

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF ACCOUNTANCY

In the Matter of  
Ramaniklal Premchand Shah

**FINDINGS OF FACT,  
CONCLUSIONS,  
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Richard C. Luis on April 20, 2011, at the Office of Administrative Hearings in St. Paul. The OAH record closed that day.

Michelle M. Owen, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101-2134, appeared on behalf of the Complaint Investigation Committee (Committee) of the Board of Accountancy (Board).

Ramaniklal Premchand Shah (Respondent) appeared on his own behalf without counsel.

**STATEMENT OF THE ISSUES**

The issues presented are whether the Board should discipline the Respondent because:

1. The Respondent failed to timely comply with the Board's Continuing Professional Education (CPE) requirements, pursuant to Minn. Stat. § 326A.04, subd. 4, and Minn. R. 1105.3000 and 1105.3100;<sup>1</sup> and

2. The Respondent failed to pay the CPE noncompliance fee to the Board until January 2011, pursuant to Minn. Stat. § 326A.08, subd, 7, and Minn. R. 1105.3000.

Based on the evidence in the record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. The Respondent is and has been for many years a certified public accountant. The Respondent has also been a Member of the Board of

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<sup>1</sup> All references to Minnesota Statutes are to the 2010 edition; all references to Minnesota Rules are to the 2009 edition.

Accountancy for many years. From 2004 to 2007, the Respondent was on the Board's Executive Committee. He was on the CPE Committee from 2004 through 2008 and has served as chair of the CPE Committee since 2008. The Respondent has also served on the CPE Committee of the National Association of State Boards of Accountancy (NASBA) since 2008.<sup>2</sup>

2. Under the Board's rules, licensed accountants must complete 120 hours of CPE on a rolling basis every three years, earning a minimum of 20 hours in each year. At least eight of the 120 hours must be in accounting ethics or business ethics.<sup>3</sup> The rules allow credit for seminars and lectures approved by NASBA and for seminars and lectures that are not approved by NASBA, but at least 72 of the 120 hours must be from courses approved by NASBA.<sup>4</sup> Programs of self-study (as opposed to seminar or lecture programs) are allowed only if the sponsors are members of NASBA's Quality Assurance Service (QAS) Program.<sup>5</sup>

3. There are different documentation rules for approved and unapproved courses. For approved courses, the licensee must have a certificate of attendance that contains the registry number of the program sponsor. For courses that are not approved, the licensee must have (1) a certificate of attendance containing the name and contact information of the sponsor, the title and description of the content of the program, the date of the program, the location of the program, and the number of CPE hours for which the licensee attended; (2) a copy of the detailed timed agenda for the program; (3) a biography of the program developer and program presenter; and (4) a statement by the licensee describing how the program contributed to the licensee's professional knowledge and competence.<sup>6</sup>

4. Licensed accountants must provide evidence of compliance with CPE requirements when they apply for renewal of their certificates each year.<sup>7</sup>

5. The rules containing these requirements were changed twice between 2004 and 2007. The disallowance of unapproved self-study courses became effective on June 30, 2007. To address widespread misunderstanding of the rules reflected in a 2007 CPE audit, Board staff sent out a letter to all licensed accountants clarifying the rule requirements.<sup>8</sup>

6. On May 29, 2009, the Board advised the Respondent that he had been selected to participate in the annual CPE audit for the three years ending June 30, 2006, 2007, and 2008. Board staff requested that he submit copies of

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<sup>2</sup> Testimony of Doreen Frost.

<sup>3</sup> Minn. R. 1105.3000 A.

<sup>4</sup> Minn. R. 1105.3100, subp. 1.

<sup>5</sup> Minn. R. 1105.3100, subp. 2.

<sup>6</sup> Minn. R. 1105.3200 A.

<sup>7</sup> Minn. R. 1105.2500 B. Beginning in calendar year 2010, the Board began phasing in a three-year renewal period. See Minn. R. 1105.2550 A.

<sup>8</sup> Testimony of Beverly Carey; Ex. 17.

certificates of completion to substantiate the CPE hours reported on his 2009 certificate renewal form.<sup>9</sup>

7. On June 29, 2009, the Respondent filed a CPE compliance form for the three years ended June 30, 2008. The Respondent indicated that he had completed 176 hours of CPE over that period of time.<sup>10</sup> He also submitted materials to support his claimed CPE hours.<sup>11</sup>

8. Board staff audited the materials and made a variety of adjustments to the claimed hours. Some self-study courses were disallowed because the sponsors were not members of the NASBA QAS program; in addition, some claimed hours for attendance at NASBA annual meetings were disallowed. Some of the approved courses taught by the Respondent were missing documentation of credit by the program sponsor. Finally, none of the claimed courses covered accounting or business ethics.<sup>12</sup>

9. On July 13, 2009, Board staff attempted to send an email to the Respondent advising him of the audit results and asking him to submit additional documentation or to call with any questions.<sup>13</sup> The Respondent either did not receive the email or he overlooked it.<sup>14</sup>

10. On October 1, 2009, the Board's executive director wrote to the Respondent asking him to submit additional documentation and/or late fees by October 19, 2009. The letter also advised the Respondent that failure to provide all supporting documentation by that date might result in referral to the Board's disciplinary committee.<sup>15</sup>

11. The Respondent met with Board staff on October 19, 2009, about the audit results. He was upset that, given the total number of hours of CPE he had taken, the Board staff was questioning his compliance with the requirements. The staff member also became upset and felt that the Respondent was improperly pressuring her to accept the credits without requiring further documentation.<sup>16</sup>

12. The Respondent thereafter requested that the CPE Committee accept the credits that lacked supporting documentation; the Committee denied this request on December 9, 2009.<sup>17</sup>

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<sup>9</sup> Ex. 2.

<sup>10</sup> Ex. 5.

<sup>11</sup> Exs. 6, 7 & 8.

<sup>12</sup> Test. of B. Carey; Ex. 3.

<sup>13</sup> Ex. 3.

<sup>14</sup> Testimony of Ramaniklal Shah.

<sup>15</sup> Ex. 9.

<sup>16</sup> Test. of R. Shah; Test. of B. Carey; Test. of D. Frost; Ex. 10.

<sup>17</sup> Ex. 11.

13. On December 1 and December 16, 2009, the Respondent submitted additional materials to support his CPE filing. The final result of the audit was that the Respondent lacked four approved ethics hours for fiscal year 2008.<sup>18</sup>

14. The Respondent was allowed to satisfy this deficiency by “carrying back” four CPE ethics hours earned in May 2010.<sup>19</sup>

15. Because the Respondent was out of compliance from July 2008 to May 2010, he was required to pay a late processing fee calculated as \$50 for the first month and \$25 per month thereafter until compliance was achieved.<sup>20</sup> In the Respondent’s case, the late processing fee amounted to \$575.

16. The Respondent disputed the fee and continued to assert that he had complied with the CPE requirements.

17. On September 15, 2010, the Board of Accountancy issued the Notice and Order for Hearing in this matter.

18. On January 14, 2011, the Respondent paid the \$575 fee under protest when he filed to renew his CPA certificate. The Respondent believed it was unfair to require payment of a disputed fee in order to renew his CPA certificate.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Board of Accountancy have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 214.10 and 326A.08.

2. The Board has given proper notice in this matter and has fulfilled all procedural requirements.

3. Licensed accountants are required to participate in a program of learning designed to maintain professional competency, and the program must comply with rules adopted by the Board.<sup>21</sup>

4. A program of CPE satisfies the Board’s requirements if it meets the requirements of Minn. R. 1105.3100 and 1105.3200.

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<sup>18</sup> Test. of B. Carey; Ex. 4.

<sup>19</sup> *Id.*

<sup>20</sup> Minn. R. 1105.3000 G.

<sup>21</sup> Minn. Stat. § 326A.04, subd. 4.

5. The failure to comply with a statute or rule the Board is empowered to enforce is a basis for disciplinary action.<sup>22</sup>

6. A licensee who is not in compliance with CPE requirements on June 30 of each year is assessed a late processing fee for each month of noncompliance.<sup>23</sup>

7. The Board may impose a civil penalty upon a person or firm that violates a statute or rule the Board is empowered to enforce.<sup>24</sup>

8. The Respondent failed to timely comply with CPE requirements for fiscal year 2008, and he failed to pay the required late processing fee until January 2011.

9. The Respondent is subject to discipline for failing to comply with Minn. Stat. §§ 326A.04, subd. 4 and 326A.08, subds. 5(a)(1) and 7(a), and Minn. R. 1105.3000G.

10. The imposition of disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. § 326A.08, subd. 5.

Based on the Conclusions, the Administrative Law Judge makes the following:

### RECOMMENDATION

**IT IS RECOMMENDED** that disciplinary action be taken against the CPA Certificate of Ramaniklal Shah.

Dated: May 18th, 2011

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Digitally recorded, no transcript prepared.

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<sup>22</sup> Minn. Stat. § 326A.08, subd. 5(a)(1).

<sup>23</sup> Minn. R. 1105.3000 G.

<sup>24</sup> Minn. Stat. § 326A.08, subd. 7(a).

## **NOTICE**

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Doreen Johnson Frost, Executive Director, Board of Accountancy, Suite 125, 85 East Seventh Place, St. Paul, MN 55101, (telephone 651- 296-7938) to learn the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

The record is clear that the Respondent takes great pride in his leadership role at the Board and in maintaining his professional competence. He took many CPE courses during the period of time in question. The record is also clear that the Board staff applied the rules properly in the course of the audit.

The disciplinary issue here has more to do with the Respondent's reaction to the audit than with the four-credit deficiency the audit disclosed. The Respondent felt insulted and believed his integrity was being unfairly questioned by staff members; but he failed to consider how this response might be perceived by those who are charged with uniformly applying a complicated set of CPE requirements to all licensed accountants. Some form of discipline is merited for the delays in meeting the requirements and paying the late processing fee. Given his position with the Board, the better approach for the Respondent may have been to take all necessary measures to understand the audit results, remedy the deficiency immediately, and promptly pay the noncompliance fee.

**R. C. L.**