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STATE OF WISCONSIN
BEFORE THE ACCOUNTING EXAMINING BOARD

IN THE MATTER OF THE APPLICATION FOR A CERTIFICATED TO PRACTICE AS A CERTIFIED PUBLIC ACCOUNTANT OF DALE F. HELLENGREEN, APPLICANT.	:	FINAL DECISION AND ORDER Case No. LS9103251

The parties to this proceeding for the purposes of s. 227.53, Wis. Stats., are:

Dale F. Hellengreen
E6491 Cty Hwy F
Weyauwega, WI 54983

Accounting Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

The rights of a party aggrieved by this decision to petition the board for hearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information".

On October 18, 1990, the Accounting Examining Board denied the application of Dale F. Hellengreen for a certificate to practice public accounting based upon a criminal conviction. Mr. Hellengreen requested a class 1 hearing upon the denial, pursuant to Wis. Stats. sec. 227.01(3)(a), which was held before an administrative law judge on May 14, 1991. Mr. Hellengreen appeared personally at the hearing and by his attorney, Charles R. Koehn, Port Plaza Mall, Suite C 1360, Green Bay, Wisconsin 54301. The state appeared by its attorney, Gerald M. Scanlon, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

The administrative law judged issued a Proposed Decision on June 5, 1991. Mr. Scanlon filed written objections to that decision on June 13, 1991. The matter was reviewed by the Accounting Examining Board at its meeting on June 28, 1991.

Based upon the entire record in this case, the Accounting Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The applicant, Dale F. Hellengreen, who resides at E6491 Cty Hwy F in Weyauwega, Wisconsin, applied to the Accounting Examining Board on April 30, 1990 for a certificate to practice as a certified public accountant in Wisconsin by endorsement.

2. Mr. Hellengreen obtained license #23,933 to practice as a certified public accountant in Illinois in November 1978.

3. Mr. Hellengreen applied to the Accounting Examining Board in September 1982 for a certificate to practice as a certified public accountant in Wisconsin by endorsement.

4. Mr. Hellengreen's September 1982 application was incomplete, lacking (1) an official transcript of his undergraduate degree from U.W.-Whitewater, (2) a completed certification form from Illinois, and (3) a completed ethics examination. The Accounting Examining Board sent a letter to Mr. Hellengreen on November 5, 1982 requesting those items in order to process his application. Mr. Hellengreen received the letter, but failed to ensure that those three items were submitted to the Board. Mr. Hellengreen delegated to an employee the task of submitting the required documents, and Mr. Hellengreen's failure to follow up was inadvertent rather than due to any problem with the required information. Mr. Hellengreen believed he had complied with all requirements for certification, but no certificate was ever issued.

5. Mr. Hellengreen held himself out to the public as a certified public accountant, and practiced as a certified public accountant from 1983 to 1990.

6. Mr. Hellengreen was convicted on May 29, 1990 of a misdemeanor violation of sec. 442.11(5), Wis. Stats., the statutory language of which is:

> "Any person shall be deemed guilty of a misdemeanor...who holds himself or herself out to the public as a certified public accountant or who assumes to practice as a certified public accountant unless he or she has been granted a certificate as such from the examining board."

On July 26, 1990, Mr. Hellengreen was sentenced as follows: ninety days jail, two years probation, a fine of $500 plus costs.

7. Mr. Hellengreen is not now practicing as a certified public accountant.

CONCLUSIONS OF LAW

1. The Accounting Examining Board has both personal and subject-matter jurisdiction of this matter, under sec. 442.05, Wis. Stats., by virtue of fact #1 above, that Mr. Hellengreen applied to the Board for a certificate to practice in Wisconsin as a certified public accountant.

2. Considering the applicable legal standard, the evidence presented at the denial proceeding was not sufficient to show that the Board's decision was inappropriate. However, the evidence presented does provide a sufficient basis for the Board in its discretion to grant Mr. Hellengreen's application for a certificate.

ORDER

IT IS HEREBY ORDERED that the application of Dale F. Hellengreen for a certificate to practice as a certified public accountant in the State of Wisconsin is denied.

FURTHERMORE, IT IS HEREBY ordered that Dale F. Hellengreen may reapply for certification upon submitting adequate proof to the Board of successful completion of the probationary period attendant to his criminal conviction.

EXPLANATION OF VARIANCE

The board has accepted the administrative law judge's Findings of Fact and Conclusions of Law. However, it has modified the proposed Order which would grant a "probationary and limited" certificate to Mr. Hellengreen, to instead deny the applicant's request at this time and provide for a reconsideration when he successfully completes his probationary period under the criminal conviction. In doing so, the board has accepted the reasoning advanced by the state's attorney in his objections to the Proposed Decision.

There are material uncertainties presented in the record of this case which, along with the protracted length of unlicensed practice and relatively recent criminal conviction and continuing probation of Mr. Hellengreen, compel the board to exercise its discretion to deny the application at this time.

Mr. Hellengreen testified that Illinois was conducting an investigation regarding his conduct and that, in fact, he no longer possessed a current license there. The record does not clearly establish the result or current status of the Illinois proceeding. Since Mr. Hellengreen testified that he allowed his Illinois registration to lapse in September 1990, it is also unclear from this record as to whether or not he held any valid certificate or license in Illinois which could be endorsed to Wisconsin either at this time, or in October 1990 when this board initially acted upon the application.

It is clear that Mr. Hellengreen has an obligation to establish that the status of his Illinois registration is such as to permit its endorsement into this state. He has not met that burden on this record, and his application should be denied on this basis alone until such time as the matter is sufficiently clarified by the applicant.

In addition, Mr. Hellengreen falsely held himself out to the public as a CPA licensed by this state from 1983 to 1990. The Findings of Fact of the administrative law judge indicate that the applicant inadvertently failed to become certified or licensed to practice public accounting in this state for a period of eight years. Mr. Hellengreen admitted that although he was aware that his application materials were incomplete in 1982 when he received a letter from the board that he had not submitted the necessary educational or certification credentials, nor his ethics examination for grading, he delegated their completion to an employee and assumed the process had been completed when he heard nothing further. In fact, no certificate or license

was ever issued as the application process was never completed by Mr. Hellengreen. He also testified that although he was aware of the required renewal of the license on a regular basis, he assumed his employee was taking care of the matter--this despite the fact he never saw any original certificate or license from the board.

The finding by the administrative law judge that Mr. Hellengreen had inadvertently failed for a period of eight years to assure himself that he was indeed initially certified, licensed, and that the license had been periodically renewed, at least casts serious doubt upon his ability to competently perform the professional tasks of information gathering and reporting which are essential to the practice of a certified public accountant. In this regard, it must also be noted that the court in the criminal case imposed both a ninety day jail sentence and a lengthy probationary period for the unlicensed practice, thus reflecting the extremely serious overall nature of the misconduct. The determination by this board should do no less.

Even assuming, although not established here, that the current status of applicant's licensure in Illinois is such as to permit the granting of a probationary and limited certification--which, as proposed, essentially requires that applicant not violate any laws in the next two years--such action would not be sufficient to either deter other licensees, or prospective licensees, from engaging in similar misconduct or adequately express both the public's and this board's expectation that there be observance of the licensing laws. Cf., State v. Aldrich, 71 Wis. 2d 206 (1976); State v. Wildermuth, 34 Wis. 2d 235 (1967); and, State v. Kern, 203 Wis. 178 (1930).

To certify an individual to practice public accounting immediately following eight years of unlicensed practice, a recent criminal conviction where incarceration was ordered, and prior to the expiration of the probationary period ordered by the court, would clearly send the wrong message to licensees, prospective licensees and the public.

It is the board's opinion that the probationary period ordered by the court should be successfully completed prior to any reconsideration of Mr. Hellengreen's application through endorsement. At that time, of course, the applicant would also be required to establish that he possesses the necessary authority to practice public accounting in Illinois in order to qualify for certification in this state through endorsement.

Dated: July 12, 1991.

STATE OF WISCONSIN
ACCOUNTING EXAMINING BOARD

Joel D. Garlock, C.P.A.
Chairman

BDLS2-527

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each, and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Accounting Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Accounting Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Accounting Examining Board.

The date of mailing of this decision is July 18, 1991.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board or the consumer credit review board, the credit union review board or the savings and loan review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

BEFORE THE STATE OF WISCONSIN
ACCOUNTING EXAMINING BOARD

IN THE MATTER OF THE APPLICATION FOR A CERTIFICATE TO PRACTICE AS A CERTIFIED PUBLIC ACCOUNTANT OF DALE F. HELLENGREEN, APPLICANT	: : : : : : :	NOTICE OF FILING PROPOSED DECISION LS9103251ACC

TO: Charles R. Koehn
Suite C-1360
Port Plaza Mall
Green Bay, WI 54301
Certified P 568 984 384

Gerald Scanlan
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Accounting Examining Board by the Administrative Law Judge, John N. Schweitzer. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Accounting Examining Board, Room 290, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before June 17, 1991. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Accounting Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together, with any objections and arguments filed, the Accounting Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 6th day of June, 1991.

John N. Schweitzer
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE ACCOUNTING EXAMINING BOARD

IN THE MATTER OF THE APPLICATION FOR A CERTIFICATE TO PRACTICE AS A CERTIFIED PUBLIC ACCOUNTANT OF DALE F. HELLENGREEN, APPLICANT	PROPOSED DECISION Case No. LS-9103251-ACC

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 1.04, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Dale F. Hellengreen
E6491 Cty Hwy F
Weyauwega, WI 54983

Accounting Examining Board
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

POSTURE OF CASE

A. On April 30, 1990, Mr. Hellengreen filed an application for a certificate to practice as a certified public accountant by endorsement in Wisconsin. The Accounting Examining Board considered the matter at its meeting on October 18, 1990 and denied the application. The Board stated its reason for denial as follows:

> On May 29, 1990 you were convicted under section 442.11(5) of the Wisconsin Statutes of holding yourself out to the public as a certified public accountant without having been granted a certificate as such from the Wisconsin Accounting Examining Board. The board understands that you are currently incarcerated pursuant to that conviction.
>
> It is the opinion of the Wisconsin Accounting Examining Board that the circumstances of your conviction are substantially related to the practice of certified public accounting, pursuant to sec. 111.335, Wis. Stats. Sec. 442. 04(5), Wis. Stats. provides that such conviction is grounds for denial of your application.

Additionally, your conviction for unlicensed practice in this instance is of particular concern since you were aware that you could not engage in such conduct without a certificate in this state, as indicated in part through your prior application in 1982 which was not acted upon because of your failure to supply the necessary accompanying information.

Finally, although not a basis for denying your application, you should be advised that there are additional concerns at this time regarding the action taken by the Wisconsin Commissioner of Securities on February 7, 1990 in rendering a Summary Order of Prohibition and Revocation against you, based upon its staff's allegations of fraud in the offer and sale of securities.

B. The Board's Order Denying the Application was dated Oct. 18, 1990. In a letter dated November 5, 1990, Mr. Hellengreen requested a denial proceeding under sec. 227.42, Wis. Stats. and ch. RL 1, Wis. Adm. Code. A denial proceeding ("hearing") was scheduled for May 14, 1991. Notice of Hearing was prepared by the Division of Enforcement and served by certified mail on Mr. Hellengreen, who received it on March 26, 1991. That notice states "The issue raised for consideration at the hearing on the denial of your application for licensure is: Whether conviction under sec. 442.11(5) of the Wis. Stats. of holding yourself out to the public as a certified public accountant without having been granted a certificate as such is sufficient grounds, considering attendant circumstances, to deny you a certificate as a certified public accountant by endorsement under sec. 442.05, Wis. Stats."

C. All time limits and notice and service requirements having been met, the denial proceeding was held as scheduled on May 14, 1991. Mr. Hellengreen appeared in person, and represented by Attorney Charles R. Koehn, Suite C-1360, Port Plaza Mall, Green Bay, WI 54301. The Accounting Board was represented by Attorney Gerald Scanlan of the Department of Regulation and Licensing's Division of Enforcement. That denial proceeding forms the basis for this proposed order.

FINDINGS OF FACT

1. The applicant, Dale F. Hellengreen, who resides at E6491 Cty Hwy F in Weyauwega, Wisconsin, applied to the Accounting Examining Board on April 30, 1990 for a certificate to practice as a certified public accountant in Wisconsin by endorsement (exhibit #4).

2. Mr. Hellengreen obtained license #23,933 to practice as a certified public accountant in Illinois in November 1978 (transcript, p. 15, and p. 4 of exhibit #3).

3. Mr. Hellengreen applied to the Accounting Examining Board in September 1982 for a certificate to practice as a certified public accountant in Wisconsin by endorsement (exhibit #3).

4. Mr. Hellengreen's September 1982 application was incomplete, lacking (1) an official transcipt of his undergraduate degree from U.W. - Whitewater, (2) a completed certification form from Illinois, and (3) a completed ethics examination (p. 3 of exhibit #3 and transcipt, p. 20). The Accounting Examining Board sent a letter to Mr. Hellengreen on November 5, 1982 requesting those items in order to process his application (p. 3 of exhibit #3 and transcript, pp. 29-30). Mr. Hellengreen received the letter, but failed to ensure that those three items were submitted to the Board. Mr. Hellengreen delegated to an employee the task of submitting the required documents, and Mr. Hellengreen's failure to follow up was inadvertent rather than due to any problem with the required information. Mr. Hellengreen believed he had complied with all requirements for certification, but no certificate was ever issued (transcript, pp. 40, 46-48).

5. Mr. Hellengreen held himself out to the public as a certified public accountant, and practiced as a certified public accountant from 1983 to 1990 (exhibits #1 and #5, and transcript, p. 40).

6. Mr. Hellengreen was convicted on May 29, 1990 of a misdemeanor violation of sec. 442.11(5), Wis. Stats., the statutory language of which is: "Any person shall be deemed guilty of a misdemeanor ... who holds himself or herself out to the public as a certified public accountant or who assumes to practice as a certified public accountant unless he or she has been granted a certificate as such from the examining board." On July 26, 1990, Mr. Hellengreen was sentenced as follows: ninety days jail, two years probation, a fine of $500 plus costs (exhibit #1).

7. Mr Hellengreen is not now practicing as a certified public accountant (transcript, p. 29).

CONCLUSIONS OF LAW

I. The Accounting Examining Board has both personal and subject-matter jurisdiction of this matter, under sec. 442.05, Wis. Stats., by virtue of fact #1 above, that Mr. Hellengreen applied to the Board for a certificate to practice in Wisconsin as a certified public accountant.

II. Considering the applicable legal standard, the evidence presented at the denial proceeding was not sufficient to show that the Board's decision was inappropriate. However, the evidence presented does provide a sufficient basis for the Board in its discretion to grant Mr. Hellengreen's application for a certificate.

ORDER

NOW, THEREFORE, IT IS ORDERED that the application of Dale F. Hellengreen for a certificate to practice as a certified public accountant in the State of Wisconsin is approved, under the following conditions:

When Mr. Hellengreen has completed the application process and provided all necessary documentation to the Board for certification by endorsement under sec. 442.05, Wis. Stats., including any transcript, out-of-state license, and required examination, a probationary and limited certificate shall be issued.

The term of probation shall be two years.

The limitations on the certificate are that
(1) Mr. Hellengreen shall submit a written report to the Board six months after issuance and every six months thereafter, verifying that he has taken all steps to maintain current licensure, and that he has not been arrested or convicted for any offense substantially related to certified public accounting; further, as long as he remains on misdemeanor probation, he must verify that he has complied with all terms of his misdemeanor probation and have this portion of his report verified by his probation officer;
(2) Mr. Hellengreen shall report to the Board any change in the status of his court-ordered probation, including any extensions of probation, change in the conditions of probation, or release from probation;
(3) if Mr. Hellengreen fails to submit such reports, or is arrested for or convicted of an offense substantially related to certified public accounting, or if he is reported to have violated any of the terms of his court-ordered probation, his certificate will be subject to summary suspension.

If Mr. Hellengreen submits such reports as required for two years, maintains current licensure, is not arrested for or convicted of an offense substantially related to certified public accounting, and is released from court-ordered probation, his probationary certificate will be replaced by a regular certificate without limitation.

OPINION

Under sec. 227.01(3)(a), Wis. Stats., boards act with substantial discretionary authority when they grant or deny a license. Therefore, an applicant who challenges a board's denial bears the burden of showing that the Board's action was an abuse of discretion. This means that the applicant must show that the Board either (1) failed fairly to consider the facts before it, or (2) misapplied the statutes and rules which should govern its decision.

The cases cited by Mr. Scanlon clearly establish that the Board acted within its authority when it denied Mr. Hellengreen's application for a certificate. In Law Enforce. Stds. Bd. v. Lyndon Station, 101 Wis.2d 472, 305 N.W.2d 89 (1981), the Wisconsin Supreme Court upheld a decision by the Law Enforcement Standards Board that convictions for misconduct in public office were substantially related to employment as a law enforcement officer, thereby barring the person in question from such employment. In Gibson v. Transp. Comm., 106 Wis.2d 22, 315 N.W.2d 346 (1982), the Wisconsin Supreme Court ruled that in an employment decision, an agency need not inquire into the specific factual circumstances of a conviction where the crime itself was substantially related to the position. Thus, under these interpretations, the Accounting Examining Board may appropriately consider a violation of sec. 442.11(5) to be an offense which is substantially related to certified public accounting, and the Board has no obligation to inquire beyond the fact of conviction in its decision to deny Mr. Hellengreen a certificate.

If the Administrative Law Judge's job were limited solely to reviewing the Board's decision, this opinion would stop here, as Mr. Hellengreen failed to prove by a preponderance of the evidence that the Board's action was inappropriate. Class 1 denial proceedings also serve another purpose, however, which is to provide an applicant with a forum for a complete and thorough presentation of evidence which may not have been submitted to the Board for its initial decision. After such a hearing, if the Administrative Law Judge feels there is enough evidence to justify a change in the Board's decision, he or she could direct the applicant to submit a new application to the Board with all the evidence which was developed in the denial proceeding. However, for administrative efficiency, rather than have the applicant start the procedure anew, the Administrative Law Judge should consider such additional evidence as was unavailable to the Board, and propose a new order for the Board's consideration.

A full and fair consideration of Mr. Hellengreen's offense requires the Board to go beyond the fact of a conviction. This approach is supported by Accy 1.40(2)(b)(3), Wis. Admin. Code (relating specifically to the initiation of disciplinary proceedings), which says

> On conviction of a misdemeanor the circumstances of which substantially relate to the practice of accounting the board will review the circumstances and the nature of the act resulting in conviction. Each such situation will be considered by the board as an informal complaint. The minutes of the board will reflect the fact of review and the resulting disposition of the informal complaint. Such convictions that are professionally related and related to good moral character can be the basis for bringing formal charges and subsequent board action (emphasis added).

Similar sentiments are expressed in an Attorney General's Opinion written before both the Lyndon Station and Gibson cases cited above, regarding the licensing of bartenders (68 OAG 202, at p. 208):

> The Wisconsin courts have not yet had an opportunity to identify what types of offenses substantially relate to bartender licensing. Although convictions for many types of offenses could arguably relate to such licensing, the policy behind the anti-discrimination statute militates against any automatic disqualification of applicants with criminal records. The thrust of the statute indicates that all of the information presented by the applicant, including but not limited to the former offense, should be considered by the licensing agency (emphasis added).

Finally, looking beyond the fact of a conviction is supported by dissents in both Lyndon Station and Gibson. In those dissents, Justice Abrahamson essentially argued that the statutory language required the licensing body to inquire into the circumstances of any conviction. For example, in Gibson at page 30, she says "The legislative history of sec. 111.32(5)(h)2b ... clearly demonstrates that the legislature specifically intended to use the words 'felony ... the circumstances of which substantially relate' rather than the words 'felony ... the elements of which substantially relate" (emphasis in original). Justice Abrahamson's view did not prevail, and there in fact is no requirement that a Board go beyond the fact of a conviction. However, neither the statute nor the cases prevent a board from looking at all the circumstances of a conviction. In this case, it is appropriate to go beyond the fact of conviction, and to propose a disposition which is more fair and just, while still safeguarding the interests of the public and the profession.

Mr. Hellengreen presented evidence of the specific circumstances of his offense which make it appropriate for the Board in its discretion to grant a certificate, preferably, for reasons discussed below, a limited probationary certificate. After obtaining a license in Illinois to practice as a certified public accountant, he moved to Wisconsin in 1980 to work for Kimberly-Clark as an internal auditor, and did not at that time apply for a certificate, as the nature of his work did not require it (transcript, pp. 17-18). In January of 1983 he became self-employed, after having applied for a certificate by endorsement (transcript, pp. 18-19). When he received word from the Board that his application was incomplete, he asked someone in his firm, possibly his personal secretary, to see that the documents were forwarded, but they never were. Mr. Hellengreen stated that at this time he was very concerned with client work, and admitted that he should have attended to his own business as conscientiously as he did to his clients' (transcript, pp. 40-41, 46-48).

Besides his own testimony that he delegated the task of submitting the missing documents to someone else in his office, common sense dictates that, having submitted an application to the Board in September of 1982, Mr. Hellengreen would not then have failed to complete his application by submitting his undergraduate transcript, his Illinois certification, and his ethics exam, except through stupidity, arrogance, or inadvertence. Mr. Hellengreen testified credibly that his undergraduate transcript was complete, that his Illinois certification was valid at the time, and that he completed

the ethics exam (transcript, pp. 20-21); there was no evidence presented or implication made in the hearing that he could not have successfully fulfilled the requirements for certification at that time. Mr. Hellengreen does not appear to be stupid, a fact corroborated by his successful C.P.A. practice, and it is difficult to imagine a person arrogant enough to call the Board's attention to himself by applying, then deliberately failing to follow through with that application, and then practicing openly as a C.P.A. In my opinion, Mr. Hellengreen's testimony regarding his inadvertence was both credible and corroborated by common sense. If the Board accepts this opinion of Mr. Hellengreen, it is imperative that an alternative to denial be considered.

In early 1990, he was arrested and charged with holding himself out to the public as a certified public accountant without a certificate. After his arrest, and on the advice of his attorney, Mr. Hellengreen pled no contest to the charge as issued. Mr. Hellengreen was indeed guilty, and as the Board's analysis in its denial states, the fact that he applied for a license in 1982 shows that he was aware of the need for a certificate. His stated reason for not contesting, or attempting to reduce, the charge was that although he thought he had fulfilled the requirements for a certificate, the crime does not require intent, and therefore, accepting the fact that no license had ever been issued, he stood no chance of being found not guilty (transcript, pp. 37-40). He stated that for the same reason he did not even pursue trying to prove that he had applied in 1982 (transcript, p. 35).

One can imagine that another person in his situation with a more aggressive temperament or a more aggressive attorney might have sought, and fought for, a dismissal, a reduction, or a not guilty verdict. However, his attitude in taking responsibility for his actions and inactions is to his credit. In pleading no contest he basically threw himself on the mercy of the court, and although there is no evidence that he has been convicted of any other offense, he received a relatively harsh penalty: 90 days in jail, 2 years probation, and a fine of $500 plus costs. He is now in a situation where his oversight has led to a criminal conviction and incarceration, and may result in an inability to fully practice his profession. Having accepted Mr. Hellengreen's testimony as truthful, my reaction is that his present situation is similar to the old saying, "for want of a nail the shoe was lost, for want of a shoe the horse was lost, for want of a horse the rider was lost, and for want of a rider the battle was lost". Although Mr. Hellengreen's failure to procure a certificate should not be excused, and his neglect of the details of his own business reflect badly on the thoroughness expected of a C.P.A., the consequences of what was essentially a negligent mistake continue to mount for him. Given the circumstances of his violation, and considering the penalty he has already paid, denying Mr. Hellengreen a certificate does not serve any necessary purpose.

A class 1 hearing is not a disciplinary hearing, but because the grant or denial of a certificate in this case is based upon a criminal conviction substantially related to the practice of the profession, and such a conviction could be the basis of a disciplinary proceeding against a licensee, the analysis involved in such proceedings may be useful. The purposes of

professional discipline have been set forth by the Wisconsin Supreme Court in four cases involving attorneys: State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 N.W.2d 235 (1969), State v. Corry, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976). Those purposes are (1) to rehabilitate the offender, (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, and (3) to deter others in the profession from similar unprofessional conduct.

The first purpose of discipline is rehabilitation, and in my reading of those cases, the term "rehabilitation" covers both positive and negative reinforcement to deter this offender from similar behavior in the future. For example, on page 126 in Corry, the Supreme Court says "in some cases, ... the court has thought the attorney had been so affected that his rehabilitation was assured and he could continue to practice without harm to the public. In such cases a reprimand for the unprofessional conduct and the imposition of costs were deemed to be sufficient discipline." The complete list of rehabilitative factors in that case, which allowed the court to decide to issue a reprimand, was as follows: "Here, Mr. Corry was subject to extensive adverse newspaper publicity, suffered a criminal prosecution and conviction, and served a period of confinement. This resulted in the loss to such a large part of his practice, he was forced to close his law office." Thus, even though the purpose of discipline is not to impose punishment per se, appreciating the adverse consequences of unprofessional behavior is part of rehabilitation. In this case, I have no doubt that the criminal conviction and sentence have had a sufficient effect to ensure that Mr. Hellengreen will never again practice without a certificate, through either design or inadvertance. In addition, I consider it likely that, knowing how fragile a professional license can be, Mr. Hellengreen if licensed will be unusually careful in his future work. Rehabilitation is not a reason for denying this application.

The second purpose of discipline is deterrence, and here again, the penalty already suffered by Mr. Hellengreen should be sufficient. It is the criminal conviction, jail, probation, and fine which will be sufficient to deter other unlicensed people from practicing without a certificate, not the Board's denial. Deterrence to others is not a reason for denying this application.

The third purpose is to ensure the public safety. This indeed seems to have been an issue here, and is the reason some inquiry was made at the hearing into the circumstances of the criminal complaint, for if Mr. Hellengreen demonstrated unprofessional conduct, by incompetent, unethical or immoral behavior, the Board would have a compelling reason for denying Mr. Hellengreen a certificate. There is, however, no relevant evidence that Mr. Hellengreen has endangered the public by his actions, and speculation about the "investment scheme" must not be considered without proof. Although the criminal complaint states that Mr. Hellengreen came to the attention of law enforcement authorities through a citizen complaint regarding investment fraud, the complaint alleges only one count of holding himself out to the

public as a certified public accountant without a certificate; it does not allege that Mr. Hellengreen was guilty of illegal transactions. The entire text related to the "investment scheme" is as follows:

> on January 3, 1990, Examiner Mark Dorman from the Legal Services Division for the State of Wisconsin, Office of the Commission of Securities, whom your affiant believes to be truthful and reliable, had occasion to speak with Donna Rippin. Donna Rippin informed Mark Dorman that she had been defrauded out of $30,000 in an investment scheme perpetrated by DALE F. HELLENGREEN, d.o.b. 7/23/48. Specifically, Donna Rippin stated that she met DALE F. HELLENGREEN in early 1988 at his office located at 806 South Commercial Street, in the City of Neenah, Winnebago County, Wisconsin. At that time, she informed DALE F. HELLENGREEN that she had approximately $30,000 that she wished to invest on a short-term basis. After further discussions with DALE F. HELLENGREEN, Donna Rippin gave DALE F. HELLENGREEN a check in the amount of $30,000 on June 20, 1988. The transfer of money took place at DALE F. HELLENGREEN's office located at the above-referenced address. At DALE F. HELLENGREEN's direction, Donna Rippin made the check payable to "DALE F. HELLENGREEN, CPA."

The criminal complaint then shifts focus, continuing with five and a half pages of text and sixteen pages of exhibits showing that Mr. Hellengreen held himself out to the public as a C.P.A. Nothing more is said about Ms. Rippin or the investment scheme (exhibit 5).

This unexamined information regarding investment fraud, as well as the documents from the Commissioner of Securities which were offered in evidence, must be considered irrelevant to this decision, and for that reason the documents were not received in evidence, although they are included in a sealed envelope to complete the appellate record if necessary. The alleged investment scheme creates a lingering uncertainty about Mr. Hellengreen, and it invites speculation, but for three reasons, the Board should consider his application only in light of his conviction for holding himself out as a C.P.A. Those reasons are

(1) constitutional notions of due process require that a person who is on trial (as Mr. Hellengreen essentially is here) be given notice and an opportunity to contest the charges on which a decision will be based (see Bracegirdle v. Board of Nursing, 159 Wis.2d 402, ___ N.W.2d ___ (Ct.App.) (1990));

(2) the notice for the denial hearing stated that the issue to be considered at the denial hearing was "Whether conviction under sec. 442.11(5) of the Wis. Stats. of holding yourself out to the public as a certified public accountant without having been granted a certificate as such is sufficient grounds, considering attendant circumstances, to deny you a certificate as a certified public accountant by endorsement under sec. 442.05, Wis. Stats;" it did not say that the investment scheme was in issue; and

(3) actions which are unrelated to the practice of certified public accounting are not proper grounds for the denial of a license (see sec. 442.04(5), Wis. Stats., which says "The examining board shall ensure that evaluation procedures and examinations are nondiscriminatory, relate directly to accountancy and are designed to measure only the ability to perform competently as an accountant").

Disregarding the red herring of the "investment scheme", there is a sense from the exhibits that Mr. Hellengreen is a highly competent practitioner. The "Verification of Employment and Experience Evaluation" forms in exhibit #3 show that he progressed through a generally increasing level of responsibility and was never absent from work. The only comment, either positive or negative, which was volunteered about his work was "His performance is excellent." Mr. Hellengreen's oversight in obtaining a certificate may have inconvenienced those persons who retained his services and are now unable to have him serve as their C.P.A., it is true, but there is no likelihood that he will do that again. In fact the one person whose safety, or at least welfare, was endangered was Mr. Hellengreen himself. Public safety is not properly a reason for denying this application.

In addition to the purposes of discipline recognized and enumerated by the Supreme Court, there is another which is almost always implicit in Board actions. In addition to the public's safety, there is always a justified concern about public trust and confidence, a phrase used by Mr. Scanlon (transcript, p. 51). To say this in another way, the Board must safeguard the profession's image in the public eye. This is suggested in an off-hand way in Aldrich, 71 Wis. 2d at 210, when the court says "The nature of the defendant's misconduct is such as to bring disrepute to the profession as a whole." This is a problem area in Mr. Hellengreen's case. Granting a certificate to someone recently convicted of a crime, especially the crime of holding himself out to the public as a C.P.A. without a certificate, does not inspire confidence in the Board's wisdom. The fact that the offense was committed through inadvertance rather than any attempt to defraud is a detail which would likely be overlooked by the general reading public. This consideration alone leads me to recommend that the Board issue Mr. Hellengreen a certificate which is visibly restricted. Specifically, I recommend that a limited and probationary certificate be granted.

The authority for this may be found in sec. 442.12, Wis. Stats. Although this section relates to discipline, it clearly confers authority on the Board to limit certificates, and to place a certificate holder on probation:

> 442.12 Disciplinary action. ... the examining board may:
> ...
> (2) Revoke, limit or suspend for a definite period any certificate or license or officially reprimand the holder, if it finds that the holder has violated this chapter or any duly promulgated standard or rule of practice or for any other sufficient cause.
> ...
> (4) Impose a period of probation under specified conditions, whether or not in conjunction with other sanctions.
> ....

Thus, although the statute does not explicitly state that the Board can issue a license which is limited or probationary, the Board clearly has the power to regulate its certificates in that way, and Mr. Hellengreen is unlikely to object to the grant of such a license. I have proposed limits and a period of probation in the above order which should allow the Board to monitor Mr. Hellengreen's situation for a period before granting him an unrestricted certificate. Such a certificate would allow him to practice as a C.P.A., yet would demonstrate to the public that the Board is not unmindful of the concerns regarding his conviction.

One factor complicates the grant of a certificate, and that is the need for Mr. Hellengreen to meet the requirements now for certification by endorsement. While he should be able to obtain his undergraduate transcript and complete the ethics or any other exam without difficulty, Mr. Hellengreen may face an obstacle in presenting the Board with adequate credentials from Illinois. He testified that he does not have a current Illinois license, as he did not have the money to renew it in September 1990 (transcript, p. 31), and the Board can take one of two approaches to that: (1) the Board may require that Mr. Hellengreen renew or otherwise reinstate his license in Illinois, or (2) if the Board is satisfied that Mr. Hellengreen held a valid Illinois certificate at the time of his application on April 30, 1990, and that no action has been taken against it for any reason other than the one before the Board now, the Board may consider that requirement for certification by endorsement to be met. One discrepancy which the Board may require Mr. Hellengreen to clear up before granting a certificate is the fact, which was not noticed or discussed in the hearing, that on his 1990 application, he listed an Illinois license number of 065-011647 (page 1 of exhibit 4), whereas on his 1982 application, he listed an Illinois certificate number of 23,933 (p. 4 of exhibit 3).

Finally, an in-depth analysis of what should be done in this case requires a look at the purpose of licensing. The statutes which govern this decision use a confusing diversity of language. Emphasis is added in each of the following excerpts to highlight the differences:

Sec. 442.04(1), Wis. Stats. states "The examining board shall grant a certificate as a certified public accountant to all persons who become entitled thereto under this section and s. 442.05. ..."

Sec. 442.05 states "The examining board may grant a certificate to any applicant who is the holder of a certificate or license to practice as a certified public accountant issued under the laws of any other state or foreign country. The applicant must also establish his or her substantial equivalence of the qualifications required under s. 442.04. ..."

Sec. 442.04(5) states, in particularly awkward language, "No certificate as a certified public accountant may be granted to any person other than a person who is 18 years of age or older, does not have an arrest or conviction record, subject to s. 111.321, s. 111.322 and 111.335, and, except as provided in s. 442.05, has successfully passed a written examination ...."

Sec. 111.335(1)(c) states "... it is not employment discrimination because of conviction record to refuse to ... license ... any individual who ... has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular ... licensed activity ...."

There is a rough balance between "shalls" and "mays", which may reflect a tension between giving the Board the authority to maintain high standards in its licensees, and ensuring that access to the profession will be open to all qualified candidates. Such distinctions are reflected in the authorizing statutes of other boards. For example, while sec. 448.02, Wis. Stats. says "the (Medical Examining) Board may grant licenses, including various classes of temporary licenses, to practice medicine and surgery, to practice podiatric

medicine and surgery and to practice physical therapy," sec. 441.06, Wis. Stats. says "an applicant for licensure as a registered nurse who complies with the requirements of this chapter and satisfactorily passes an examination shall receive a license." The statutes themselves do not resolve this tension for the Accounting Board, but sec. 227.01(3)(a), Wis. Stats. provides the best guidance, by stating that in granting or denying a license a board acts with "substantial disretionary authority," which means its decision will be upheld if it fairly considers the facts, and applies those facts to the proper statutes and rules (see Reidinger v. Optometry Examining Board, 81 Wis.2d 292, 297, 260 N.W.2d 270 (1977)).

One final statutory excerpt which merits special notice and provides some specific guidance is the last sentence of sec. 442.04(5), which says "The examining board shall ensure that evaluation procedures and examinations are nondiscriminatory, relate directly to accountancy and are designed to measure only the ability to perform competently as an accountant." In this case, accepting the facts as I find them, and looking only at whether Mr. Hellengreen has the ability to perform competently as an accountant, my opinion is that he should be granted a certificate, and as stated, it is only for purposes of public trust and confidence that I recommend the certificate be limited and probationary.

Dated June 5, 1991.

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

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