

BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA

**FILED**

NOV 06 2015

INSURANCE COMMISSIONER  
OKLAHOMA

STATE OF OKLAHOMA, ex rel. JOHN D. )  
DOAK, Insurance Commissioner, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
DAVID BRUCE AUER a licensed )  
insurance producer, )  
 )  
Respondent. )

Case No. 15-1047-DIS

CONSENT ORDER

The State of Oklahoma, *ex rel.* John D. Doak, Insurance Commissioner (the “Insurance Commissioner” or “Petitioner”), and the above named Respondent David Bruce Auer (“Auer” or “Respondent”) agree to the entry of this Consent Order and jointly state as follows:

JURISDICTION

1. The Insurance Commissioner has jurisdiction of this cause, pursuant to the Oklahoma Constitution Article VI, § 22; the Oklahoma Insurance Code generally, 36 O.S. §§ 101 et seq.; and specifically pursuant to the Oklahoma Producer Licensing Act, 36 O.S. §§ 1435.1, et seq.

2. David Bruce Auer is a licensed resident insurance producer holding license 100181501. His address of record with the Oklahoma Insurance Department is 4906 E. 114<sup>th</sup> Place, Tulsa, Oklahoma 74137.

3. The Insurance Commissioner may place on probation, censure, suspend, revoke or refuse to issue or renew a license issued pursuant to the Oklahoma Producer Licensing Act and/or may levy a fine up to \$1,000.00 for each occurrence of a violation of the Oklahoma Insurance Code, 36 O.S. § 1435.13(A) and (D).

4. Informal disposition of this matter may be made by consent order. 75 O.S. § 309(E). Auer has been apprised of his rights, including the right to a public hearing, and has knowingly and freely waived said rights and enters into this Consent Order as a voluntary settlement to the issues and questions raised in the above captioned case.

### **STIPULATION OF FACTS**

1. Respondent is currently a licensed Oklahoma Attorney and a licensed Oklahoma Certified Public Accountant. He applied for a life, accident and health insurance producer license on January 30, 2014. The second background question on the application asks:

Have you ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration? “Involved” means having a license censured, suspended, revoked, canceled, terminated; or being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. “Involved” also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration.

2. Respondent answered this question “no” and certified, under penalty of perjury, all of the information in the application was true and complete. The Department issued a producer license to Respondent based on the information given.

3. The Oklahoma Insurance Department (the “Department”) was notified of an order issued by the Oklahoma Accountancy Board on October 17, 1997, in Case No. 1421-98; *In the Matter of David B. Auer*. The order had suspended Respondent’s certificate as a certified public accountant for a period of two years for failing to complete the required permit application and continuing education requirements (Exhibit “A”).

4. Respondent failed to disclose the suspension of his accounting certificate as required on his application for producer licensure.

5. An investigation by the Department revealed that Respondent was disbarred by the State of Colorado on July 23, 2014, in Case No. 14PDJ006; *The People of the State of Colorado v. David Auer* for engaging in the unauthorized practice of law in Colorado (Exhibit B).

6. Respondent failed to report the Colorado administrative action of disbarment to the Oklahoma Insurance Commissioner as required by 36 O.S. § 1435.18(A):

A producer shall report to the Insurance Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days (30) days of the final disposition of the matter. This report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

7. Thereafter, the Oklahoma Bar Association initiated a reciprocal disciplinary proceeding against Respondent on December 5, 2014, in Case No. SCBD #6213; *State of Oklahoma ex rel., Oklahoma Bar Association v. David Bruce Auer*. That action is currently pending before the Oklahoma Supreme Court (Exhibit C).

8. The Department discovered that Respondent had entered into a Consent Order with the Oklahoma Accountancy Board, Case No. 2048; *In the Matter of David Bruce Auer, CPA, License No. 9356*, following reinstatement, on March 20, 2015, due to his failure to disclose his Colorado disbarment and other administrative actions on his reinstatement application (Exhibit D).

9. The Accountancy Board found he had committed fraud and deceit in filing for his reinstatement and committed other acts that reflect adversely on his fitness to practice public accounting. The Oklahoma Accountancy Board fined him \$1,000 and placed him on three years probation.

10. The Department also determined that on January 30, 2015, the Colorado State Board of Accountancy had also fined Respondent \$5,500 in a Stipulation and Final Agency Order, Case No. 2014-4068, for Respondent's failure to disclose his Colorado disbarment (Exhibit E).

11. Respondent failed to report the Oklahoma and Colorado administrative actions to the Oklahoma Insurance Commissioner as required by 36 O.S. § 1435.18(A).

#### **AGREED CONCLUSIONS OF LAW**

1. Respondent violated 36 O.S. § 1435.13(A)(1) by providing incorrect, misleading, incomplete or materially untrue information in the license application.

2. Respondent violated 36 O.S. § 1435.13(A)(2) by violating 36 O.S. § 1435.18(A) in failing to report other administrative actions in another jurisdiction or by another governmental agency in this State.

#### **ORDER AND CONSENT**

**IT IS THEREFORE ORDERED** by the Insurance Commissioner and **CONSENTED** to by David Auer that he is placed on probation until his 2017 license renewal and fined in the amount of **FOUR THOUSAND DOLLARS (\$4,000.00)**. The \$4,000.00 civil fine shall be paid by money order or cashiers check made payable to the Oklahoma Insurance Department. The payment shall reference Respondent's case number 15-1047-DIS and shall be mailed concurrently with this executed Consent Order to the attention of: Julie Meaders, Deputy General Counsel, 3625 NW 56<sup>th</sup> Street, Suite 100, Oklahoma City, Oklahoma 73112.

David Auer acknowledges and agrees that the Insurance Commissioner has the right to seek additional penalties – after being given notice and an opportunity for hearing – against him in the event the terms of this Consent Order are breached.

WITNESS My Hand and Official Seal this 5<sup>th</sup> day of November, 2015.



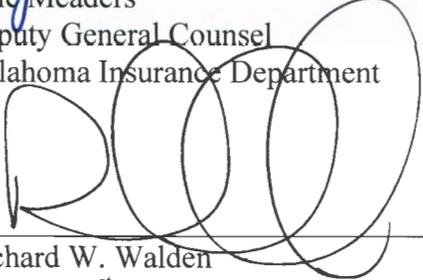
JOHN D. DOAK  
INSURANCE COMMISSIONER  
OKLAHOMA INSURANCE DEPARTMENT

  
\_\_\_\_\_  
~~JOHN MILLER~~ STEPHAN S. MATHIS  
HEARING EXAMINER

APPROVED:



Julie Meaders  
Deputy General Counsel  
Oklahoma Insurance Department



Richard W. Walden  
9524 E. 81<sup>st</sup> Street, Suite B #1575  
Tulsa, Oklahoma 74133  
Attorney for David Auer

**VERIFICATION AND CONSENT**

I, David Auer, the Respondent, state:

I have read this Consent Order. The contents and facts set forth in the order are true to the best of my knowledge. I consent to the entry of the order by the Insurance Commissioner and I waive my right to appeal this order.

David Auer  
DAVID AUER

STATE OF OKLAHOMA  
COUNTY OF TULSA

This instrument was acknowledged before me on October 29, 2015 by DAVID AUER.

Lynn Calip  
Signature of Notarial Officer



Notary  
Title

My commission expires:  
March 2, 2026

**CERTIFICATE OF MAILING**

On this 6<sup>th</sup> day of November, 2015, a true and correct copy of the above and foregoing Consent Order was mailed electronically, and by regular mail, to:

Richard W. Walden  
Attorney at Law  
9524 E. 81<sup>st</sup> Street, Suite B #1575  
Tulsa, Oklahoma 74133

**CERTIFIED MAIL NO:**

**Notification was sent to:**

All Appointing Insurers  
NAIC/RIRS

**A copy was delivered to:**

Licensing Division

Anti-Fraud/Investigations Division

  
Julie Meaders

BEFORE THE OKLAHOMA ACCOUNTANCY BOARD  
STATE OF OKLAHOMA

In the Matter of  
DAVID B. AUER

)  
)  
) Case No. 1421-98  
)

Certificate No. 9356-R

ADMINISTRATIVE PROCEEDINGS  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to a Notice of Permit Expiration and Public Hearing by the OKLAHOMA ACCOUNTANCY BOARD ("BOARD"), issued to DAVID B. AUER ("AUER"), Certificate No. 9356-R, a hearing (the "Hearing") was convened on the 13th day of October, 1997, at 9:00 o'clock a.m., in the offices of the BOARD at 4545 N. Lincoln Boulevard, Suite 165, Oklahoma City, to consider whether disciplinary action should be taken against AUER, a registrant, as one who is required by Section 15.14A. of the Oklahoma Accountancy Act ("ACT") and TIT. 10, OKLAHOMA ADMINISTRATIVE CODE, Section 10:15-1, et seq., (the "OAC"), to hold a permit but who did not apply for a permit; or in the alternative, AUER's failure to report to the BOARD a change of employment or professional status occurring between registrations such that AUER would not require a permit (as required by Section 15.14(h) of the ACT). The hearing was presided over by Hearing Officer Douglas Price, Assistant Attorney General. AUER did not appear either in person or by counsel. Evidence for the State was presented by DIANA COLLINSWORTH, Executive Director.

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Subsequent to the hearing, on October 17, 1997 the Board convened in a regularly-scheduled open meeting held in the offices of the Board, to consider the recommendations of Hearing Officer Price in the case heard by him on October 13, 1997. Members of the BOARD voting and entering into the decision were:



Jack E. Short, CPA, Chairman; James A. Nickles, CPA, Vice Chairman; Harold L. Russell, CPA, Member; Gay Minnix, CPA, Member; Sam W. Hunsaker, CPA, Member; and Vernon E. Askew, PA, Member. The BOARD, having reviewed the evidence submitted, hereby makes the following findings of fact and conclusions of law:

1. The BOARD has jurisdiction in this matter pursuant to the ACT and the OAC.
2. AUER was served, by certified mail, return receipt requested, with the Notice of Permit Expiration and Public Hearing, dated September 2, 1997, notifying AUER of the Hearing set for October 13, 1997, at 9:00 o'clock a.m., at the offices of the BOARD.
3. AUER did not respond to the Notice of Expiration on or before the Hearing date.
4. The Hearing was convened at the BOARD's request.
5. There was no request by AUER that any member of the BOARD disqualify him or herself from participating in the decision.
6. AUER filed a registration and application for permit to practice public accounting with the BOARD for the 1996-1997 permit year. On this permit application, AUER indicated he was engaged in the practice of public accounting.
7. On May 8, 1997 a form to renew the permit to practice was mailed to AUER but he did not file the form to apply for the permit before June 30, 1997 as required.
8. AUER did not demonstrate satisfactory completion of the required continuing professional education requirements on or before June 30, 1997; nor did AUER file a notice of change of status or employment, stating that he was no longer practicing public accounting, within thirty (30) days of such changes becoming effective, as required by

Section 15.14(h) of the ACT.

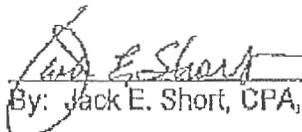
ORDER

IT IS THEREFORE THE ORDER OF THE BOARD, based upon the foregoing findings of fact and conclusions of law, that:

1. DAVID B. AUER's certificate as a certified public accountant is hereby suspended for a period of two (2) years, effective immediately.
2. AUER is to surrender his CPA wall certificate to the BOARD and immediately cease and desist from holding out as a certified public accountant.
3. AUER may apply to the BOARD for a reduction of his suspension or immediate reinstatement upon demonstrating compliance with the ACT and the OAC.
4. Any future violations of the ACT or the OAC by AUER shall be viewed as very serious in nature.

This Order is adopted by the BOARD in open meeting on the 17th day of October 1997, for immediate effect.

OKLAHOMA ACCOUNTANCY BOARD

  
By: Jack E. Short, CPA, Chairman

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
<b>Complainant:</b> THE PEOPLE OF THE STATE OF COLORADO  <b>Respondent:</b> DAVID AUER	<b>Case Number:</b> 14PDJ006
<b>OPINION AND DECISION IMPOSING SANCTIONS          PURSUANT TO C.R.C.P. 251.19(c)</b>	

On June 5, 2014, the Presiding Disciplinary Judge (“the Court”) held a sanctions hearing pursuant to C.R.C.P. 251.15(b). Timothy J. O’Neill appeared on behalf of the Office of Attorney Regulation Counsel (“the People”). David Auer (“Respondent”) failed to appear. The Court now Issues the following “Opinion and Decision Imposing Sanctions Pursuant to C.R.C.P. 251.19(c).”

**I. SUMMARY**

In this case, Respondent, who is not a licensed attorney in the State of Colorado, intentionally practiced law in this state for more than three years without the supervision of a licensed lawyer. He also engaged in dishonest conduct by intentionally holding himself out as a licensed Colorado attorney to his clients. The Court finds that the appropriate sanction is disbarment.

**II. PROCEDURAL HISTORY**

The People filed their complaint on January 7, 2014. A copy of the complaint and citation were served upon Respondent by certified and regular mail at his last known address: 4906 W. 114<sup>th</sup> Place, Tulsa, Oklahoma 74137. Respondent failed to answer the complaint. On February 25, 2014, the People filed a motion for entry of default against Respondent, who did not file a response. The Court granted the People’s motion for default on March 24, 2014.



Upon the entry of default, the Court deems all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.<sup>1</sup> During the sanctions hearing on June 5, 2014, the Court considered the People's exhibit 1 and heard testimony from Loni Woodley.

### III. ESTABLISHED FACTS AND RULE VIOLATIONS

Respondent was admitted to the bar of the Oklahoma Supreme Court on September 1, 1991, under attorney registration number 14672. At all relevant times, however, Respondent practiced law in Colorado. He is thus subject to the Court's jurisdiction in these disciplinary proceedings.<sup>2</sup> Because Respondent has defaulted, the admitted facts and rule violations are presented in abbreviated form. Further details are available in the People's complaint.

#### Facts Established By Default

On December 23, 2009, Respondent, a licensed certified public accountant in Colorado and Oklahoma, entered into a partnership with Loni Woodley, an accountant, after purchasing two Colorado Springs accountancy firms. The partnership was formed with the intent to practice accounting in Colorado. The new partnership became known as Auer Woodley CPAs ("AW"). Respondent mentioned to Woodley that he could apply for a Colorado law license, with the intent to practice estate and business planning in Colorado under the supervision of a Colorado attorney while he sought Colorado bar membership.

In early 2010, Respondent contacted Terry Doherty, an attorney in Colorado Springs. Respondent informed Doherty that he was applying for a law license in Colorado and was seeking to partner with a licensed Colorado attorney who would supervise his work while he was waiting for his license. Respondent then negotiated with Doherty to form a law firm. At the time, Respondent had yet to submit an application for admission to the Colorado bar.

On September 8, 2010, Respondent filed papers with the Colorado Secretary of State's Office, registering Auer Doherty as a limited liability law partnership. Respondent began practicing law from AW's Colorado office while using the Auer Doherty name. He provided Colorado clients with advice concerning estate planning matters, and he drafted estate planning documents, including wills, revocable and irrevocable trust documents, and insurance trusts.

In November 2010, Doherty became concerned that Respondent was not pursuing a Colorado law license. After discussing these concerns with Respondent, Doherty wrote Respondent a memorandum in which he alleged that Respondent was engaged in the unauthorized practice of law by rendering estate planning advice and creating documents for clients. He also questioned Respondent's solicitation of clients. Doherty had never

<sup>1</sup> See C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

<sup>2</sup> See Colo. RPC 8.5(a) ("A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.").

reviewed or supervised Respondent's work. When Respondent did not address the issues Doherty raised in the memorandum, Doherty withdrew from the firm.

In January 2011, Respondent applied for admission to the Colorado bar. But the application was abandoned after he failed to provide additional information.

After the breakup of Auer Doherty, Respondent conferred with three other Colorado Springs lawyers—Stephen Benson, David Willson, and Ryan Coward—about partnering in a new law firm. During July and August of 2011, the three of them met and Respondent discussed with them a large untapped market for high-end estate planning work in the Colorado Springs area. He stated that AW would be the source for client referrals. Thereafter, Respondent paid so that he and Benson could attend a continuing legal education course by Wealth Counsel LLC, an estate planning industry group that markets estate planning software. At the time, Benson had very little trust and estate experience, and he had never handled estate planning matters involving large estates.

On September 8, 2011, Respondent provided Benson with estate planning documents that Respondent had drafted back in February and March 2011 for Colorado clients. Respondent asked Benson to review them so that Benson could get a better understanding of the kind of estate planning work their law firm would be performing. Respondent advised Benson not to review the documents too thoroughly and paid him \$500.00 for his review. On September 15, 2011, Respondent filed articles of organization with the Colorado Secretary of State for Primus Law Group of Colorado, LLC, listing the AW address as the principal office address and AW as the registered agent.

Respondent asked Benson to come to the AW office on October 6, 2011, where he was taken into a conference room with Woodley and Carol Plsanos, an AW client experience manager. Respondent explained to the attendees that he had engaged in the unauthorized practice of law by drafting estate planning documents. Respondent asked Benson whether he thought Respondent was able to draft these types of documents without violating Colorado law. Benson replied that he did not believe Respondent could legally draft these documents. Respondent then suggested that Benson supervised his work, but Benson denied this, as he had received the estate documents six months after Respondent had performed the work. Respondent thereafter announced that he would not draft any more documents and would form a Colorado law firm to handle such matters in the future.

In November 2011, AW formed a new accounting firm, Auer Woodley & Reinemer, P.C. ("AWR"), based in Englewood, Colorado. Ownership of the new entity was held by AW and Eric Reinemer, CPA.

Toward the end of 2011, Benson, Willson, and Coward grew concerned about the status of Respondent's Colorado law license and the relationship their proposed law firm would have with AW. In early 2012, the three men broke off negotiations with Respondent regarding the formation of the law firm.

In April 2012, Respondent approached another Colorado attorney, Francis Brown, regarding the formation of an estate planning law firm in Colorado. Respondent told Brown that he needed an attorney who was licensed in Colorado to review his work and asked Brown to assume the supervisory role. Brown understood that Respondent would bring him clients and that Brown would be responsible for the final estate planning documents. Respondent registered Auer Brown LLP on May 19, 2012, and listed AWR's principal office.

Respondent then contacted another Colorado lawyer, Amy Symons, in June 2012, regarding a possible affiliation with her firm. Respondent informed Brown that he was recruiting Symons for Auer Brown. Respondent told Symons that he wanted her to act as co-counsel on several client matters and to supervise his work. During the summer of 2012, Symons and Respondent met with clients—a married couple and a single mother—regarding estate planning issues. During the meeting with the married couple, it became apparent to Symons that Respondent had a longstanding relationship with them, as he advised them on estate planning matters and did most of the talking. Respondent never informed either client that he was not licensed to practice law in Colorado. Respondent used estate planning software to generate estate planning documents for these clients, and Symons reviewed them.

After giving the clients the estate documents, Symons reviewed the engagement letter for the first time. She noted that the letter listed her name on the Auer Brown letterhead but did not indicate that Respondent was unlicensed in Colorado. She became concerned that Respondent was misleading clients and ended her affiliation with him. Symons later learned that the single-mother client believed Respondent was licensed to practice law in Colorado.

From June 2012 through May 2013, Respondent billed Auer Brown clients in Colorado, Kansas, and Wyoming for legal services, including the drafting of wills, living wills, trust documents, powers of attorney, partnership agreements, and operating agreements. Brown worked on two client matters for Auer Brown with Respondent. He was never informed of additional clients, although he understood that Respondent was also working in Wyoming. Brown later learned that Respondent was engaging in the practice of law under the Auer Brown name in Wyoming.

Beginning in 2010, Respondent also billed for his legal services through AW. Specifically, Respondent charged clients for the preparation of estate planning documents. Respondent advertised his legal services on his profile affiliation with Auer Brown, which stated that he was licensed to practice law both in Colorado and Oklahoma.

In late 2012 or early 2013, Respondent joined the Trilogy Law Group, where he advertised as a Colorado lawyer. In January 2013, Respondent again submitted an application for admission to the Colorado bar.

On January 24, 2013, Woodley, through counsel, notified Respondent that he was being expelled from AW. Woodley asserted that Respondent's unauthorized practice of law

constituted a "cause event" for expulsion under the AW partnership agreement. On April 5, 2013, Respondent received a cease-and-desist letter from the Wyoming Unauthorized Practice of Law Committee. The letter reprimanded Respondent for giving legal advice and holding himself out as a lawyer licensed to practice in Wyoming.

On September 9, 2013, Respondent and Woodley attended a four-day arbitration hearing concerning the legality of Respondent's expulsion from AW. At the hearing, Benson, Brown, Doherty, and a client testified that Respondent had engaged in the unauthorized practice of law. The arbiter found "overwhelming evidence" that Respondent had engaged in the unauthorized practice of law in Colorado. Among this evidence was the client's testimony that he had hired Respondent to draft a will and other estate planning documents. The client testified that Respondent had represented himself as a Colorado lawyer and that he believed Respondent's representations.

Through the conduct described above, Respondent violated Colo. RPC 5.5(a)(1), which proscribes a lawyer from practicing law in this jurisdiction without a license to practice law. He repeatedly violated this rule by holding himself out as a licensed Colorado attorney, establishing multiple offices for his law practice, drafting legal documents, and offering legal advice to or on behalf of clients. He also violated Colo. RPC 5.5(a)(2), which prohibits attorneys from practicing law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction, when he engaged in the unauthorized practice of law in Wyoming. In addition, by misrepresenting to clients his status to practice law in Colorado, Respondent engaged in dishonest conduct in violation of Colo. RPC 8.4(c).

#### IV. SANCTIONS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) ("ABA Standards") and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.<sup>3</sup> In imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. These three variables yield a presumptive sanction that may be adjusted in consideration of aggravating and mitigating factors.

##### *ABA Standard 3.0 – Duty, Mental State, and Injury*

Duty: By practicing law in Colorado without a Colorado license, Respondent violated duties he owed as a professional and to the legal profession. He also violated duties owed to clients, the public, and the legal system by engaging in dishonest conduct.

Mental State: The Court's order entering default establishes that Respondent knowingly engaged in the unauthorized practice of law in Colorado and Wyoming and that he engaged in dishonest conduct by misrepresenting his status as a lawyer to clients. The

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<sup>3</sup> See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

Court finds that Respondent acted not only knowingly but intentionally in committing this misconduct. Whereas knowledge is the conscious awareness of the nature of the conduct but without the conscious objective or purpose to accomplish a particular result, intent is defined as the conscious objective or purpose to accomplish a particular result.<sup>4</sup>

Respondent's conduct was intentional because he received notice from Doherty in November 2010 of his unauthorized practice of law, as well as the 2013 cease-and-desist letter from the Wyoming Unauthorized Practice of Law Committee, reprimanding him for giving legal advice and holding himself out as a Wyoming lawyer. Yet Respondent continued to engage in the unauthorized practice of law for more than three years after receiving Doherty's memorandum, and he billed both Wyoming and Colorado clients for his services after receiving the cease and desist letter. Respondent further facilitated his misconduct by engaging in dishonesty. His dishonesty was intentional because it was done with the conscious objective to avoid complying with his obligations under the rules. Respondent continued to seek out avenues to engage in the unauthorized practice of law, including attempts to form multiple partnerships with Colorado lawyers, even though he knew he could not lawfully perform the estate planning work under the Colorado Rules of Professional Conduct.

*Injury:* Respondent caused actual injury to the legal system and to the profession by engaging in the unauthorized practice of law. He also caused potentially serious harm to his clients when he performed legal services and billed for his work without a license to practice law in Colorado. Woodley stated that he believed that Respondent created trust documents for many clients who either did not understand the documents or did not need the type of documents Respondent created for them; they were nonetheless billed by Respondent for those services. In fact, Woodley learned through arbitration with Respondent that he had billed in excess of \$300,000.00 to AW clients.

Respondent also caused serious potential and actual injury to the accountants and various attorneys with whom he partnered. For example, Woodley testified that he has incurred significant costs in hiring Colorado attorneys to review the estate planning documents that Respondent prepared for AW's clients. Woodley's accounting firm has also paid restitution to many clients. Woodley had to pay for the arbitration costs out of his own pocket, which totaled approximately \$265,000.00. He was awarded these costs in the arbitration but has been unable to collect on the judgment. Woodley further testified that Respondent's conduct caused him emotional stress. In addition, through his conduct Respondent exposed Colorado attorneys to potential liability for assisting him to engage in the unauthorized practice of law.

#### **ABA Standards 4.0-7.0 – Presumptive Sanction**

Under the ABA Standards, the presumptive sanction for Respondent's misconduct is disbarment. ABA Standard 7.1 provides that disbarment is appropriate when a lawyer

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<sup>4</sup> ABA Standards § IV, Definitions.

knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to gain a benefit and causes serious or potentially serious injury to a client, the public, or the legal system. Similarly, ABA Standard 4.6<sup>1</sup> urges disbarment be imposed where an attorney knowingly deceives a client with the intent to benefit the lawyer and causes serious or potentially serious injury to a client. Finally, ABA Standard 5.11(b) calls for disbarment when an attorney engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law.

#### **ABA Standard 9.0 – Aggravating and Mitigating Factors**

Aggravating circumstances include any considerations or factors that may warrant an increase in the presumptive discipline to be imposed, while mitigating circumstances may justify a reduction in the severity of the sanction.<sup>5</sup> The Court considers evidence of the following aggravating circumstances in deciding the appropriate sanction. Respondent failed to participate in this disciplinary proceeding, and thus the Court is unaware of any mitigating factors.

Dishonest or Selfish Motive – 9.22(b): The Court finds that Respondent acted with a selfish motive when, in order to collect fees from clients, he knowingly practiced law in Colorado and Wyoming without a license.

Pattern of Misconduct – 9.22(c): Respondent engaged in an extensive pattern of the unauthorized practice of law and dishonest conduct for approximately three years.

Multiple Offenses – 9.22(d): Respondent committed three separate types of offenses, including practicing law in Colorado and Wyoming without a law license and engaging in dishonest conduct.

Substantial Experience in the Practice of Law – 9.22(f): Respondent has been a licensed attorney in Oklahoma since 1991.

#### **Analysis Under ABA Standards and Colorado Case Law**

The Court is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,<sup>6</sup> mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."<sup>7</sup> Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

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<sup>5</sup> See ABA Standards 9.21 & 9.31.

<sup>6</sup> See *In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

<sup>7</sup> *In re Attorney F.*, 285 P.3d at 327 (quoting *People v. Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

In this case, ABA Standards 4.61, 5.11(b), and 7.1 all call for disbarment. Further, the ABA Standards counsel that in cases involving multiple types of attorney misconduct, the ultimate sanction should at least be consistent with, if not greater than, the sanction for the most serious disciplinary violation.<sup>8</sup>

Although not directly on point, Colorado Supreme Court case law suggests that disbarment is appropriate here. For example, in *People v. James*, the Colorado Supreme Court found that a lawyer's continued practice of law while under an order of suspension, coupled with his failure to protect the legal interests of his client, warranted disbarment.<sup>9</sup> Also, in *People v. Wilson*, the Colorado Supreme Court disbarred an attorney who practiced law after he had been immediately suspended due to a felony conviction.<sup>10</sup> Likewise, courts in sister jurisdictions have imposed lengthy suspensions or disbarments when attorneys practice without a license in the state in which they are conducting business.<sup>11</sup>

The Court finds that the ABA Standards and Colorado case law support the imposition of disbarment in this matter.<sup>12</sup> Further, Respondent's non-appearance at the sanctions hearing demonstrates that he is indifferent to and has no regard for these disciplinary proceedings. Accordingly, the Court accepts the People's recommendation of disbarment.

## V. CONCLUSION

Respondent practiced law without a Colorado license for more than three years, engaged in dishonest conduct, and failed to cooperate in these disciplinary proceedings. Attorneys occupy a position of trust and responsibility and are expected to adhere to high moral and ethical standards. Respondent disregarded these standards and caused serious injury and serious potential injury to his clients, Colorado attorneys, and the legal profession. In light of the egregious nature of Respondent's repeated misconduct and the aggravating factors at work here, the Court finds disbarment is warranted.

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<sup>8</sup> ABA Standards § 2 at 7.

<sup>9</sup> 731 P.2d 698, 700 (Colo. 1987).

<sup>10</sup> 832 P.2d 943, 943 (Colo. 1992).

<sup>11</sup> See *In re Nadel*, 82 A.3d 716, 723 (Del. Supr. 2013) (suspending a non-admitted attorney for one year and prohibiting him from seeking pro hac vice admission for three years, for knowingly engaging in the unauthorized practice of law in Louisiana); *In re Kingsley*, No. 138,2008, 2008 WL 2310289 at \*4 (Del. Supr. Jun. 4, 2008) (disbarring an unlicensed attorney for knowingly violating a cease and desist order); *In re Cortigene*, \_\_\_ So.3d \_\_\_, Nos. 2013-B-2022, 2013-B-2172, 2014 WL 683717 at \*6 (La. Feb. 14, 2014) (suspending for three years an attorney who was licensed in Texas and Pennsylvania for knowingly engaging in the unauthorized practice of law in Louisiana).

<sup>12</sup> See also *People v. Swan*, 938 P.2d 1164, 1166 (Colo. 1997) (approving the disbarment of an attorney who took no steps to notify his client of his suspension or to protect his client's interests, which caused actual harm to his client); *People v. Redman*, 902 P.2d 839, 840 (Colo. 1995) (upholding disbarment where the attorney knowingly engaged in the practice of law while administratively suspended); *People v. Dolan*, 873 P.2d 766, 769 (Colo. 1994) (upholding disbarment where the attorney, who had an extensive history of similar discipline, failed to perform the affirmative duties of notification and winding up imposed by the disciplinary rules).

VI. ORDER

The Court therefore **ORDERS**:

1. **DAVID AUER**, Oklahoma attorney registration number 14672, is **DISBARRED** from the practice of law **IN THE STATE OF COLORADO**. The **DISBARMENT SHALL** take effect only upon Issuance of an "Order and Notice of Disbarment."<sup>13</sup>
2. Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.
3. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Disbarment," an affidavit complying with C.R.C.P. 251.28(d).
4. The parties **SHALL** file any post-hearing motions or applications for stay pending appeal with the Court on or before **Wednesday, July 9, 2014**. No extensions of time will be granted. Any response thereto **SHALL** be filed within seven days, unless otherwise ordered by the Court.
5. Respondent **SHALL** pay the costs of these proceedings. The People **SHALL** file a "Statement of Costs" on or before **Wednesday, July 2, 2014**. Respondent may file his response to the People's statement, if any, within seven days thereafter.

DATED THIS 18<sup>th</sup> DAY OF JUNE, 2014.

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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

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<sup>13</sup> In general, an order and notice of sanction will issue thirty-five days after a decision is entered pursuant to C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.



ORIGINAL



FILED  
SUPREME COURT BAR DOCKET  
STATE OF OKLAHOMA  
DEC 17 2014

MICHAEL S. RICHIE  
CLERK

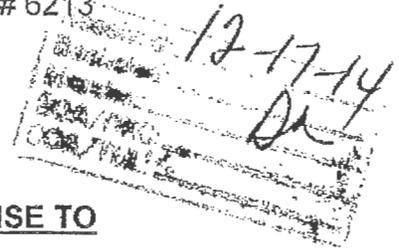
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA *ex rel.*, )  
OKLAHOMA BAR ASSOCIATION, )  
 )  
Complainant, )  
 )  
v. )  
 )  
DAVID BRUCE AUER, )  
 )  
Respondent. )

RULE 7.7, RGDP

OBAD # 2014

SCBD # 6213



OKLAHOMA BAR ASSOCIATION'S RESPONSE TO  
ORDER TO SHOW CAUSE

Complainant, State of Oklahoma *ex rel.*, Oklahoma Bar Association, by and through its Assistant General Counsel, hereby responds to this Court's December 11, 2014 Order to Show Cause why this matter should not proceed under Rule 6, Rules Governing Disciplinary Proceedings, 5 O.S. 2011, ch. 1, app. 1-A. Complainant responds to this Court's Order as follows:

1. This a reciprocal discipline matter filed pursuant to this Court's directive in Rule 7.7, RGDP.

2. This Court has amended the provisions of Rule 7.7, Rules Governing Disciplinary Proceedings, ("RGDP"), 5 O.S. 2011 ch. 1, app. 1-A. *State ex. rel. Okla. Bar Ass'n v. Knight*, 2014 OK 71, ¶¶ 17-19, \_\_\_ P.3d \_\_\_\_. These changes were formally amended by Order dated September 29, 2014, 2014 OK 82. The duty of the General Counsel to transmit documentation of a lawyer's discipline by another jurisdiction was changed from discretionary<sup>1</sup> to mandatory<sup>2</sup>.

<sup>1</sup> The pertinent provision follows: (b) "...the General Counsel of the Oklahoma Bar Association may cause to be transmitted to the Chief Justice a certified copy of such



3. Complainant submits that the Rules Governing Disciplinary Proceedings requires Complainant to submit this cause as a Rule 7.7, RGDP reciprocal discipline matter and not as a Rule 6, RGDP, filing. See *State ex. rel. Okla. Bar Ass'n v. Knight*, 2014 OK 71, ¶¶ 17-19, \_\_\_ P.3d \_\_\_; and *In Re: Amendments to Rules 7.2 and 7.7(b) of the Rules Governing Disciplinary Proceedings*, 2014 OK 82. The Supreme Court of Colorado found that Respondent engaged in the practice of law (albeit without a license) in Colorado and was thus subject to the Colorado Supreme Court's jurisdiction and discipline.<sup>3</sup> As a result of Respondent's misconduct, he was disbarred by the Colorado Supreme Court. Complainant obtained certified copies of the Order and Notice of Disbarment and Opinion and Decision Imposing Sanctions on December 5, 2014. In accordance with Rule 7.7(b), RGDP, Complainant filed its notice of discipline with the Chief Justice the same day. Per Rule 7.7(b), RGDP, the documents transmitted to the Court, "shall constitute the charge and shall be prima facie evidence the lawyer committed the acts therein described."

Therefore, Complainant submits that it has complied with the requirements of the Rules Governing Disciplinary Proceedings in submitting this matter pursuant to Rule 7.7, RGDP. Complainant respectfully requests that this Court find that this reciprocal

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adjudication..." Rule 7.7(b), 5 O.S. ch. 1, app. 1-A, *superceded* by September 30, 2014, Order, 2014 OK 82. *Emphasis added.*

<sup>2</sup> The pertinent provision follows: "...the General Counsel of the Oklahoma Bar Association **shall** cause to be transmitted to the Chief Justice a certified copy of such adjudication within five (5) days of receiving such documents. Rule 7.7(b), RGDP, 5 O.S. 2011 (as amended September 29, 2014) ch. 1, app. 1-A. *Emphasis added.*

<sup>3</sup> Similarly, Rule 8.5, Oklahoma Rules of Professional Conduct, 5 O.S. 2011 ch. 1, app. 1-A, provides that lawyers not admitted in this jurisdiction are subject to the disciplinary jurisdiction of this Court if the lawyer offers or provides any legal services in this jurisdiction.

discipline matter should proceed in accordance with Rule 7.7(b), RGDP.

Respectfully submitted,

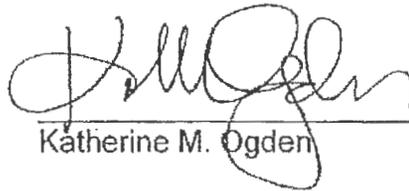


Katherine M. Ogden, OBA No. 22668  
Assistant General Counsel  
Oklahoma Bar Association  
1901 N. Lincoln Blvd.  
P.O. Box 53036  
Oklahoma City, Oklahoma 73152  
Telephone: 405.416.7007  
Facsimile: 405.416.7003

ATTORNEY FOR COMPLAINANT

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that on the 17<sup>th</sup> day of December, 2014, a true and correct copy of the foregoing document was mailed, postage prepaid, to: David Bruce Auer, Respondent, 4906 East 114<sup>th</sup> Place, Tulsa, OK 74137.



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Katherine M. Ogden

BEFORE THE OKLAHOMA ACCOUNTANCY BOARD  
STATE OF OKLAHOMA

In the Matter of )  
DAVID BRUCE AUER, CPA, )  
License No. 9356, ) Case No. 2048  
Respondent. )

**FILED**  
MAR 20 2015  
OKLAHOMA  
ACCOUNTANCY BOARD

CONSENT ORDER

The Oklahoma Accountancy Board ("Board") and the Respondent, David Bruce Auer, CPA ("Respondent") do hereby agree, stipulate, and consent to the following facts, terms, conditions, and to the following order:

1. The Board has jurisdiction in this matter pursuant to the Oklahoma Accountancy Act, OKLA. STAT. tit. 59, § 15.1 *et seq.* ("Act"), the Oklahoma Administrative Procedures Act, OKLA. STAT. tit. 75, § 250 *et seq.* ("APA") and Title 10 of the Oklahoma Administrative Code ("Board's Rules").
2. Respondent was served by private process server with a copy of the Formal Complaint in this matter, giving notice of the allegations against Respondent and of the hearing to be held before the Board on March 20, 2015, at 9:00 o'clock a.m. Respondent entered into settlement discussions with Denielle Williams Chaney, Special Prosecutor for the Oklahoma Accountancy Board, and agreed to terms for a Consent Order.
3. Respondent has not requested and does not request that any member of the Board disqualify themselves from participating in this proceeding.
4. Respondent has requested and the Board has agreed and entered into this Consent Order in lieu of a hearing before the Board on the Formal Complaint filed by the Special Prosecutor in this matter.



**Consent Order**  
**David Bruce Auer, CPA**

5. Respondent is an individual Certified Public Accountant licensed with the Oklahoma Accountancy Board, with a current registration and permit, License No. 9356.

6. On October 17, 1997, an Order of the Oklahoma Accountancy Board was issued in Case No. 1421-98 before the Oklahoma Accountancy Board, State of Oklahoma, In the Matter of David B. Auer, Certificate No. 9345-R, containing the following orders:

1. DAVID B. AUER's certificate as a certified public accountant is hereby suspended for a period of two (2) years, effective immediately.
2. AUER is to surrender his CPA wall certificate to the BOARD and immediately cease and desist from holding out as a certified public accountant.
3. AUER may apply to the BOARD for a reduction of his suspension or immediate reinstatement upon demonstrating compliance with the ACT and the OAC.
4. Any future violations of the ACT or the OAC by AUER shall be viewed as very serious in nature."

7. On October 22, 2013, Respondent filed his Application to Reinstate with the Oklahoma Accountancy Board, and he was reinstated.

8. On July 23, 2014, the Respondent was disbarred from the practice of law in the State of Colorado by Order and Notice of Disbarment in a case before the Supreme Court of the State of Colorado, Case Number 14PDJ006, Complainant: The People of the State of Colorado, Respondent: David Auer, and whereby in said case an Opinion and Decision Imposing Sanctions Pursuant to C.R.C.P. 251.19(c) was issued on June 18, 2014, by the Supreme Court of the State of Colorado. The following facts were established and stated in said Opinion and Decision:

**Consent Order**  
**David Bruce Auer, CPA**

- Respondent had engaged in the practice of law in the unauthorized practice of law in Wyoming.
- Respondent received a cease-and-desist letter from the Wyoming Unauthorized Practice of Law Committee, reprimanding him for giving legal advice and holding himself out as a lawyer licensed to practice in Wyoming.
- Respondent had engaged in the unauthorized practice of law in Colorado.
- Respondent violated Colo. RPC 5.5(a)(1), which proscribes a lawyer from practicing law in this jurisdiction without a license to practice law. He repeatedly violated this rule by holding himself out as a licensed Colorado attorney, establishing multiple offices for his law practice, drafting legal documents, and offering legal advice to or on behalf of clients.
- Respondent violated Colo. RPC 5.5(a)(2), which prohibits attorneys from practicing law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction, when he engaged in the unauthorized practice of law in Wyoming.
- Respondent misrepresented to clients his status to practice law in Colorado, Respondent engaged in dishonest conduct in violation of Colo. RPC 8.4(c).

9. When renewing his Oklahoma certificate as a certified public accountant on September 30, 2014, Respondent answered "No" to the following question: "Has license been cancelled, revoked, refused or suspended by enforcement?" He also answered "No" to the following question: "Any credential cancelled, revoked or suspended by enforcement?"

10. On January 30, 2015, the State Board of Accountancy of the State of Colorado censured the Respondent, whereby a Stipulation and Final Agency Order was entered in Case No. 2014-4068, "In the Matter of a Disciplinary Action Against the Certificate to Practice as a Certified Public Accountant of David Bruce Auer, Certificate No. 27779," whereby he was disciplined and fined for his disbarment from the practice of law in the State of Colorado.

**Consent Order**  
**David Bruce Auer, CPA**

11. In resolution of this matter, Respondent voluntarily agrees and stipulates to the terms and conditions set forth herein.

12. Respondent has been advised and hereby acknowledges that by signing this Consent Order, he is voluntarily waiving certain of his rights accorded under the Administrative Procedures Act, including, but not limited to, the right to a hearing and the right to present evidence and cross-examine witnesses. Respondent further acknowledges notification of his rights to representation by counsel and further stipulates that he has been advised of his rights and obligations under the terms of this Consent Order.

13. The Board has independently reviewed the evidence submitted in this matter and does hereby approve this Consent Order by a majority vote taken in an open meeting. The Board's approval is evidenced by the signature of the Chair of the Board or his designee, affixed hereto subsequent to the vote.

THE BOARD HEREBY ORDERS the following:

1. Respondent violated Section 15.14B of the Act and Sections 10:15-39-1 and 10:15-39-9 of the Board's Rules by his acts of professional misconduct as follows:
  - a. Respondent committed fraud or deceit in filing his September 30, 2014 renewal application with the Oklahoma Accountancy Board.
  - b. Respondent violated or attempted to violate the Oklahoma Accountancy Act or the rules implementing that Act as above set forth.
  - c. Respondent committed acts that reflect adversely on his fitness to practice public accounting as above set forth.

**Consent Order**  
**David Bruce Auer, CPA**

- d. Respondent engaged in conduct involving dishonesty, fraud, deceit, misrepresentation or omission of a known material fact in his most recent renewal application with the Oklahoma Accountancy Board, and by practicing law in the state of Colorado without a license for more than three years and engaging in dishonest conduct in Colorado.
  - e. Respondent received a censure, suspension, cancellation, revocation, by a state or federal agency concerning the right of the registrant to practice before a state or federal agency, whether by a hearing, consent agreement, court order, or other administrative proceedings, as evidenced by his disbarment on July 23, 2014, as an attorney in the State of Colorado as more particularly set forth above, and as evidenced by the Stipulation and Final Agency Order dated January 30, 2015, of the State Board of Accountancy of the State of Colorado.
2. Respondent violated Section 15.14(H) of the Act by failing to report he was disbarred from the practice of law in the State of Colorado by Order and Notice of Disbarment in a case before the Supreme Court of the State of Colorado, Case Number 14PDJ006, within thirty (30) calendar days of said disbarment becoming effective.
  3. Respondent is assessed a fine in the amount of \$1,000.00 for the above violations of the Act and Board's Rules.
  4. Respondent is placed on probation for three (3) years from the effective date of this Order.
  5. Respondent is assessed costs and attorney fees associated with this disciplinary matter in the amount of \$1,728.85.

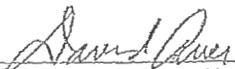
Consent Order  
David Bruce Auer, CPA

OKLAHOMA BOARD OF ACCOUNTANCY

3/20/15  
Date

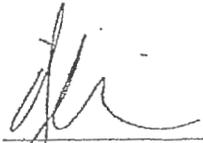
  
Mike Samner, CPA, Chair

3/18/15  
Date

  
David Bruce Auer, CPA

APPROVED:

3/18/2015  
Date

  
Darrielle Williams Chancy, OBA #30296  
CALVERT LAW FIRM  
1041 NW Grand Boulevard  
Oklahoma City, Oklahoma 73118  
(405) 848-5000 Telephone  
(405) 848-5052 Facsimile  
SPECIAL PROSECUTOR FOR THE  
OKLAHOMA ACCOUNTANCY BOARD

BEFORE THE STATE BOARD OF ACCOUNTANCY

STATE OF COLORADO

Case No. 2014-4068

---

**STIPULATION AND FINAL AGENCY ORDER**

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IN THE MATTER OF A DISCIPLINARY ACTION AGAINST THE CERTIFICATE TO PRACTICE AS A CERTIFIED PUBLIC ACCOUNTANT OF DAVID BRUCE AUER, CERTIFICATE NO. 27779,

Respondent.

---

The State Board of Accountancy (the "Board") and David Bruce Auer ("Respondent") hereby enter into this Stipulation and Final Agency Order ("Order") and agree as follows:

**JURISDICTION AND CASE HISTORY**

1. Respondent was issued a certificate to practice as a certified public accountant ("CPA") on October 23, 2009, being issued certificate number 27779, which Respondent has held continuously since that date.
2. The Board has jurisdiction over Respondent, his certificate to practice, and the subject matter of this action.
3. The Board received a complaint regarding Respondent's professional conduct. The Board notified Respondent of the complaint, and gave him the opportunity to provide the Board with written data, views, and arguments concerning the complaint. Respondent responded to the complaint and provided his written data, views, and arguments.
4. At its regularly scheduled meeting on December 10, 2014, the Board considered the complaint Respondent's response and found reasonable grounds to refer Respondent to hearing for license law violations.
5. It is the intent of the parties and the purpose of this Order to provide for a settlement of all matters arising out of Case No. 2014-4068 without the necessity of holding a formal hearing.

**WAIVERS**

6. Respondent understands that:



- a. Respondent has the right to be represented by an attorney of Respondent's choice, and Respondent has voluntarily chosen to proceed without representation;
- b. Respondent has the right to a formal hearing conducted pursuant to Sections 12-2-125 and 24-4-105, C.R.S.;
- c. By entering into this Order, Respondent knowingly and voluntarily gives up the right to a hearing, admits the facts contained in this Order, and relieves the Board of its burden of proving such facts;
- d. By entering into this Order, Respondent knowingly and voluntarily gives up the right to present a defense by oral and documentary evidence, to cross-examine witnesses who would testify on behalf of the Board, and to have subpoenas issued upon request; and
- e. By entering into this Order, Respondent knowingly and voluntarily waives the right to seek judicial review of this Order.

7. Respondent understands that counsel for the Board may communicate directly with the Board regarding this Order, without notice to or participation by Respondent. By signing this Order, Respondent understands and agrees that if the Board rejects this Order and this case proceeds to hearing, Respondent shall not claim in any forum that the Board was prejudiced by its review and discussion of this Order or of any records related hereto.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8. Respondent specifically admits, and the Board hereby finds that:
  - a. Beginning on or around December 2009, Respondent performed legal work for his CPA clients in Colorado through one of his Colorado CPA firms without having a valid Colorado law license.
  - b. As a result of the legal work performed for his CPA clients in Colorado, Respondent was later disbarred from the practice of law in the State of Colorado for practicing law without a valid Colorado law license.

9. Respondent admits and the Board finds that the conduct described above violates Section 12-2-123(1)(b), C.R.S., and is grounds for discipline pursuant to Section 12-2-123(1), C.R.S.

#### **ORDER**

10. The Board imposes and Respondent accepts the discipline set forth below:

### **LETTER OF ADMONITION**

11. This Order shall constitute a Letter of Admonition pursuant to Sections 12-2-123(1) and 12-2-126(1)(b)(II)(D), C.R.S. Respondent is hereby admonished for the acts and omissions described above and warned that repetition of such conduct could lead to formal disciplinary action against Respondent's certificate, including probation, suspension, or revocation.

12. By signing this Order, Respondent agrees to waive the rights provided by Section 12-2-126(1)(b)(III), C.R.S., to have formal disciplinary proceedings initiated to adjudicate the propriety of the conduct upon which this Letter of Admonition is based.

### **FINE**

13. Respondent shall pay a fine of five thousand dollars (\$5,000.00) in United States funds drawn on a United States Bank, as authorized by Section 12-2-123(5), C.R.S. Respondent understands and acknowledges that, pursuant to Section 24-34-108, C.R.S., the Executive Director of the Department of Regulatory Agencies shall impose an additional surcharge of ten percent (10%) of this fine. Thus, Respondent shall pay a total amount of five thousand five hundred dollars (\$5,500.00) [fine + 10%] in United States funds drawn on a United States Bank. The total amount shall be due and payable to the State of Colorado at the time Respondent signs this Order, and shall be submitted together with this signed Order to the Program Director, State Board of Accountancy, 1560 Broadway, Suite 1350, Denver, Colorado 80202.

### **CONTINUING PROFESSIONAL EDUCATION**

14. Within ninety (90) days of the effective date of this Order, Respondent shall: (1) complete two (2) hours of Continuing Professional Education ("CPE") concerning Colorado Rules and Regulations ("CR&R"); and (2) submit a certificate of completion thereof to the Program Director via e-mail to [dora\\_accountancyboard@state.co.us](mailto:dora_accountancyboard@state.co.us). These two (2) hours of CPE shall be required in addition to, and may not be counted toward, the mandatory CPE requirements for an active Colorado certificate or to meet any other licensure requirements. "CR&R" means CPE concerning Sections 12-2-101 through 132, and 13-90-107(1)(f), C.R.S., and Colorado State Board of Accountancy Rules and Regulations. In order to qualify as a CR&R course, the course must review and encourage compliance with all Colorado statutes, rules and regulations regarding CPAs.

15. Within ninety (90) days of the effective date of this Order, Respondent shall: (1) complete the fifteen and a half (15.5) hour ethics course offered by the American Institute of Certified Public Accountants (AICPA) entitled "AICPA Real-World Business Ethics: 12 Case Studies" and (2) shall submit a certificate of completion thereof to the Program Director via e-mail to [dora\\_accountancyboard@state.co.us](mailto:dora_accountancyboard@state.co.us). This fifteen and a half (15.5) hour course shall be required in addition to, and may not be counted toward, the mandatory CPE requirements for an active Colorado certificate or to meet any other licensure requirements.

16. Failure to provide any certificate of completion of CPE deemed satisfactory evidence of completion by the Board may be deemed a violation of this Order.

17. Respondent shall include with any correspondence to the Program Director, including with the submission of any certificate of completion of CPE, a cover letter that references case no. 2014-4068.

### OTHER TERMS

18. Respondent shall bear the expenses of complying with this Order.

19. All information provided by Respondent pursuant to this Order shall be accurate, complete, and truthful. Respondent agrees that it shall be a violation of this Order if Respondent knowingly provides information that is false or misleading, or fails to provide information required pursuant to this Order.

20. This Order shall become an order of the Board when it is accepted and signed by the Program Director or authorized Board representative.

21. This Order shall become effective upon (a) mailing by first-class mail to Respondent at Respondent's address of record with the Board, or (b) service by electronic means on Respondent at Respondent's electronic address of record with the Board. Respondent hereby consents to service by electronic means if Respondent has an electronic address on file with the Board.

22. This Order and its terms shall have the same force and effect as an order entered after a formal hearing conducted pursuant to Section 12-2-125 and 24-4-105, C.R.S, except that it may not be appealed. Any violation of this Order may result in discipline against Respondent's certificate to practice. Further, any violation proven at a hearing conducted pursuant to Section 24-4-105, C.R.S. shall be deemed a violation of a valid agency order in violation of Section 12-2-123(1)(c), C.R.S.

23. Once effective, this Order shall be admissible as evidence at any future proceeding before the Board.

24. In the event this Order is not signed by the Board's Program Director, it shall be void.

25. Invalidation of any portion of this Order by judgment or court order shall in no way affect any other provision, which provisions shall remain in full force and effect.

26. Colorado law governs this Order. Any claims or causes of action arising out of or based upon this Order shall be commenced in the Colorado Department of Personnel and Administration, Office of Administrative Courts or before the Board as appropriate. Respondent

hereby consents to the jurisdiction, venue and process of the Colorado Department of Personnel and Administration, Office of Administrative Courts and the Board.

27. This Order constitutes the entire agreement between the parties, and there are no other agreements or promises, written or oral, that modify, interpret, construe or affect this Order.

28. Upon the effective date, this Order shall be a permanent public record in the Board's custody.

FOR THE STATE BOARD OF ACCOUNTANCY

David Bruce Auer  
DAVID BRUCE AUER  
Respondent

Ofelia Duran  
OFELIA DURAN  
Program Director

Date 1/16/15

Effective this 30 day of January, 2015.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within STIPULATION AND FINAL AGENCY ORDER by electronic means or depositing copies of the same in the United States mail first-class postage prepaid, at Denver, Colorado, this 20 day of January, 2015, addressed as follows:

David Bruce Auer  
4906 E. 114th Place  
Tulsa, OK 74137

By email: dbataxlawyer@yahoo.com

  
\_\_\_\_\_  
Division Staff