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DEPARTMENT OF CONSUMER AFFAIRS (DCA)
CALIFORNIA BOARD OF ACCOUNTANCY (CBA)

MINUTES OF THE
APRIL 26, 2010
CBA MEETING

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Roll Call and Call to Order.

CBA President Manuel Ramirez called the meeting to order at 10:00 a.m. on Monday, April 26, 2010, and the meeting adjourned at 11:32 a.m.

CBA Members

April 26, 2010

Manuel Ramirez, President	10:00 a.m. to 11:32 a.m.
Sally Anderson, Vice President	10:00 a.m. to 11:32 a.m.
Marshal Oldman, Secretary-Treasurer	10:00 a.m. to 11:32 a.m.
Diana Bell	10:00 a.m. to 11:32 a.m.
Rudy Bermúdez	10:15 a.m. to 11:32 a.m.
Michelle Brough	10:00 a.m. to 11:32 a.m.

Angela Chi	10:00 a.m. to 11:32 a.m.
Donald Driftnier	10:00 a.m. to 11:32 a.m.
Herschel Elkins	10:00 a.m. to 11:32 a.m.
Louise Kirkbride	Absent.
Leslie LaManna	10:00 a.m. to 11:32 a.m.
Robert Petersen	10:00 a.m. to 11:32 a.m.
David Swartz	Absent.
Lenora Taylor	10:00 a.m. to 11:32 a.m.
Andrea Valdez	Absent.

Staff and Legal Counsel

Patti Bowers, Executive Officer
 Dan Rich, Assistant Executive Officer
 Rich Andres, Associate Information Systems Analyst
 Veronica Daniel, Executive Analyst
 Gary Duke, Legal Counsel, Department of Consumer Affairs (DCA)
 Paul Fisher, Supervising Investigative CPA
 Scott Harris, Deputy Attorney General, Department of Justice (DOJ)
 Lauren Hersh, Information and Planning Officer
 Rafael Ixta, Chief, Enforcement Division
 Matthew Stanley, Legislation/Regulation Analyst

Other Participants

April Alameda, Special Aide to the Director, DCA
 Russ Heimerich, Chief, Office of Public Affairs, DCA
 Ed Howard, Center for Public Interest Law (CPIL)
 Brian Joseph, Orange County Register
 Vicki Kinman, Office of Information Services, DCA
 Mario Rodriguez, Chairman, Hispanic 100
 Jonathan Ross, KP Public Affairs, Deloitte, E&Y, GT, KPMG, PWC
 Carol Rudat, California Women's Leadership Association (CWLA)
 Brian Stiger, Director, DCA
 Alfredo Terrazzo, Senior Assistant Attorney General, DOJ
 Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)

I. Roll Call and Call to Order.

CBA President Ramirez called the meeting to order on April 26, 2010.

II. Reconsideration of the Board's March 25-26, 2010 Action to not Post Accusations on the CBA's Web Site.

Mr. Ramirez stated that shortly after the March 2010 CBA meeting, Ms. Bowers received a call from DCA Director Brian Stiger, urging the CBA to reconsider its position on the posting of accusations, and stating the DCA would commence

with posting CBA accusations if the CBA declined. Mr. Ramirez stated the CBA was not aware of the DCA's intentions to post this information, and should be provided an opportunity to consider this fact prior to making a decision on this matter.

Ms. Brough recapped the series of events and meetings leading up to the CBA's decision to not post accusations. Ms. Brough stated the CBA made a decision to not post accusations based on due process concerns and potential Web crawling issues. Ms. Brough stated that this issue came before the CBA again with new information that the Web crawling issue had been resolved, however, nothing else was brought to the table regarding due process, and this issue was still outstanding. Ms. Brough stated the CBA members are very thorough, base votes on factual information, make rational decisions and take the goal of public protection very seriously. Ms. Brough stated she had not heard of any constitutional amendments where the due process clause was amended or removed, and there are no new facts or information being provided in order to make a new decision. Ms. Brough expressed concern that the CBA would be reconsidering its decision based on threats from the DCA, inspired by a blogger and lobbyist who is exercising rights to free speech. Ms. Brough further stated she would be highly surprised and disappointed if a CBA member were to change their vote based on no new facts in the matter.

Ms. Chi concurred with Ms. Brough regarding the due process concerns. Ms. Chi inquired if the DCA has received a written legal opinion regarding posting accusations prior to a hearing. Ms. Chi further stated the CBA needs to have more solid information before posting accusations on its Web site.

Mr. Elkins stated due process is not an issue since accusations are public record. Mr. Elkins further stated the question before the CBA is how the public may view it, either initially when posted to the Web site, or as a second step by having to request it be sent to them.

Mr. Ramirez stated it is up for debate whether pending accusations that have gone through an investigatory process should be posted prior to a formal hearing taking place.

Mr. Stiger thanked Mr. Ramirez for convening this meeting regarding the posting of accusations. Mr. Stiger recognized Mr. Ramirez for having the best interest of consumers in mind, and also recognized the CBA for posting information on its Web site that is easy for consumers to see when certain licensees have pending accusations against them. Mr. Stiger stated it is now time for the CBA to take the next step and place the paper accusations on the Web site. Mr. Stiger stated that consumer education and the ability for consumers to protect themselves is very important and critical to state regulators; additionally, those who are Governor Schwarzenegger appointees should recognize the Governor's goal to implement full transparency in State government. Mr. Stiger stated that Ms. Bowers would not send a fully vetted investigation to the Attorney General's

(AG) Office if she did not believe that there was clear and convincing evidence of some serious wrong doing, and the AG's Office will not file an accusation unless it believes that there is substantial evidence that the licensee committed a serious violation of the law. Mr. Stiger concurred with Mr. Elkins and stated this has nothing to do with due process; it has to do with consumer protection. Mr. Stiger stated that once an accusation is filed, it takes a long time for that action to be fully executed, which is why the DCA developed the Consumer Protection Enforcement Initiative. Mr. Stiger stated that providing consumers with information about a licensee relative to an accusation is one way we can help consumers protect themselves. Mr. Stiger further stated he is here to lend support and urge the CBA to reconsider its decision regarding the posting of accusations on its Web site.

Mr. Stiger addressed Ms. Chi's inquiry stating it has been well documented that accusations are public documents; therefore, there is not an issue with due process.

Mr. Duke concurred with Mr. Elkins, stating there is no due process issue with regards to posting of accusations. Mr. Duke stated that accusations are public record that initiates the due process for an individual, and is, in essence, a pleading, which will require a formal hearing.

Mr. Ramirez inquired if the CBA had within its jurisdiction the ability to require a hearing prior to the accusation. Mr. Duke stated the CBA has broad investigatory authority, and that investigatory hearings could be used prior to the initiation of an accusation. Mr. Ramirez inquired if the CBA currently requires investigatory hearings. Mr. Duke stated in certain cases, but not in all cases.

Ms. Chi inquired regarding the distinction of certain cases. Mr. Duke stated the investigatory hearings are conducted when there is difficulty obtaining information or evidence, but often times there is adequate information and evidence that has been received by the CBA.

Mr. Ramirez inquired if investigatory hearings could be a solution to the concern of due process and satisfy CBA members' concerns. Mr. Duke confirmed that the CBA does have the authority to require investigatory hearings.

Mr. Driftmier inquired if the CBA's current practice of posting information on its Web site, and allowing consumers to obtain more detailed information if so desired is not adequate. Mr. Stiger questioned why the CBA would not make this information available at the time a consumer accessed the Web site. Mr. Stiger stated it is the DCA's intentions that within the next 60-90 days, all boards and bureaus at DCA will post this information so that consumers may make informed decisions.

Mr. Driftmier inquired if the other boards/bureaus will be required to come up to CBA standards first, and then take the next steps in posting accusations.

Mr. Stiger stated almost all boards/bureaus provide information that an accusation is pending. Mr. Stiger stated he was acknowledging the CBA for making the information more simplified, and it is now time for the CBA to take the next step for full transparency by making accusations available on the Web site.

Ms. LaManna inquired if mandatory investigative hearings would have any effect on CBA making its final decision regarding accusations. Mr. Duke stated that investigative hearings may be conducted by staff; however, there are problems with ex parte communications as it is not part of the formal hearing process and it may cause delays. Ms. LaManna inquired regarding how long the process currently takes. Ms. Bowers stated that for FY 2008-09, the process took an average of 248 days from the date of accusation filing to the final decision.

Mr. Petersen thanked Mr. Stiger for attending this meeting in person and expressed his appreciation.

Ms. Bell inquired if it was fact that the DCA would post this information if the CBA withheld its current decision to not post. Mr. Stiger stated that it is the DCA's intention to post all accusations for boards/bureaus under the DCA within the next 60-90 days.

Mr. Ramirez thanked Mr. Stiger for his participation and providing testimony at this meeting, as well as direction from the DCA.

Mr. Howard stated that accusations are by law, a matter of public record, and no licensee should have any expectation of privacy in these documents. Mr. Howard stated he is not aware of a legal case which states there are 5th or 14th Amendment concerns with posting these documents. Mr. Howard stated that by statute, the priority of the CBA is public protection, and that the full accusation provides more information to the public than summaries. Mr. Howard stated that only the strongest cases are filed as criminal accusations as the CBA has to meet the clear and convincing evidence standards. Mr. Howard stated that accusations are completely different than raw complaints from consumers, and as documented by staff, only a tiny fraction of accusations are withdrawn. Mr. Howards stated that Web crawling can be entirely prevented. Mr. Howard stated that for these reasons, and with respect to the CBA's deliberations, its decision to prioritize the non existent privacy interests of licensees who have been formally accused of serious wrongdoing over providing the consuming public with an entirely truthful accurate picture of what wrongs the licensee has committed is an incorrect balance and inconsistent with CBA's mission. Mr. Howard suggested the CBA provide more information to consumers, and stated that there are ways to ensure consumers understand such information.

Ms. Tindel stated CBA is one of the first boards to post existence of potential disciplinary action on its Web site. Ms. Tindel stated that it is unfortunate the CBA is being required to revisit the matter based on a misleading blog stating that the CBA is keeping consumers in the dark, which is not the case.

Ms. Tindel stated that consumers wishing to hire a CPA can see pending existence of disciplinary action, and if more information is desired, consumers may request the accusation. Ms. Tindel stated that the CBA is very responsive in fulfilling its public protection mandate. Ms. Tindel stated it can and does happen that an accusation has no merit, but at that point damage to a CPA is done. Ms. Tindel stated if CBA proceeds with posting accusations, CalCPA would be more comfortable if the current internal processes were modified to ensure the CPA has been adequately informed and afforded the opportunity to provide a formal response prior to the accusation filing.

Ms. Rudat stated that it would be an extremely negative position to post any claims before they are solidified. Ms. Rudat stated that if the concern is that it takes too long to process the claims, then that's where the problem lies. Ms. Rudat stated there is a concern in causing irreparable damage to people. Ms. Rudat stated to her knowledge, anything that is searched through Google remains permanently encrypted in cyberspace. Ms. Rudat requested the CBA to consider keeping such information confidential until verified.

Mr. Rodriguez cautioned CBA members, stating that everyone deserves due process. Mr. Rodriguez stated that anytime anything is on the Internet, it is there forever. Mr. Rodriguez stated that anyone can make accusations about anyone they want, and that without due process, this is very wrong. Mr. Rodriguez expressed concern regarding how this will affect businesses throughout the State, specifically CPAs. Mr. Rodriguez urged CBA members to think hard about this decision and allow due process to take place before doing anything that will negatively affect anyone in business.

Per the request of Mr. Ramirez, Ms. Bowers read a letter from CAMICO for the record (**see Attachment 1**).

Ms. Anderson stated that based on the information and comments provided at this meeting, she feels the information that is currently on the CBA Web site is more than adequate to protect consumers. Ms. Anderson further stated that it would be harmful and unnecessary to have an unproven accusation on the internet, and she has not changed her opinion regarding this matter.

Ms. Bell stated she is shifting her opinion based on the fact that this information will be available in the next 60-90 days through the DCA. Ms. Bell further stated that increased access for consumers is important, and the CBA needs to be in line with the direction of consumer protection.

Ms. Brough stated there is a due process issue that has not yet been resolved and inquired if any other state boards of accountancy currently posts pending accusations. Ms. Bowers stated this information is not readily available; however, staff may research this matter and provide a follow up. Ms. Tindel stated that this inquiry was posed to the American Institute of Certified Public Accountants, and the answer was no.

Ms. Brough inquired whether there was knowledge of a letter to Senator Negrete-McLeod regarding the requirement for the Dental Board to post accusations relating to SB 1111. Mr. Stiger stated he was not aware of such letter. Mr. Ramirez requested for CBA staff to research details regarding said letter.

Ms. Chi expressed comments regarding due process and stated that she stands by her original vote to not post accusations.

Mr. Driftmier stated that several CBA members are consumers as well as licensees and take Governor appointment seriously. Mr. Driftmier stated if the information currently provided on the CBA Web site was not informative enough, the information is available at one-click away. Mr. Driftmier expressed concern regarding the demeanor of Mr. Stiger's memo to the CBA.

Mr. Elkins stated he has been impressed that CBA members are here because they have interest in keeping the profession honest. Mr. Elkins stated there have been a number of speeches regarding due process, and that this is no due process issue. Mr. Elkins suggested implementing a watermark on accusation documents to clarify an accusation is pending.

Ms. LaManna stated that six months is a short enough period of time to wait until posting accusations on the Web site. Ms. LaManna stated that she took her oath of office seriously to uphold consumer protection. Ms. LaManna stated as an American, she feels people are entitled to due process and human rights issue in that someone's reputation could be damaged.

Mr. Oldman stated there was a recent situation where an accusation was withdrawn because it was filled with false statements by a number of witnesses. Mr. Oldman stated that a watermark disclaimer may be a solution; however, the real issue is whether the CBA should assist in disseminating this information to the people who blog and spread news on the Internet. Mr. Oldman stated his opinion that the CBA should not assist such people until an accusation is proven.

Mr. Petersen stated the CBA should vote based on facts that accusations are public documents and are available by request, and are not merely complaints with no prior investigation for reasonableness as suggested in the CAMICO letter. Mr. Petersen commented regarding the CBA's investigation process and stated questions of due process are adequately addressed (See Attachment 2). Mr. Petersen stated that in protection of the public, he personally believes it is better to have facts available on Web site, rather than a summary. Mr. Petersen stated that most accusations that come before the CBA have a prior investigative conclusion by the Securities Exchange Commission, the Public Company Accounting Oversight Board, or the Office of Professional Conduct by the Internal Revenue Service. Mr. Petersen stated that the Web crawler issue continues to arise; however, the CBA staff have found that this information is not

retained on the Internet. Mr. Petersen suggested that CBA members support posting accusation based on the facts in this matter.

Ms. Taylor stated that members have not given much weight to the fact that this information will be posted, and the question is whether accusations will be posted by the CBA or DCA. Ms. Taylor further stated the CBA should maintain control on how the information is posted.

Mr. Ramirez thanked Mr. Stiger for allowing the CBA an opportunity to address the issue of posting accusations. Mr. Ramirez stated the CBA is within the jurisdiction of the DCA and it should take lead from the DCA when appropriate. Mr. Ramirez proposed a solution to address due process concerns as well as potential misuse of accusations on the Web site. Mr. Ramirez suggested requiring a mandatory investigative hearing to allow the accused an opportunity to defend himself or herself and provide evidence in anticipation of an accusation being posted. Mr. Ramirez also suggested having staff determine whether implementing an embedded watermark on accusation documents could allow for the public to understand the accusation is pending and not final, and the document could not be misused.

It was moved by Ms. Anderson, seconded by Ms. Brough to not change CBA position regarding this matter, allow DCA to post accusations with watermark, and for staff to pursue solution of investigative hearing. Ms. Anderson later amended this motion prior to a vote by CBA members.

Mr. Duke stated as a matter of procedure, the agenda title is for reconsideration of CBA's vote at its last meeting. Mr. Duke further stated the CBA should first address that issue, and then decide how to proceed.

Ms. LaManna suggested that the CBA is better off posting this information and allowing licensees an opportunity to post a response regarding the accusation.

Mr. Petersen suggested that the conference call is an awkward way to handle this matter. Mr. Petersen suggested the CBA vote to reconsider its decision and work out the details at a future CBA meeting.

Ms. Chi stated that if an investigative hearing and watermark are implemented, she would be willing to change her vote to support posting accusations on CBA's Web site.

Ms. Bell stated the CBA should be posting on its Web site as oppose to DCA posting the information.

(Tied to her motion above) It was moved by Ms. Anderson, seconded by Ms. Brough to post accusations with watermark on the CBA web site, and require a mandatory investigative hearing. Ms. Anderson later amended this motion prior to a vote by CBA members.

Mr. Petersen questioned why there is a need for a mandatory investigative hearing, which will only serve to delay the process, and also require a new regulation.

Ms. Taylor suggested the licensee be provided with an option to request hearing because everyone may not want a hearing. Mr. Petersen and Ms. Anderson concurred that implementing a hearing at the request of the licensee would be the best option.

(Tied to her two previous motions above) It was moved by Ms. Anderson, seconded by Ms. Brough to post accusations with watermark on the CBA Web site, and that a mandatory investigative hearing would be available at the licensee's option prior to posting. Ms. Anderson later withdrew this motion.

Mr. Stiger stated that with this motion, the CBA would be at least nine months away due to the need for regulatory process. Mr. Ramirez requested for Mr. Duke to provide clarification regarding circumstances where an investigative hearing may be implemented without a regulation change. Mr. Duke stated that for purposes of conducting a general application of a hearing, a regulation would be required. Mr. Ramirez requested if CBA policy may be implemented to remedy the situation until such time a regulation change is made. Mr. Duke stated that would not be possible. Ms. Bowers stated that implementing a CBA policy regarding this matter may be considered an underground regulation.

Mr. Stiger stated the first motion should be whether CBA is reconsidering its decision not to post accusations on its Web site. Mr. Stiger stated that if the motion passes, then the CBA may work out details. Mr. Stiger stated he would be encouraged if the CBA were to vote to reconsider its prior decision, assuming details are to be completed at next CBA meeting.

It was moved by Ms. Anderson, seconded by Mr. Elkins and carried to reconsider the matter of posting accusations on the CBA's Web site. Mr. Bermudez opposed. Ms. Brough abstained.

Mr. Ramirez stated this matter will be added to the agenda for discussion at the next CBA meeting and assigned to the Committee on Professional Conduct to work out details regarding execution.

III. Stipulations and Proposed Decisions [Closed Session Government Code Section 11126(c)(3)].

It was moved by Ms. Brough, seconded by Ms. Taylor, and unanimously carried by those present to withdraw this agenda item. Mr. Petersen was temporarily absent.

IV. Public Comments.

No comments were received.

Adjournment.

CBA President Ramirez adjourned the meeting at 11:32 a.m. on Monday, April 26, 2010.

Manuel Ramirez, President

Marshal Oldman, Secretary-Treasurer

Veronica Daniel, Executive Analyst, and Patti Bowers, Executive Officer, CBA, prepared the CBA meeting minutes. If you have any questions, please call (916) 561-1718.