

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the matter of the failure of Benjamin M.) Docket No.: 17-CONS-3684-CPEN
Giles ("Operator") to comply with K.A.R. 82-)
3-104 and K.A.R. 82-3-111 at the Flying J) CONSERVATION DIVISION
Geer #2 well in Butler County, Kansas.)
License No.: 5446

**STAFF'S RESPONSE TO OPERATOR'S MOTION FOR SUMMARY ORDER ON
THE PLEADINGS**

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission", respectively) files its Response to Operator's Motion for Summary Order on the Pleadings (Response). Staff asserts Operator's Motion for Summary Order on the Pleadings should be denied, a prehearing officer designated, and the matter set for a prehearing conference in anticipation of an evidentiary hearing. For its Response, Staff states as follows:

JURISDICTION

1. K.S.A. 74-623 provides that the Commission has the exclusive jurisdiction and authority to regulate oil and gas activities. K.S.A. 55-152 provides that the Commission has jurisdiction to regulate the construction, operation, and abandonment of any well and the protection of the usable water of this state from any actual or potential pollution from any well. The Commission has licensing authority pursuant to K.S.A. 55-155.

2. K.A.R. 82-3-104 provides that every person who drills a well that penetrates formations containing oil, gas, fresh water, mineralized water, or valuable minerals shall case or seal off the formations to effectively prevent migration of oil, gas, or water from or into strata

that would be damaged by such migration. The effectiveness of the casing or sealing off shall be tested in a manner prescribed or approved by an agent of the Commission.

BACKGROUND

3. Operator conducts oil and gas activities in Kansas under license number 5446, and is responsible for the care and control of the Flying J Geer #2 OWWO well, API 15-015-01490-00-01, (“the subject well”) located in Section 32, Township 25 South, Range 4 East, Butler County, Kansas.

4. Operator sought an exception to the Table 1 Minimum Surface Casing Requirements. The Director of the Conservation Division granted the exception with the condition that the production or long string casing nearest the formation wall would be immediately cemented from a depth of at least 250 feet back to surface. Operator was further instructed in writing to notify the KCC District Office prior to spudding the well, and also one day before cementing the longstring, so Staff could have the opportunity witness the procedure.

5. On June 13, 2013, Operator spudded the subject well and notified Staff by telephone.¹ Due the exception to the minimum surface casing requirement, Staff anticipated being present to witness cementing from 250 feet to surface as contemplated when the exception was granted.

6. On January 29, 2014, Operator submitted a Well Completion (ACO-1) Form for the subject well. The ACO-1 indicated that the well was completed on November 20, 2013. No casing records, cement tickets, or perforation records were included with the ACO-1 form.²

7. Operator waited from November 20, 2013, until July 23, 2014, before cementing the longstring, leaving a raw bore hole for 245 days in violation of K.A.R. 82-3-104 and

¹ See, Exhibit A (District #2 Phone log entry dated Tuesday, June 18, 2013).

² See, Operator’s Request for Hearing and Motion for Summary Order on the Pleadings, Exhibit D.

constituting a direct threat to useable water. Operator did not contact Commission Staff about cementing the casing contrary to Operator's assertion otherwise.³

8. On September 3, 2015, Commission Staff performed a lease inspection and found the subject well inactive and shut in with no lease infrastructure present. Staff subsequently met with Operator and required submission of a completed ACO-1 form, including cement tickets, and directed that Operator obtain temporary abandonment status to bring the subject well into compliance.

9. On August 30, 2016, Commission Staff conducted a lease inspection which revealed the subject well remained inactive and shut in with no lease infrastructure present. Furthermore, Operator had neither submitted a completed ACO-1 form, including cement tickets, nor obtained temporary abandonment status as required by Staff.

10. On October 19, 2016, Operator submitted a Temporary Abandonment (CP-111) Application for the subject well. No supporting documentation to verify the well construction information was provided. On December 19, 2016, Staff denied temporary abandonment status for the well due to Operator's failure to submit a complete ACO-1 with documentation as required on the second page of the form. Staff then set a deadline of January 6, 2017, for the subject well to be brought into compliance. Staff subsequently extended the deadline to January 13, 2017 to allow Operator to submit the missing well information regarding casing and production.

11. On January 13, 2017, Operator submitted a cement ticket that failed to provide information indicating whether cement was circulated or returned to surface as requested by Staff. Commission Staff had significant concerns that the requirements of the surface casing

³ See, Exhibit A. (note: with exception of spud call regarding an unrelated well on November 8, 2013, Operator did not contact District #2 Staff from September 2013 to March 2014.)

exception had not been met by Operator due to Operator's failure to afford Staff an opportunity to witness the cementing. Staff then received a second copy of the cementing ticket from Operator with the addition of a handwritten note allegedly from an employee of Consolidated Oil Well Services stating, "[c]ement did circulate approx. 4 BBL to pit." Since the only evidence of appropriate cement circulation was now an addition of a handwritten note to a cement ticket, for work performed over three years prior, Commission Staff requested a cement bond log be performed to ensure casing requirements were met as is authorized by K.A.R. 82-3-104 and also that Staff be notified prior to the procedure to allow the opportunity to witness the bond log.

12. On April 14, 2017, Commission Staff sent a letter to Operator, giving an April 28, 2017 deadline to run a bond log on the subject well. The letter also notified Operator that it was required to contact Staff's District Office prior to performing the work, so that Staff could witness the procedure.⁴

13. On April 26, 2017, Commission Staff received the bond log and noted irregularities in the log method utilized and corresponding results, which included no data from 40 feet up to surface, and identical sections between the depths of 776-899 feet and 899-1022. Staff again was not contacted as directed and was not afforded an opportunity to witness the bond log procedure. The bond log was performed utilizing unorthodox methodology and contained identical entries.⁵

14. On June 27, 2017, the Commission issued a Penalty Order against Operator for a violation of K.A.R. 82-3-111. On July 31, 2017, Operator timely requested a hearing, alternatively filing a motion for summary order.

⁴ See Exhibit B, Letter from District #2 Supervisor Jeff Klock to Operator dated April 14, 2017. "Notify this office when the log will be run so [S]taff can be onsite to witness."

⁵ See Exhibit C, side by side comparison of bond log entries for depths of approximately 776-899 feet and 899-1022 feet.

DISCUSSION

Operator's request for hearing and motion for summary order on the pleadings suggests Staff placed "conditions" on Operator to obtain Temporary Abandonment (TA) status, then unreasonably questioned the authenticity and veracity of information provided. Operator would have Staff overlook significant concerns which could have been avoided twice had Operator followed Staff's straightforward instructions to notify the District #2 Office before performing the necessary work.

Operator contends that the filing a new application for temporary abandonment necessarily precludes the Commission from penalizing the operator for a violation of K.A.R. 82-3-111. If this were true, this procedure would allow any operator who fails to comply with K.A.R. 82-3-111 to file renewed applications indefinitely to avoid enforcement, which is not the intent of the regulation. A second TA application does not cure Operator's failure to establish cementing from 250 feet to surface. Contrary to Operator's assertions, Staff's requests were reasonable considering the irregularities detected by Staff discussed below.

Staff's Request for a Completed ACO-1 Form with Supporting Documentation

15. The letter⁶ sent to Operator on May 14, 2013, granting a Table 1 Exception instructs the Operator to "Notify the KCC District #2 office prior to spudding the well and one day before cementing the longstring so they may have the opportunity to witness the procedure." Despite this requirement's conspicuous presence in the letter, Operator did not contact Staff and omitted the information from the ACO-1 form completely. In essence, Operator desires Staff to accept Operator's assurances that the terms of the exception to the Table 1 Casing Requirements were followed.

⁶ See, Penalty Order (issued June 27, 2017) Exhibit 3.

16. After supplying the cement ticket to Staff, and being advised that the ticket does not establish whether cement was circulated to surface, Operator desired Staff to accept a handwritten notation for work performed years prior, and to accept such a representation without further verification.

Request for Cement Bond Log

17. Operator's conduct in not notifying Staff before cementing raised a valid concern for Staff that fresh and useable water resources were not protected. A cement bond log was requested to establish the cementing was completed as directed in the letter granting exception. Operator contracted with Dyna-Log, Inc. which performed the bond log in a manner which Staff believes is unconventional. Had Staff been afforded an opportunity to witness the bond log being performed, perhaps these concerns would have been addressed. Operator dismisses irregularities in the bond log on the basis that the depths with duplicate entries are not at issue. Staff's concern is that at best the duplicate entry calls into question the accuracy of the bond log at all depths due to unconventional methodology and at worst calls into question Operator's credibility.⁷

18. Despite clear evidence to the contrary, Operator and Dyna-Log, Inc. dispute the duplication of portions of the bond log.⁸

Conclusion

19. Despite Operator's repeated refusals to notify District #2 Staff when work was to be performed, an incomplete ACO-1 form, and a bond log that clearly is duplicitous, it requests the Commission accept assurances that the work was properly performed. Operator's decisions to not follow the instructions to notify Staff on two separate occasions, denial of irregularities in

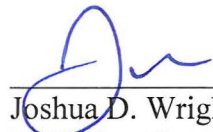
⁷ See, Exhibit D (Kanas Board of Accountancy Final Order). Staff has some concerns about the veracity of Operator's claims based upon the Kansas Board of Accountancy's findings in Case No. 2014-10. "There is clear and convincing evidence that [Benjamin Giles] committed an act of fraud, dishonesty and deceit in preparing and submitting to the Board his July 26, 2011 Permit Renewal Application..."

⁸ See, Operator's Request for Hearing and Motion for Summary Order on the Pleadings, paragraph 24.

the bond log, and his previous dishonest conduct as illustrated by the Kansas State Board of Accountancy are responsible for Staff's concerns; not a desire to impose onerous requirements upon Operator. As such, factual disputes exist which indicate a hearing in this matter is appropriate.

WHEREFORE, Commission Staff respectfully requests the Commission deny the relief sought by Operator in its motion for summary order and schedule this matter for a prehearing conference in anticipation of an evidentiary hearing.

Respectfully submitted,



Joshua D. Wright, #24118
Litigation Counsel
Kansas Corporation Commission
266 N. Main, Suite 220
Wichita, Kansas 67202-1513
Phone: 316-337-6200; Fax: 316-337-6211

Entry ...	Subject	Start	D...C...C...
Phone call	Dusty w/ Ben Giles called in a spill on Ralston lease 10-26S-4E	Mon 3/6/2017 10...	0
Phone c...	SUE W/BEN GILES WANTING COPY OF NOV DATED 2-14-2017 WRIGHT LSE 32-25-4E BU.26...	Thu 2/9/2017 2:...	0...
Phone c...	Ben Giles for JK	Tue 9/6/2016 2:...	0...
Phone c...	Dusty Green w/Ben Giles called in a spill at the M&L Land Stollei Tank batt. in the the SW/4 ...	Fri 8/12/2016 9:...	0...
Phone c...	Ken Dainty - landowner in Butler county (316-323-4498) called to inquire what the rules are ...	Wed 8/3/2016 9...	0...
Phone c...	Dusty Green w/ Ben Giles called in to inform us on plan for 3 Clearwater wells	Mon 3/28/2016 ...	0...
Phone c...	Dusty Green w/ Ben Giles (316-655-7542) call in a spill on the Ralston in 10-26S-4E	Tue 1/19/2016 9...	0...
Phone c...	Dusty Green w/ Ben Giles (316-655-7542) called in spill on the Whipple in 7-26S-5E	Tue 11/24/2015 ...	0...
Phone c...	DK checked in. Lse ck Whipple Lse_Ben Giles_Compliance	Thu 9/17/2015 ...	0...
Phone c...	Spud Call - Ben Giles 316-265-1992, called in McCulloch #12 SWD 32-25-4E BU Co. Will spud...	Fri 9/4/2015 10:...	0...
Phone c...	Kathy Haynes for JK about Ben Giles - Wright OWWO	Mon 8/31/2015 ...	0...
Phone c...	BEN GILES CALLED FOR JK / ALSO STATED WILL BE WORKING ON HIGGINS TA WELL, HAS P...	Mon 6/15/2015 ...	0...
Phone c...	DUSTY GREEN W/BEN GILES REPORTED SPILL / HIGGINS SW 7-26-5E BU. CATTLE STEPPED ...	Mon 6/15/2015 ...	0...
Phone c...	Dusty w/ Ben Giles for JK	Wed 4/29/2015 ...	0...
Phone c...	DUSTUY GREEN W/BEN GILES CALLED FOR JK	Mon 4/6/2015 1...	0...
Phone c...	BEN GILES FOR JK	Thu 3/26/2015 ...	0...
Phone c...	DUSTY GREEN CALLED & CANCELED MIT TODAY ON MCCULLOCH 10X FOR BEN GILES	Wed 2/25/2015 ...	0...
Phone c...	Jerry Sullivan w/ Dynalog called w/ information about Ben Giles McCoulligh SWD log	Fri 2/13/2015 1:...	0...
Phone c...	Ben Giles (316-655-2356) called for JK	Fri 2/13/2015 9:...	0...
Phone call	Dusty Green w/Ben Giles called in to talk to Jeff about the SWD well on the McCuligh lease, wont pr.	Wed 2/11/2015 8:...	0...
Phone c...	JH-called in for a copy of an MIT on the Clearwater #1 for Ben Giles.	Thu 1/22/2015 ...	0...
Phone c...	DK calling about scheduling an MIT on the Ray for Ben Giles today/tomorrow	Thu 9/18/2014 ...	0...
Phone c...	DUSTY W/BEN GILES CALLED REPORTED RAY B 1 NW 34-25-3E BU. WELL WOULD PRESSURE...	Thu 9/11/2014 ...	0...
Phone c...	Ben Giles called in a spud on the Varner #1 OWWO in 28-25-4E, BU. Co.	Wed 7/30/2014 ...	0...
Phone c...	Ben Giles for JK	Tue 7/8/2014 9:...	0...
Phone c...	Ben Giles -- for JK. Ben @ 265-1992.	Mon 7/7/2014 3:...	0...
Phone c...	PS - MIT on the Ablauch for Ben Giles	Wed 6/25/2014 ...	0...
Phone c...	Dusty With Ben Giles Called in for MIT Paulson B #8 BU	Wed 3/26/2014 ...	0...
Phone c...	BEN GILES CALLED IN SPUD SEIDL OWWO # 1 NE 34-25-3E BU. / 11-11-2013 / 15-015-20127...	Fri 11/8/2013 9:...	0...
Phone c...	Ben Giles called for Jeff	Mon 9/9/2013 9:...	0...
Phone c...	Ben Giles called in for Jeff K.	Mon 7/29/2013 ...	0...
Phone call	Ben Giles called in to confirm the spud call was made on the Flying J Geer #2OWWO in 32-25-4E, B...	Tue 6/18/2013 3:...	0... B...
Phone c...	Dan F. -- MIT passed on Ben Giles well.	Wed 5/15/2013 ...	0...
Phone c...	DF CHECKING IN, MIT W/BEN GILES CANCELED , TO WET WILL RESCHEDULE	Fri 4/12/2013 1:...	0...
Phone c...	PS- going to pit check for Ben Giles	Thu 4/11/2013 ...	0...
Phone c...	Dusty w/Ben Giles called in for Patrick and talked to Dan Fox and sch. an MIT on the Buttwic...	Tue 4/9/2013 3:...	0... D...
Phone c...	PATRICK/UNPERMITTED PIT CHECK/BEN GILES/MCCOLLOUGH/BU	Fri 3/8/2013 9:0...	0...
Phone c...	DK TO BEN GILES MOLE IN BU CO	Thu 2/7/2013 8:...	0...
Phone c...	PATRICK/UIC CHECK/BEN GILES/RAY B7/34-25-3E/BU	Mon 2/4/2013 8:...	0...
Phone c...	Ben Giles--spudding the Ben Giles--Erdwien 1A in SW-SW 11-26-2E SG cty.--today.. Did NO...	Wed 1/16/2013 ...	0...
Phone c...	Duke Coulter called in the spud that Ben Giles already had done earlier on the M&L Stollei in...	Wed 1/9/2013 1:...	0...
Phone c...	Ben Giles called in spud on the M&L Land Stollei A#1 in the SW qtr. of 11-26-2E, SG. Co.	Wed 1/9/2013 1:...	0... B...
Phone c...	JR Hogaboom called in to state they will be moving over to spud the well for Ben Giles today.	Wed 1/9/2013 8:...	0...
Phone c...	CONNIE W/BEN GILES COULD NOT LOAD ATTACHMENT TO TA, TOLD HER TA NEEDED TO B...	Thu 1/3/2013 4:...	0...
Phone c...	BEN GILES / RECEIVED TA NOV PARSLEY # 6 3-26-3E BU. WELL IS ON TIME CLOCK, 15 MIN O...	Mon 11/19/201...	0...
Phone c...	Ben Giles for JK..	Mon 10/22/201...	0...
Phone c...	Ben Giles called in spud on Ablah 1A SWD, NW NW SW, Sec. 11-26-4E, BU Co. 15-015-30089...	Mon 9/10/2012 ...	0...
Phone c...	BEN GILES FOR JK	Mon 9/10/2012 ...	0...
Phone c...	Cotton Gulick - C&G drilling spud the Whipple for Ben Giles- 7-26-5e	Tue 8/28/2012 4:...	0... 6...
Phone c...	PATRICK/MIT/BEN GILES/WAIT/3-26-3E/BU	Wed 8/22/2012 ...	0...
Phone c...	Ben Giles for JK- would like him to call his moble 316-655-2356	Fri 8/17/2012 1:...	0...

Conservation Division
District Office No. 2
3450 N. Rock Road
Building 600, Suite 601
Wichita, KS 67226



Phone: 316-337-7400
Fax: 316-630-4005
<http://kcc.ks.gov/>

Pat Apple, Chairman
Shan Feist Albrecht, Commissioner
Jay Scott Emmer, Commissioner

Sam Brownback, Governor

April 14, 2017

Benjamin M. Giles
346 S. Lulu
Wichita, KS 67211

KCC #5446

Re: Seidl 1 OWWO, SE SE NE, Sec. 34-25-3E, BU Co. – 15-015-20127-00-02
Flying J Geer 2 OWWO, E2 E2 NE, Sec. 32-25-4E, BU Co. – 15-015-01490-00-01
Ray A 1, NW NW SW, Sec. 34-25-3E, BU Co. – 15-015-20784-00-00
Ralston 1, NE NW SE, Sec. 10-26-4E, BU Co. – 15-015-40140-00-00

Dear Mr. Giles,

The top plug on the Seidl #1 OWWO fell back to 61' from surface and must be topped off prior to cutting the casing below grade and restoring the location. If the casing fills with water you must bail the water out of the casing prior to dumping any cement from the surface. The open workover pits must be emptied and closed by April 28, 2017.

This office has not received the bond log required on the Flying J Geer 2 OWWO. The bond log must be run by April 28, 2017. Notify this office when the log will be run so staff can be onsite to witness.

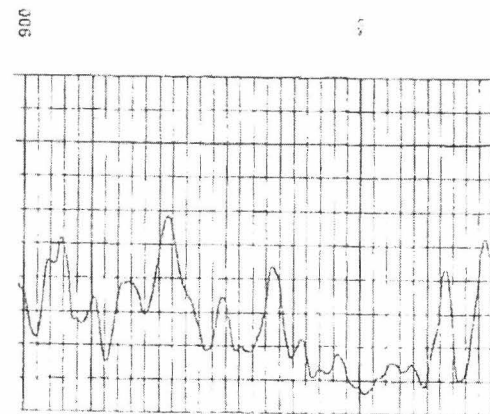
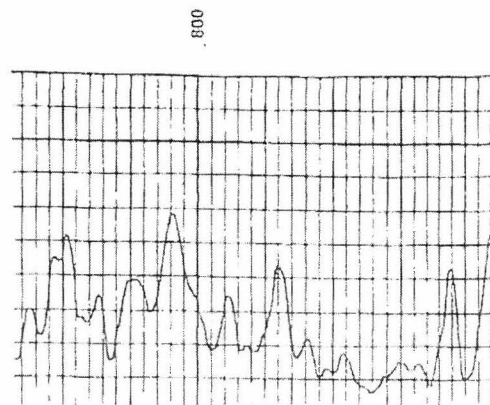
The Ralston #1 was tested on March 23, 2017 and passed a casing MIT. A CP-111 must be filed by April 21, 2017 for Temporary Abandonment approval.

The Ray A #1 must have an MIT of the casing for Temporary Abandonment approval.

Sincerely,

Jeff Klock
District 2 Supervisor

Cc: Jon Myers – Litigation Counsel
Jonathan Hill – ECRS
Dan Fox – Compliance Officer
Jon Schlatter – Morris Laing Evans Brock & Kennedy, Cht.



BEFORE THE KANSAS BOARD OF ACCOUNTANCY
LANDON STATE OFFICE BUILDING
900 SW JACKSON, SUITE 556S
TOPEKA, KS 66612-1239
(785) 296-2162

IN THE MATTER OF

BENJAMIN M. GILES, CPA,
Kansas Certificate No. 1589
Kansas Permit No. 3782
Respondent.

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Case No. 2014-10

FINAL ORDER

NOW on this 23rd day of October, 2015, the above captioned matter comes before the Kansas Board of Accountancy ("Board") for hearing on the Petition for Disciplinary Action filed with the Board on or about September 2, 2014. The Board appears by and through disciplinary counsel Randall J. Forbes of Frieden, Unrein & Forbes, LLP. Respondent appears in person and by counsel Scott J. Gunderson of Nelson, Gunderson & Lacey. The presiding officer designated pursuant to K.S.A. 77-514 is the Kansas Board of Accountancy, consisting of John R. Helms, CPA, Chair, Rodney G. Van Norden, CPA, Vice-Chair, Kathryn J. Mitchell, CPA, Denise Denning, CPA, T.C. Anderson, Public Member, and Michael L. Marsh, CPA. Patricia O'Sullivan, public member, recused and did not participate as a presiding officer in this proceeding. After giving due consideration to the pleadings, evidence, and statements of the parties constituting the entirety of the record in this proceeding, and upon review of the Kansas statutes and regulations governing the practice of certified public accountancy in the State of Kansas, the Board finds and orders as follows:

SCANNED

I. Procedural Background

The Petition for Disciplinary Action ("Petition") was filed with the Board on or about September 2, 2014 requesting the imposition of disciplinary sanctions against Respondent pursuant to K.S.A. 1-311. The Petition alleges that Respondent (1) engaged in fraud, dishonesty and deceit in obtaining renewal of his permit to practice certified public accountancy in the State of Kansas, (2) failed to timely file his personal tax returns for tax years 2009, 2010, 2011 and 2012, (3) willfully violated a rule of professional conduct by committing acts discreditable to the profession, (4) engaged in conduct reflecting adversely on his fitness to practice certified public accountancy, and (5) failed to timely remit payroll or other taxes collected on behalf of others for which he was responsible. The Petition for Disciplinary Action, together with an Amended Notice of Hearing, was served on Respondent on September 2, 2014 at Respondent's business address of 346 South Lulu, Wichita, Kansas 67211.

On May 1, 2015, a formal hearing on the Petition commenced and thereafter concluded on October 23, 2015. Following deliberations, the Board's decision as codified herein was rendered by motion duly approved by unanimous vote of the presiding officers.

II. Findings of Fact.

1. Respondent is an individual engaged in the practice of certified public accountancy in the State of Kansas with a business office located at 346 South Lulu, Wichita, Kansas 67211. At all times relevant hereto, Respondent maintained a Kansas certificate issued by the Board pursuant to K.S.A. 1-302, specifically, certificate number 1589, and a permit to practice certified public accountancy in the State of Kansas issued by the Board pursuant to K.S.A. 1-310.

2. On January 26, 2005, the Board issued its Final Order in the case titled *In the Matter of Benjamin M. Giles*, Board case number 2005-18, finding that Respondent failed to timely file his personal federal income tax returns for tax years 2000, 2001 and 2002, and imposing discipline pursuant to K.S.A. 1-311(a)(7) premised on Respondent's willful violation of a rule of professional conduct, specifically K.A.R. 74-5-401.¹

3. On July 26, 2011 Respondent submitted to the Board, an Application for Renewal of Permit to Practice as a CPA in Kansas ("Permit Renewal Application") which if granted, would authorize Respondent to lawfully engage in the practice of certified public accountancy in the State of Kansas from July 1, 2011 to June 30, 2013. The Permit Renewal Application directed Respondent to answer written questions relative to the propriety of his permit renewal.

Question number 10 on the July 26, 2011 Permit Renewal Application states as follows:

Within the last seven years, have you been delinquent in filing your personal tax returns that you have not previously disclosed to the Kansas Board of Accountancy?

Respondent intentionally answered "No" to question number 10, thereby willfully, knowingly and affirmatively denying that he had been delinquent in filing his personal tax returns within the seven (7) years preceding the date of the application. Respondent signed the July 26, 2011 Permit Renewal Application affirming to the Board that the information provided by Respondent and contained in the Permit Renewal Application was "true and accurate."

4. Based on the content and purpose of the Permit Renewal Application, Respondent understood that the Board would rely upon the information contained in the July 26, 2011 Permit Renewal Application in rendering its decision as to the propriety of the requested permit

¹ K.S.A. 1-311(a)(7) was amended in 2007, and is now referenced at K.S.A. 1-311(a)(8).

renewal.

5. The Board relying upon Respondent's representations contained in the July 26, 2011 Permit Renewal Application, renewed Respondent's permit to practice certified public accountancy in the State of Kansas for the period from July 1, 2011 to June 30, 2013.

6. On July 29, 2013 Respondent submitted to the Board, an Application for Renewal of Permit to Practice as a CPA in Kansas ("Permit Renewal Application") which if granted would authorize Respondent to lawfully engage in the practice of certified public accountancy in the State of Kansas from July 1, 2013 to June 30, 2015. The Permit Renewal Application directed Respondent to answer written questions relative to the propriety of his permit renewal. Question number 10 on the July 29, 2013 Permit Renewal Application states as follows:

Within the last seven years, have you been delinquent in filing your personal tax returns that you have not previously disclosed to the Kansas Board of Accountancy?

Respondent intentionally answered "No" to question number 10, thereby willfully, knowingly and affirmatively denying that he had been delinquent in filing his personal tax returns within the seven years preceding the date of the application. Respondent signed the July 29, 2013 Permit Renewal Application affirming to the Board that the information provided by Respondent and contained in the Permit Renewal Application was "true and accurate."

7. Based on the content and purpose of the Permit Renewal Application, Respondent understood at all relevant times, that the Board would rely upon the information contained in the July 29, 2013 Permit Renewal Application in rendering its decision as to the propriety of the requested permit renewal.

8. The Board relying upon Respondent's representations contained in the July 29,

2013 Permit Renewal Application, renewed Respondent's permit to practice certified public accountancy in the State of Kansas for the period from July 1, 2013 to June 30, 2015.

9. On July 29, 2013, Respondent disclosed to the Board as part of the permit renewal process, that the Kansas Department of Revenue ("KDOR") had issued a tax warrant in May of 2013, seeking payment of \$65,364.03 in unpaid sales taxes associated with the business operations of M & S Well Service, L.L.C. ("M & S"). Respondent was a member of and owned a fifty-percent interest in M & S.

10. The Board initiated an investigation relative to Respondent's compliance with the laws governing the practice of certified public accounting. In the course of that investigation, the Board submitted to Respondent on February 12, 2014, a letter requesting in part that Respondent produce unredacted transcripts from the IRS and KDOR relative to Respondent's filing of personal tax returns for tax years 2009 through 2012, and copies of Respondent's personal tax returns as filed with the IRS for tax years 2009 through 2012. Respondent understood the Board's request, and was aware that the transcripts if disclosed would reveal to the Board the date upon which his personal tax returns were filed with the IRS and KDOR for years 2009 through 2012.

11. On March 14, 2014, Respondent replied to the Board's inquiry of February 12, 2014, notifying the Board that he would not produce to the Board, copies of either his personal tax returns or the tax transcripts documenting the filing of his personal tax returns. On March 20, 2014, the Board notified Respondent in writing that the Board's inquiries were submitted to Respondent in the course of a Board investigation and placing Respondent on notice of his obligation to comply with the Board's investigation pursuant to K.A.R. 74-5-407. Furthermore,

in an effort to address Respondent's concerns relative to the privacy of the document production, the Board proposed to permit production of the documents under a protective order thereby alleviating Respondent's stated privacy concerns.

12. On April 1, 2014, Respondent through counsel replied to the Board's correspondence of March 20, 2014, notifying the Board that Respondent would produce IRS and KDOR transcripts relative to M & S. On April 4, 2014, Respondent produced IRS and KDOR transcripts reflecting the filing of returns by M & S; however, Respondent failed and refused to produce copies of his personal tax returns or the IRS and KDOR transcripts.

13. On May 12, 2014, the Board issued to Respondent yet again, a request for the production of Respondent's personal tax returns for tax years 2009 through 2012, and copies of IRS and KDOR transcripts reflecting the filing dates for said tax returns. Respondent was asked to produce the documents to the Board on or before May 26, 2014 and once again, the Board offered to address Respondent's alleged privacy concerns through the use of a protective order.

14. On May 23, 2014, Respondent submitted to the Board redacted copies of certain federal forms titled "Schedule E" for tax years 2009 through 2012. The documents produced did not disclose the dates upon which the tax returns were filed with the IRS or KDOR. Respondent represented that he would provide redacted copies of the IRS and KDOR transcripts if the Board still wished to review the documents. On June 3, 2014 the Board replied to Respondent reiterating its continuing request for receipt of the IRS and KDOR transcripts.

15. On June 10, 2014 Respondent requested from the IRS and KDOR, transcripts reflecting the filing of his personal tax returns for tax years 2009 through 2012. Respondent then produced the IRS and KDOR transcripts to the Board on June 16, 2014.

16. The IRS transcript for tax year 2009 documented that Respondent filed his personal federal tax return on November 29, 2010. Respondent admits that the return was not filed in a timely manner. Thus Respondent failed to timely file his personal federal tax return for tax year 2009.

17. The KDOR transcript for tax year 2009 documented that Respondent filed his personal state tax return on or about November 24, 2010. Respondent failed to timely file his personal state tax return for tax year 2009.

18. The IRS transcript for tax year 2010 documented that Respondent filed his personal federal tax return on November 28, 2011. Respondent admits that the return was not filed in a timely manner. Thus, Respondent failed to timely file his personal federal tax return for tax year 2010.

19. The KDOR transcript for tax year 2010 documented that Respondent filed his personal state tax return on or about November 23, 2011. Respondent failed to timely file his personal state tax return for tax year 2010.

20. The IRS transcript for tax year 2011 documented that Respondent filed his personal federal tax return on April 25, 2013. Respondent argues that the IRS transcript for tax year 2011 is inaccurate, and that he timely filed his 2011 return on October 15, 2012.

In his defense, Respondent cites to a document issued by the IRS to Respondent dated April 22, 2013, wherein the IRS notified Respondent of his delinquency in filing his 2011 personal tax return. Respondent purportedly replied to the IRS notice by completing a portion of the document, therein representing to the IRS that he had filed his 2011 return on October 15, 2012 and enclosing a signed and dated copy of the original return. After review of the document

and the testimony, the Board is not convinced as to the veracity of Respondent's defense.

Respondent alleged that upon receipt of the IRS notice of April 22, 2013, that his spouse contacted the State of Kansas to determine whether Respondent's 2011 Kansas income tax return had been filed. The document submitted by Respondent notes that this communication took place on April 23, 2013. The State of Kansas purportedly informed Respondent at that time, that it too had not received Respondent's 2011 income tax return. Thus two separate and distinct entities, to wit the IRS and the KDOR, failed to receive Respondent's 2011 income tax return in a timely manner. This fact standing alone suggests more than a mere mishandling of the return by the IRS. Furthermore, a review of the KDOR transcript revealed that Respondent's state tax return was filed on April 22, 2013, one day prior to the alleged telephone call documented on Respondent's reply to the IRS.

Finally, although Respondent was purportedly able to respond to the IRS inquiry by providing a copy of a "signed and dated" 2011 personal tax return, the 2011 personal tax return provided to the Board in the course of this proceeding, was both unsigned and undated.

In sum, when weighed as a whole, the Board finds that Respondent failed to timely file his 2011 federal personal income tax return.

21. The KDOR transcript for tax year 2011 documented that Respondent filed his personal state tax return on or about April 22, 2013. Accordingly, Respondent failed to timely file his personal state tax return for tax year 2011.

22. Respondent was aware at all relevant times that the IRS and KDOR transcripts if produced, would disclose to the Board the dates on which Respondent filed his personal tax returns and thus, divulge whether Respondent had timely filed those returns.

23. Respondent did not disclose to the Board his failure to timely file his personal tax returns for tax years 2009, 2010 or 2011 prior to June 16, 2014, the date on which he produced the IRS and KDOR transcripts to the Board.

24. Respondent's statement to the Board in response to question number 10 as contained on the July 26, 2011 Permit Renewal Application, constitutes a false statement. At the time of Respondent's completion of the July 26, 2011 Permit Renewal Application, Respondent had been delinquent in filing his personal tax returns on at least two occasions within the seven years preceding the date of the application, specifically the delinquent filing of his 2009 Federal income tax return and his 2009 Kansas income tax return.

25. Respondent's statement to the Board in response to question number 10 as contained on the July 29, 2013 Permit Renewal Application constitutes a false statement. At the time of Respondent's completion of the July 29, 2013 Permit Renewal Application, Respondent had been delinquent in filing his personal tax returns on at least six occasions within the seven years preceding the date of the application, specifically the delinquent filing of his 2009, 2010 and 2011 Federal income tax returns and his 2009, 2010 and 2011 Kansas income tax returns.

26. Respondent made the false statements referred to in paragraphs 24 and 25 of this Final Order, with knowledge that the statements were false and with knowledge that the Board would rely upon those statements, in rendering a decision as to the merits of Respondent's applications for permit renewal.

The Board does not find Respondent's suggestion that he accurately answered question 10 on each of the Permit Renewal Applications to be a credible defense. Respondent does not deny that he failed to timely file his 2009 personal tax returns, but rather submits that because he

ultimately filed those returns prior to submitting the July 26, 2011 Permit Renewal Application to the Board, that he had somehow expunged the prior delinquent filing of his 2009 federal and state personal tax returns.

The language contained in question 10 of the Permit Renewal Applications is clear and concise. Question 10 states "within the last seven years, have you been delinquent in filing your personal tax returns that you have not previously disclosed to the Kansas Board of Accountancy?" (Emphasis supplied.) The use of the term "have" and the phrase "within the last seven years," clearly contemplate both present and past tense, and are entirely inconsistent with Respondent's defense. Respondent's assertion of this defense relative to the July 29, 2013 permit renewal application is without merit.

Respondent also suggests that he accurately answered Question 10 as he perceived the term "delinquent" to refer to an extended delay rather than a short term delay in the filing of his tax returns. Because his 2009 and 2010 returns were each filed approximately six weeks after the due date, he urges that he did not perceive them to be "delinquent." This defense is likewise without merit. Once again, the Board finds that the language of question 10 is clear and that the term delinquent refers to whether the tax returns in question were filed by the prescribed deadline imposed by law. Respondent had been sanctioned on a prior occasion for his failure to timely file personal tax returns, and was acutely aware of the law in this regard. Given his experience, Respondent was also aware of the deadlines imposed on individuals for the filing of personal tax returns. In sum, the Board does not find Respondent's defense to be credible.

27. The Board concludes that there is insufficient evidence with which to determine whether Respondent failed to timely file his 2012 personal tax returns, and thus makes no finding

in that regard.

28. Respondent was responsible for the preparation of tax returns on behalf of M & S. Respondent testified that he did not agree to provide nor did he provide any additional services for M & S relative to either the calculation or payment of sales taxes and payroll taxes. According to Respondent's testimony, Casey Martin provided services to M & S relative to the sales and payroll tax returns.

III. Conclusions of Law.

1. The Board is duly constituted under the laws of the State of Kansas, K.S.A. 1-201 *ET. seq.*, and is therein authorized to deny, revoke, suspend and reinstate certificates and permits and to initiate proceedings, hold hearings and do all things necessary to regulate the practice of certified public accountancy. K.S.A. 1-202, K.S.A. 1-311.

2. K.S.A. 1-311(a) states in relevant part, as follows:

The board may deny an application for a Kansas certificate, revoke or suspend any certificate issued under the laws of this state or may revoke, suspend or refuse to renew any permit issued under K.S.A. 1-310 and amendments thereto, or may revoke or suspend a practice privilege under K.S.A. 1-322, and amendments thereto, and any notification issued pursuant to K.S.A. 2000 Supp. 1-322 and amendments thereto, may censure the holder of any such permit, certificate, notification or practice privilege, limit the scope of practice of any permit holder and may impose an administrative fine not exceeding \$5,000, for any one of the following causes:

(1) Fraud, dishonesty or deceit in obtaining a certificate, permit, registration, notification or practice privilege;

...

(6) failure to comply with applicable federal or state requirements regarding the timely filing of the person's personal tax returns, the tax returns of the person's firm or the timely remittance of payroll and other taxes collected on behalf of others;

...

(8) willful violation of a rule of professional conduct;

...

(14) any conduct reflecting adversely on a person's fitness to practice certified public accountancy;

3. K.A.R. 74-5-401 is a rule of professional conduct and provides that a certified public accountant shall not commit any act discreditable to the profession.

4. K.S.A. 1-316(a) provides in relevant part that it is unlawful for any person to engage in the practice of certified public accountancy unless the person holds a Kansas certificate and a valid permit to practice issued by the Board pursuant to K.S.A. 1-310. Permits to practice certified public accountancy in the State of Kansas are issued by the Board pursuant to K.S.A. 1-310, and thereafter renewed on a biennial basis. As a condition of permit renewal, an individual is required to submit to the Board a sufficient renewal application together with a prescribed fee. K.S.A. 1-310. The application for permit renewal consists of a form provided by the Board. K.A.R. 74-4-3a. The questions posed by the Board correlate in part to the information otherwise required by the Board in order to make a proper determination as to whether an individual qualifies for receipt of a permit to practice certified public accountancy in the State of Kansas. See K.S.A. 1-310, K.S.A. 1-311.

5. At all times relevant hereto, Respondent maintained a Kansas Certificate issued pursuant to K.S.A. 1-302, and a permit to practice certified public accountancy in the State of Kansas issued pursuant to K.S.A. 1-310. Respondent resides and practices certified public accountancy in the State of Kansas. Jurisdiction in this matter is vested in the Board by virtue of the authority set forth in K.S.A. 1-201 *ET. seq.*.

6. Notice of these proceedings was properly afforded the parties pursuant to K.S.A. 77-514.

7. Whereas the terms fraud, dishonesty and deceit are not defined *per se* by the

Kansas Accountancy Act, K.S.A. 1-201 *ET. seq.*, such terms have been addressed by our judiciary. Fraud is commonly defined as requiring

- A. That false (or untrue) representations were made as a statement of existing and material fact;
- B. That the representations were known to be false (or untrue) by the party making them, or were recklessly made without knowledge concerning them;
- C. That the representations were intentionally made for the purpose of inducing another party to act upon them;
- D. That the other party reasonably relied and acted upon the representations made; and
- E. That the other party sustained damage by relying upon them.

P.I.K. 4th §127.40. Also see *Kelly v. VinZant*, 287 Kan. 509, 515, 197 P.3d 803 (2008.)

Similarly, the term dishonesty often refers to actions which illustrate a disposition to lie, cheat or defraud and the term deceit is commonly referred to in the context of a fraudulent and deceptive misrepresentation. *Black's Law Dictionary*, 5th Edition.

8. Respondent submitted his July 26, 2011 Permit Renewal Application to the Board and therein knowingly and willfully represented to the Board that he had not been delinquent in filing his personal tax returns in the seven years preceding the date of the application. This statement was false and made to the Board as a statement of existing and material fact.

Respondent was aware at the time that he completed and submitted the July 26, 2011 permit renewal application that he had been delinquent in filing his 2009 federal and state personal tax returns, and therefore knew that the representation made to the Board in response to Question 10 of the July 26, 2011 Permit Renewal Application was a false statement.

Respondent made the false statement with the purpose and intent to induce the Board to

renew his permit to practice certified public accountancy for the renewal period commencing July 1, 2011. The Board reasonably relied on Respondent's representation as to the timeliness of his filing of personal tax returns, and issued to Respondent a permit to practice certified public accountancy for the renewal period commencing July 1, 2011. Although the Board did not sustain monetary damage, the Board is satisfied that its interests and those of the public were damaged by Respondent's actions.

There is clear and convincing evidence that Respondent committed an act of fraud, dishonesty and deceit in preparing and submitting to the Board his July 26, 2011 Permit Renewal Application, and therefore Respondent is subject to discipline pursuant to K.S.A. 1-311(a)(1).

9. Respondent submitted his July 29, 2013 Permit Renewal Application to the Board and therein knowingly and willfully represented to the Board that he had not been delinquent in filing his personal tax returns in the seven years preceding the date of the application. This statement was false and made to the Board as a statement of existing and material fact.

Respondent was aware at the time that he completed and submitted the July 29, 2013 permit renewal application that he had been delinquent in filing his 2009, 2010 and 2011 federal and state personal tax returns, and therefore knew that the representation made to the Board in response to Question 10 of the July 29, 2013 Permit Renewal Application was a false statement.

Respondent made the false statement with the purpose and intent to induce the Board to renew his permit to practice certified public accountancy for the renewal period commencing July 1, 2013. The Board reasonably relied on Respondent's representation as to the timeliness of his filing of personal tax returns, and issued to Respondent a permit to practice certified public accountancy for the renewal period commencing July 1, 2013. Although the Board did not

sustain monetary damage, the Board is satisfied that its interests and those of the public were damaged by Respondent's actions.

There is clear and convincing evidence that Respondent committed an act of fraud, dishonesty and deceit in obtaining a permit on July 26, 2011 and July 29, 2013, and therefore Respondent is subject to discipline pursuant to K.S.A. 1-311(a)(1).

10. Respondent was required by law to file his 2009 federal and state tax return on or before October 15, 2010. See 26 U.S.C. § 6072, 26 U.S.C. § 6081, K.S.A. 79-3221 and K.A.R. 92-12-67. Respondent filed his 2009 federal tax return on or about November 29, 2010 and his 2009 state tax return on or about November 24, 2010. Respondent acknowledged that his 2009 personal tax returns were not filed in a timely manner. Accordingly, Respondent failed to comply with applicable federal and state requirements regarding the timely filing of his personal tax returns for tax years 2009, and is therefore subject to sanction pursuant to K.S.A. 1-311(a)(6).

11. Respondent filed his 2010 federal tax return on or about November 28, 2011 and his 2010 state tax return on or about November 23, 2011. Respondent acknowledged that his 2010 personal tax returns were not filed in a timely manner. Accordingly, Respondent failed to comply with applicable federal and state requirements regarding the timely filing of his personal tax returns for tax years 2010, and is therefore subject to sanction pursuant to K.S.A. 1-311(a)(6).

12. Respondent filed his 2011 federal tax return on or about April 25, 2013 and his state tax return on or about April 22, 2013. Accordingly, Respondent failed to comply with applicable federal and state requirements regarding the timely filing of his personal tax returns for tax years 2011, and is therefore subject to sanction pursuant to K.S.A. 1-311(a)(6).

13. K.A.R. 74-5-401(a) provides that a certified public accountant shall not commit

an act discreditable to the profession. K.A.R. 74-5-401(b) provides that Rule 501 of the code of professional conduct, including the terminology and interpretations under rule 501 of the "AICPA professional standards" shall be used by the board in determining whether a certified public accountant has committed an act discreditable to the profession. Rule 501 interpretations provide in relevant part that an individual "... who fails to comply with applicable federal, state, or local laws or regulations regarding the timely filing of his or her personal tax returns or tax returns of the member's firm, ...may be considered to have committed an act discreditable to the profession in violation of rule 501."

Respondent's failure to comply with applicable federal and state requirements regarding the timely filing of his personal tax returns for each of the tax years 2009, 2010 and 2011 constituted willful acts discreditable to the profession, and Respondent is therefore subject to sanction pursuant to K.S.A. 1-311(a)(8).

Furthermore, Respondent's willful commission of acts of fraud, dishonesty and deceit in obtaining a permit, likewise constitute acts discreditable to the profession in that such acts are injurious and bring dishonor and harm to the reputation of the profession of certified public accountancy. Respondent is therefore subject to sanction pursuant to K.S.A. 1-311(a)(8).

14. Respondent's commission of acts of fraud, dishonesty and deceit as further described herein in obtaining his permit to practice certified public accountancy, and Respondent's failure to timely file his federal and state tax returns for tax years 2009, 2010 and 2011, reflect adversely on his fitness to practice certified public accountancy. Respondent is therefore subject to sanction pursuant to K.S.A. 1-311(a)(14).

15. The Petitioner did not fulfill its burden of proof to establish that Respondent

failed to timely remit payroll or other taxes collected on behalf of others for which Respondent was responsible. Respondent is therefore not subject to discipline pursuant to K.S.A. 1-311(a)(6) relative to the failure of M & S to timely remit payroll and sales taxes to the proper authorities.

16. K.S.A. 1-311(a)(1) authorizes the Board in relevant part to revoke or suspend a Kansas certificate, revoke or suspend any permit issued under K.S.A. 1-310 and amendments thereto, censure the holder of any such certificate or permit, limit the scope of practice of any permit holder and impose an administrative fine not exceeding \$5,000 upon a finding that Respondent engaged in fraud, dishonesty or deceit in obtaining a permit. As to Count I of the Petition, the Board has determined that Respondent committed acts of fraud, dishonesty and deceit in obtaining a permit to practice certified public accountancy as described above. The Board finds that Respondent's permit to practice certified public accountancy shall be suspended for a period of one (1) year to commence upon the effective date of this Final Order. Furthermore Respondent shall pay to the Board a monetary fine in the amount of \$1,500.00 to be paid within thirty (30) days of the effective date of this Final Order which shall not be paid by credit card.

Respondent's intentional falsification of two distinct Permit Renewal Applications is deemed to be a serious offense worthy of appropriate sanction in this case. Respondent had been previously disciplined for failure to timely file his personal tax returns over the course of three (3) years and therefore was not naïve to the rules governing his conduct as a certified public accountant, notably his timely filing of personal tax returns. Despite this history, Respondent intentionally mislead the Board on two separate occasions as to his timely filing of personal tax returns in an effort to obtain renewal of his permit to practice as a certified public

accountant in the State of Kansas. Those two occasions were approximately 24 months apart, leaving ample time for Respondent to give consideration to the propriety of his actions and affording an opportunity for Respondent to remedy the issues at hand. Respondent was requested on February 12, 2014 to provide specific tax transcripts otherwise readily available to him documenting his timely filing of personal tax returns, yet refused to do so until June of 2014. Respondent took this course of action with knowledge that the production of the tax transcripts as requested, would serve to disclose his unlawful acts to the Board. As a result, the sanctions are deemed to be appropriate and properly within the vested discretion of the Board.

17. K.S.A. 1-311(a)(6) authorizes the Board in relevant part to revoke or suspend a Kansas certificate, revoke or suspend any permit issued under K.S.A. 1-310 and amendments thereto, censure the holder of any such certificate or permit, limit the scope of practice of any permit holder and impose an administrative fine not exceeding \$5,000 upon a finding that Respondent failed to comply with applicable federal or state requirements regarding the timely filing of the his personal tax returns. As to Count II of the Petition, the Board has determined that Respondent failed to comply with applicable federal and state requirements regarding the timely filing of his personal tax returns as described herein. Accordingly, the Board finds that Respondent shall pay to the Board a monetary fine in the amount of \$500.00 to be paid within thirty (30) days of the effective date of this Final Order which shall not be paid by credit card. Respondent's actions relative to the timely filing of his personal tax returns constitute a repeat offense and are worthy of the appropriate sanction provided for herein.

18. K.S.A. 1-311(a)(8) authorizes the Board in relevant part to revoke or suspend a Kansas certificate, revoke or suspend any permit issued under K.S.A. 1-310 and amendments

thereto, censure the holder of any such certificate or permit, limit the scope of practice of any permit holder and impose an administrative fine not exceeding \$5,000 upon a finding that Respondent willfully violated a rule of professional conduct. K.A.R. 74-5-401(a) is a rule of professional conduct and provides that a certified public accountant shall not commit an act discreditable to the profession. As to Count III of the Petition, the Board has determined that Respondent committed acts discreditable to the profession as further described herein. Accordingly, Respondent's permit to practice certified public accountancy shall be suspended for a period of one (1) year to commence upon the effective date of this Final Order and Respondent shall pay to the Board a monetary fine in the amount of \$1,500.00 to be paid within thirty (30) days of the effective date of this Final Order which shall not be paid by credit card.

The propriety of the sanction is established based on a review of the specific conduct at issue in this case and the circumstances addressed in paragraph 16 above, which are incorporated herein by reference.

19. K.S.A. 1-311(a)(14) authorizes the Board in relevant part to revoke or suspend a Kansas certificate, revoke or suspend any permit issued under K.S.A. 1-310 and amendments thereto, censure the holder of any such certificate or permit, limit the scope of practice of any permit holder and impose an administrative fine not exceeding \$5,000 upon a finding that Respondent engaged in conduct reflecting adversely on his fitness to practice certified public accountancy. As to Count IV of the Petition, the Board has determined as described above, that Respondent engaged in acts as otherwise described herein, that reflect adversely on his fitness to practice certified public accountancy. Accordingly, Respondent's permit to practice certified public accountancy shall be suspended for a period of one (1) year to commence upon the

effective date of this Final Order and Respondent shall pay to the Board a monetary fine in the amount of \$1,500.00 to be paid within thirty (30) days of the effective date of this Final Order which shall not be paid by credit card.

The propriety of the sanction is established based on a review of the specific conduct at issue in this case and the circumstances addressed in paragraph 16 above, which are incorporated herein by reference.

20. The Board finds that Petitioner failed to fulfill its burden of proof to establish that Respondent is subject to sanction pursuant to Count V of the Petition, and therefore Count V is dismissed.

21. The Board has given consideration to the party's arguments as to the propriety of sanctions. Respondent argues that the Board should follow the lead of prior decisions in determining the appropriate sanction.

K.S.A. 1-311 vests the Board with both the authority and the discretion to render a multitude of diverse sanctions ranging from revocation of certificates to censure. In *Deberry v. Kansas State Board of Accountancy*, 34 Kan. App. 2d 813, 124 P.3d 1067 (2005), the Kansas Court of Appeals specifically stated as to the instant issue, that "[T]he discipline the Board determined and imposed in other cases is irrelevant." Thus, whereas the Board has the discretion to review and consider its prior decisions, it is not bound to impose sanctions similar to those assessed in a separate and distinct case. Furthermore, each case presents its own unique set of facts and circumstances. For example, the decisions referenced by Respondent were issued by consent and agreement of the parties in reconciliation of wrongs committed, and arise from a summary presentation of the evidence. The instant decision arises from a full evidentiary

hearing which presented unique facts and arguments. The Board has the opportunity to observe and listen to witnesses and reviewed an extensive record in this proceeding. The Board finds sanctions herein are within the statutory authority bestowed upon the Board and are appropriate and reasonable based on the record.

22. K.S.A. 1-206 authorizes the Board to assess reasonable costs where an order is issued adverse to a certificate or permit holder. Those costs include fees incurred for legal services rendered to the Board by independent contractors and the cost of preparing a transcript of the hearing. The Findings of Fact and Conclusions of Law previously set forth herein are adopted by reference in this paragraph 22.

This proceeding arises from Respondent's submission of his July 26, 2011 and July 29, 2013 Permit Renewal Applications and his affirmation that the contents of the application were true and correct. The Board initiated an investigation with the assistance of counsel that included an attempt to ascertain whether Respondent had timely filed his personal tax returns and provided truthful information to the Board in support of the Permit Renewal Applications. Following the completion of its investigation, the Board once again with the assistance of counsel, filed a Petition for Disciplinary Action thereafter proceeding to a full evidentiary hearing over the course of two (2) days. Based on the content of the record and the Board's deliberations, it was determined that Respondent was subject to sanction consistent with the terms of this Final Order. Respondent's commission of fraudulent, dishonest and deceitful acts, his failure to act in accordance with the law governing the timely filing of his personal tax returns, his commission of acts discreditable to the profession and conduct reflecting adversely on his fitness to practice certified public accountancy are acts which directly impact the public

and are deemed of importance to the Board. Accordingly, it is necessary and appropriate for the Board to conclude that the assessment of fees and costs to Respondent is likewise reasonable and appropriate.

WHEREFORE, based on the findings of the Board as set forth herein, the Board orders as follows:

A. As to Count I of the Petition for Discipline, Respondent has committed acts of fraud, dishonesty and deceit in obtaining a permit to practice certified public accountancy as further described above, and is subject to sanction pursuant to K.S.A. 1-311(a)(1). Respondent's permit to practice certified public accountancy is hereby ordered suspended for a period of one (1) year from the effective date of this Final Order. Furthermore, Respondent shall pay a fine to the Board in the amount of \$1,500.00, which shall be paid within thirty (30) days of the effective date of the Board's Final Order and which shall not be paid by credit card;

B. As to Count II of the Petition for Disciplinary Action, Respondent has failed to comply with applicable federal and state requirements regarding the timely filing of his personal tax returns as to tax years 2009, 2010 and 2011 as further described above, and is subject to sanction pursuant to K.S.A. 1-311(a)(6). Respondent shall pay a fine to the Board in the amount of \$500.00, which shall be paid within thirty (30) days of the effective date of the Board's Final Order and which shall not be paid by credit card;

C. As to Count III of the Petition for Disciplinary Action, Respondent willfully violated a rule of professional conduct, specifically K.A.R. 74-5-401 as further described above, and is therefore subject to sanction pursuant to K.S.A. 1-311(a)(8). Respondent's permit to practice certified public accountancy is hereby ordered suspended for a period of one (1) year

from the effective date of this Final Order. Furthermore, Respondent shall pay a fine to the Board in the amount of \$1,500.00, which shall be paid within thirty (30) days of the effective date of the Board's Final Order and which shall not be paid by credit card;

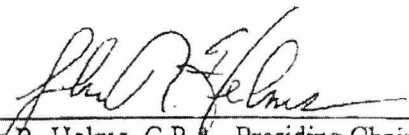
D. As to Count IV of the Petition for Disciplinary Action, Respondent engaged in conduct reflecting adversely on his fitness to practice certified public accountancy as further described above and is subject to sanction pursuant to K.S.A. 1-311(a)(14). Respondent's permit to practice certified public accountancy is hereby ordered suspended for a period of one (1) year from the effective date of this Final Order. Furthermore, Respondent shall pay a fine to the Board in the amount of \$1,500.00, which shall be paid within thirty (30) days of the effective date of the Board's Final Order and which shall not be paid by credit card;

E. Count V of the Petition for Disciplinary Action is hereby dismissed;

F. Costs of this proceeding are hereby assessed to Respondent pursuant to K.S.A. 1-206, the amount of which shall be determined upon motion and hearing before the Board; and

G. The periods of suspensions described in paragraphs A, C, and D, shall run concurrently.

IT IS SO ORDERED.


John R. Helms, C.P.A., Presiding Chair
Kansas Board of Accountancy

NOTICE OF RELIEF FROM FINAL AGENCY ACTION

This Final Order is issued pursuant to K.S.A. 77-526. Respondent is afforded additional procedural rights as outlined below. Pursuant to K.S.A. 77-529, any party, within eighteen (18) days from the date of service of this Final Order, may file a petition for reconsideration with the Kansas Board of Accountancy, stating the specific grounds upon which relief is requested. The filing of the petition is not a prerequisite for seeking administrative or judicial review. If reconsideration has not been requested, a petition for judicial review of the Final Order shall be filed within thirty-three (33) days from the date of service of this Final Order. If reconsideration has been requested, a petition for judicial review of a final order shall be filed within thirty-three (33) days from the date of service of the order rendered upon reconsideration or thirty-three (33) days from the date of service of an order denying the request for reconsideration. If the last day of a period prescribed herein, falls upon a Saturday, Sunday or legal holiday, then the due date shall be extended to the next day on which the agency is open for business. A petition for judicial review is not deemed timely unless filed within the time periods set forth above. The date of service of this Final Order is set forth in the Certificate of Service attached to this pleading. The time periods specified herein incorporate and include the additional three (3) days allowed by law where service is obtained by mail. A request for reconsideration and/or a petition for judicial review of the Final Order shall be served on:

Susan L. Somers
Executive Director
KANSAS BOARD OF ACCOUNTANCY
Landon State Office Building
900 S.W. Jackson
Room 556S
Topeka, Kansas 66612-1239


CERTIFICATE OF SERVICE

This is to certify that on the 20th day of November, 2015, a true and correct copy of the above and foregoing **FINAL ORDER** was served via first class mail, addressed to:

Randall J Forbes
FRIEDEN, UNREIN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604

Scott J. Gunderson
NELSON, GUNDERSON & LACEY
2420 N. Woodlawn
Building 100, Suite K
Wichita, KS 67220

With a copy to:
Darin Conklin
Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C.
P. O. Box 237
Topeka, KS 66601-0237


On behalf of the Board

CERTIFICATE OF SERVICE

I certify that on 8/17/17, I caused a complete and accurate copy of this Response to be served electronically and via United States mail, with the postage prepaid and properly addressed to the following:

Jonathan Schlatter
Morris Laing Evans Brock & Kennedy, Chtd.
300 N. Mead, Suite 200
Wichita, KS 67202
jschlatter@morrislang.com
Attorney for Benjamin Giles

and delivered by email to:

Joshua D. Wright, Litigation Counsel
KCC Wichita Office

Michael Duenes, Deputy General Counsel
KCC Topeka Office

/s/ Paula J. Murray
Paula J. Murray
Legal Assistant
Kansas Corporation Commission