors on a more general basis, in addition to utilizing the Boomerang Program.**

Mr. Driftmier commented that at each meeting, the Board has significant deliberation based on information that comes from Mr. Newington's office. It is not only in large cases that this expertise is needed, but also at each and every Board meeting such as the last one, wherein eight individuals had their licenses taken away. He stated that he appreciated Ms. Williamson's participation in the discussion, and hoped that the message and passion of the Board's needs for enforcement program assistance gets communicated to the Department.

Ms. Sigmann asked Ms. Williamson what is required to use the CMAS and MSA process and if the DGS allows individuals to get on one of those lists for the purpose that the Board is discussing. In addition, she inquired regarding the timeframe for going through the vendor process.

Ms. Williamson indicated she would have to research the answer to those questions. She stated that she has worked with both CMAS and MSA contractors in various capacities, and indicated there is an application process that she believes takes a number of weeks. Some vendors are on both lists. Although the lists are pre-approved, state agencies must still go through the bidding process. But these vendors, as a group, are more readily contacted and it is easier to obtain a bid from them.

Ms. Sigmann asked Ms. Williamson to get back to her on the process, timeframes, and the specialties that are on the lists.

Mr. Driftmier asked Ms. Williamson and Ms. Werner if there was an official way for their offices to weigh in on the proposed legislative solution.

Ms. Williamson responded that the DCA supports the ICPA salary increase, but because the administration goes through the DPA and the bargaining process, DCA could not support the legislation.

Ms. Werner stated that she does not know if her office could support the legislation but she would find out. She then inquired if there is a structural problem that occurred in the last bargaining unit contract where these classifications were overlooked, and what assurance there is that this issue would be addressed and remedied in the current bargaining process.

Ms. Williamson responded that DPA formally asked all state agencies to review their department-specific classifications, such as the ICPA, and identify those classes that needed to be addressed in the bargaining process. DCA put together a list of specific proposals for a number of classifications and the ICPA pay issue was number one for the Board. The fact that DPA requested the review indicates that it is aware there are a number of problem salary situations. She stated that at a recent conference she attended, Mr. Dave Gilb of DPA mentioned that the investigator class is an area where there are many subclasses, and there are

definite issues with salaries. Also, the proposal package that the Board put together has gone separately to the DPA and Agency, providing additional assurance that this issue will be addressed in the bargaining process.

Ms. Sigmann asked Ms. Williamson to investigate if there is an alternative to making contracts case specific, such as the Board putting five cases in one contract versus only one case. She referred to the special statute the Board has in Accountancy Act, but indicated that she has been told that the contracts have to be very case specific.

Ms. Werner stated that she is concerned about using contracts as the information contained in them is public, and investigations are non-public. She does not think the District Attorney's office would want to make its investigation contracts public.

Mr. Howard asked Ms. Sigmann if the specificity that she was referring to was as a consequence of interpretation of a code, or if it was the Department was requiring the specificity.

Mr. Newington responded that the direction came from the DCA or the DGS. In the past, when the Board tried to have a contract that could be generic toward work, the Board was denied and instructed that it had to identify a specific case and have the contract attached to that case to qualify the contractor and justify timeframe, hours, and rate. He indicated that the contracting process requires substantial time and is an obstacle to outsourcing enforcement work, unless it is a major case.

Ms. Sigmann agreed with Ms. Werner's statement regarding hiring investigators through a contractual arrangement. CPA firms or individual CPAs identified as subjects in these contracts could be judged as guilty prior to completing an investigation and filing an accusation.

Dr. Charney inquired if it would be difficult to change an investigator from a degree-specific classification, and then adapt the salary from that, which would likely be faster than pursuing legislation.

Mr. Newington responded that the Board uses a unique employee class that is the Investigative CPA, and there is no other agency that uses that class or that has the same minimum qualifications. Some of the other investigative classes have similar salary ranges, but they are different in the sense that they do not have a CPA license requirement.

Mr. Driftmier thanked everyone for all the information that was shared.

Ms. Sigmann stated that the Board intended to have an Enforcement Program Oversight Committee meeting on this subject, but inquired whether the Board wanted to bring this issue back to the full Board in March. Mr. Driftmier stated that the Board would continue with its present course of action and not pursue additional remedies at this time.

VII. Reconsideration of the Board's Denial of Mr. Carl Olson's Rulemaking Petition Regarding Restatements.

Mr. Chang provided an oral summary of Mr. Olson's petition, its background, and

the previous actions taken by the Board (**see Attachment 5**). He indicated that if the Board has reviewed and concurs with the Executive Officer's decision on the petition, it could take a motion to ratify Ms. Sigmann's decision denying the petition. Mr. Chang asked Mr. Olson to make a brief statement prior to the Board making a motion.

Mr. Olson provided comments related to his petition and distributed a copy of the text of his oral comments to the Board (**see Attachment 6**).

**It was moved by Mr. Swartz, seconded by Mr. Oldman, and carried unanimously to ratify the action taken by Ms. Sigmann which denied, in its entirety, the motion of Mr. Olson.**

**It was moved by Dr. Charney, seconded by Ms. Anderson, and carried unanimously to deny the petition for reconsideration.**

#### VIII. Board Member Comments.

Mr. Bermúdez recognized that the Board has moved forward on a piece of legislation (ICPA salary increase), but wanted to let everyone know that there is no guarantee. However, to do nothing and wait for things to happen is worse than moving a bill that may, or may not, eventually get passed.

Mr. Swartz asked that the Board try to get Mr. Dave Gilb of the DPA to attend one its meetings so the members can get some of their questions answered and explore opportunities instead of having a middle man.

Mr. Ramirez acknowledged the trust that the Governor has put in each member of the Board, and each member's desire to protect the public. He proposed that due to the focus on mobility issues and the specific focus on comments made by Mr. Howard of CPIL, a letter should be written to NASBA requesting that it maintain consistent information on its Web site for each state board.

Mr. Driftmier stated that he would like to work with Mr. Ramirez on that.

Ms. Sigmann added that the letter should also be very specific in the enforcement area, asking that NASBA specify when information is added and deleted.

Ms. Chi commented that she voted yes on the Mobility Resolution (See Agenda Item III.A.) because there is a need to move forward with a global vision. The state of California needs to make it convenient for consumers to do business with their CPAs. She indicated that she believes that this will become an international trend.

Dr. Charney stated that he believes that mobility is an important issue and there is a lot of protection behind it. He stated that this is the way the business world will be conducted in the future, and California should continue to lead.

Mr. Driftmier requested that each Board member submit their calendar information by Friday to Ms. Sigmann in regards to scheduling the Retreat.

IX. Comments from CalCPA Representative.

Mr. Hal Schultz reiterated the profession's consistent, strong support for an effective Enforcement Program. He stated that they have worked with Board members and staff in some of the initiatives that have been unsuccessful and they stand ready to assist the Board in achieving success in the initiatives adopted today.

X. Comments from SCA Representative.

Mr. David Tolkan concurred with Mr. Schultz' comments and commended the Board and staff on what has been accomplished with Peer Review.

XI. Public Comments.

No comments received.

XII. Agenda Items for Future Board Meetings.

No agenda items were identified.

XIII. Adjournment.

President Driftmier thanked everyone for attending during the busy tax season and adjourned the meeting at 12:24 p.m. on Monday, February 25, 2008.

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Donald Driftmier, President

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Rudy Bermúdez, Secretary-Treasurer

Paula Bruning, Executive Office Technician, and Carol Sigmann, Executive Officer, California Board of Accountancy, prepared the Board minutes. If you have any questions, please call (916) 561-1718.