

STATE OF FLORIDA  
BOARD OF ACCOUNTANCY

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

DOAH Case No. 2008-2648PL  
DBPR Case No. 2004-050571

v.

DAVID MCQUAY, JR.,

Respondent.

Final Order No. BPR-2008-10999 Date: **12-23-08**  
**FILED**

Department of Business and Professional Regulation  
AGENCY CLERK  
Sarah Wachman, Agency Clerk

By Brandon M. Thibault

**FINAL ORDER**

THIS MATTER came before the Board of Accountancy (hereinafter the Board) for final action pursuant to Section 120.57(1)(I), Florida Statutes, at a duly-noticed public meeting held December 4, 2008, in Tallahassee, Florida, for the purpose of considering the Recommended Order issued by the Administrative Law Judge in the above-styled case. Respondent was neither present nor represented by counsel at the proceedings. Petitioner was represented by Eric R. Hurst, Assistant General Counsel.

After a review of the complete record in this matter, including consideration of the Administrative Law Judges Recommended Order, a copy of which is attached hereto as Exhibit A, the Board makes the following findings and conclusions:

**FINDINGS OF FACT**

1. The Administrative Law Judges findings of fact are hereby approved, adopted, and incorporated herein.

2. There is competent, substantial evidence to support the Administrative Law Judges findings of fact as adopted by the Board.

### **CONCLUSIONS OF LAW**

3. The Board has jurisdiction over this matter pursuant to the provisions of Sections 120.569 and 120.57(1) and Chapter 473, Florida Statutes.
4. The Administrative Law Judges conclusions of law are hereby approved, adopted and incorporated herein.
5. There is competent substantial evidence to support the Boards findings and conclusions.

### **PENALTY**

6. Upon a complete review of the record in this case, the Board adopts the Administrative Law Judges Recommended Penalty.

WHEREFORE, and for the foregoing reasons, it is hereby **ORDERED**:

7. Respondent shall complete and submit to the Board office satisfactory proof of said completion sixteen (16) hours of continuing education, including eight (8) hours related to nonprofit organizations, within one (1) year of the entry of this Final Order and said hours shall not count towards his normal renewal requirements.

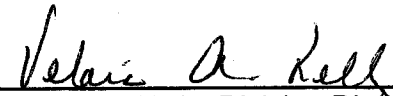
8. Respondent's license, AC R001736, shall be placed on probation for a period of two (2) years commencing with the entry of this Final Order. During the first year of probation, Respondent shall submit all audits, including financial statements and working papers, for pre-issuance review by a Board-selected consultant, at Respondent's expense. Should any audit be deemed to be deficient by the Board, Respondent shall continue to submit all audits, including financial statements and working papers, for pre-issuance review by a Board-selected consultant, at Respondent's expense during the second year of probation.

This Final Order shall become effective upon filing with the clerk of the Department of

Business and Professional Regulation.

**DONE AND ORDERED** this 18<sup>th</sup> day of December, 2008.

**BOARD OF ACCOUNTANCY**

  
Veloria A. Kelly, Division Director

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

Pursuant to Section 120.569, Florida Statutes, any substantially affected person is hereby notified that they may appeal this Final Order by filing one copy of a Notice of Appeal with the clerk of the Department of Business and Professional Regulation and by filing the filing fee and one copy of the Notice of Appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to David McQuay, Jr., 110 North Lincoln Avenue, Tampa, FL 33609-2908; Eric Hurst, Esquire, Department of Business and Professional Regulation, 1940 North Monroe Street, Suite 60, Tallahassee, FL 32399-2202; and Hon. Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee FL 32399-1550; and by inter-office mail to Mary Ellen Clark, Assistant Attorney General, PL01 The Capitol, Tallahassee, FL 32399-1050, this 23<sup>rd</sup> day of Dec., 2008.



**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
BOARD OF ACCOUNTANCY**

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION,

Petitioner,

v.

DBPR Case Number: 2004-050571

DAVID MCQUAY, JR.,

Respondent.

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**AMENDED ADMINISTRATIVE COMPLAINT**

Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
("Petitioner") files this Administrative Complaint against DAVID MCQUAY, JR.  
("Respondent"), and alleges:

1. Petitioner is the state agency charged with regulating the practice of public accountancy, pursuant to Section 20.165, Florida Statutes., and Chapters 455 and 473, Florida Statutes.
2. The Department of Business and Professional Regulation has jurisdiction over the practice of public accounting pursuant to Section 455.228, Florida Statutes.
3. Chapter 120, Florida Statutes, entitles the Respondent to elect a hearing regarding the allegations contained herein. Rule 28-106.111, Florida Administrative Code, provides in part that if a Respondent fails to request a hearing within twenty-one (21) days of receipt of an

agency pleading, the Respondent shall have waived his right to request a hearing on the facts alleged.

4. Respondent's address of record is 110 North Lincoln Avenue, Tampa, Florida 33609-2908.

5. Respondent was, at all time material hereto, a certified public accountant in the State of Florida having been issued license number R 1736.

6. Respondent performed an audit for the Mid-Florida Center for Medical Health and Substance Abuse, Inc. ("Mid-Florida Center"), a non-profit organization, for the financial year ending on September 30, 2002.

7. The audit was reviewed by an accounting expert who found that Respondent failed to properly address several significant areas. These areas are as follows:

(a) Financial Statements

- i. Amendment No. 2 (Auditor Communication) to the Yellow Book necessitated changes to auditor's reports.
- ii. Several necessary disclosures are missing in the Notes to the financial statements.
- iii. The Statement of Activities and Statement of Functional Expenses should not contain captions of "Memorandum Only" for the total columns.
- iv. Donations of long-lived assets (depreciable) should not be reported as "Permanently Restricted Net Assets."

(b) Working Papers

- i. There was no evidence of a reporting and disclosure checklist for not-for-profit organizations, which is common practice to include.

- ii. No audit evidence was located for fraud risk factors or planning materiality.
- iii. The management representation letter in this instance omitted the specific representations relative to the Single Audit and the referenced schedule of uncorrected misstatements in the management representation letter.
- iv. No documentation was evident regarding a consideration of a going concern with the entity's financial position.
- v. The management representation letter addressed the \$158,429 liability owed to the Executive Director, which was reversed off the books; however, the letter failed to justify the removal of the liability from the financial statements by specifically finalizing the matter.
- vi. Relative to compliance testing, the working papers contained evidence of testing only one monthly invoice/progress report.

8. Section 473.323(1)(g), Florida Statutes, states in pertinent part that committing an act of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of public accounting, is an act for which disciplinary actions under Subsection 473.323(3) may be taken.

9. Section 473.323(1)(h), Florida Statutes, in pertinent part states that a violation of any rule adopted pursuant to this chapter or chapter 455, constitutes grounds for which disciplinary action may be taken.

10. Rule 61H1-22.002, Florida Administrative Code, in pertinent part states, a licensee shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent certified public accountant unless he has complied with the applicable generally accepted auditing standards.

11. Rule 61H1-22.003, Florida Administrative Code, in pertinent part states, a licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from any such principle which has a material effect on the statements taken as a whole, unless he can demonstrate that due to unusual circumstances that financial statements would otherwise have been misleading. In such cases his report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

12. Rule 61H1-22.01, Florida Administrative Code, in pertinent part states, a licensee shall undertake only those engagements which he or his firm can reasonably expect to complete with professional competence.

#### **COUNT ONE**

13. Petitioner re-alleges and incorporates herein by reference the allegations contained in the foregoing paragraphs one (1) through twelve (12) as if fully stated herein.

14. Based upon the foregoing, Respondent violated Subsection 473.323(1)(g), Florida Statutes, by failing to properly address significant areas in the audit.

#### **COUNT TWO**

15. Petitioner re-alleges and incorporates herein by reference the allegations contained in the foregoing paragraphs one (1) through twelve (12) as if fully stated herein.

16. Based upon the foregoing, Respondent violated Section 473.323(1)(h), Florida Statutes, through Rule 61H1-22.002, Florida Administrative Code, by failing to comply with generally accepted auditing standards.

### COUNT THREE

17. Petitioner re-alleges and incorporates herein by reference the allegations contained in the foregoing paragraphs one (1) through twelve (12) as if fully stated herein.

18. Based upon the foregoing, Respondent violated Section 473.323(1)(h), Florida Statutes, through Rule 61H1-22.003, Florida Administrative Code, by issuing an opinion on financial statements that departed from generally accepted accounting principles without describing the departures.

### COUNT FOUR

19. Petitioner re-alleges and incorporates herein by reference the allegations contained in the foregoing paragraphs one (1) through twelve (12) as if fully stated herein.

20. Based on the foregoing, Respondent violated Section 473.323(1)(h), Florida Statutes, through Rule 61H1-22.001, Florida Administrative Code, by failing to perform his engagements with competency.

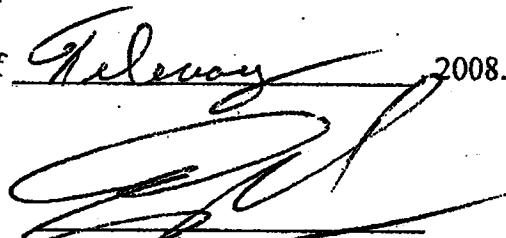
**WHEREFORE**, Petitioner respectfully requests the Department enter an order imposing one or more of the following penalties: imposition of an administrative fine not to exceed \$5,000 per violation, assessment of costs associated with the investigation and prosecution, imposition of any or all penalties delineated within Sections 455.228, Florida Statutes, and/or any other relief that the Department is authorized to impose pursuant to Chapters 455 and 473, Florida Statutes, and/or the rules promulgated thereunder.

Signed this 6<sup>th</sup> day of February, 2008.

**FILED**  
Department of Business and Professional Regulation  
DEPUTY CLERK

CLERK  
DATE

*Brandon M. Nichols*  
2-25-2008

  
Eric R. Hurst  
Assistant General Counsel



COUNSEL FOR THE DEPARTMENT:

Eric R. Hurst  
Assistant General Counsel  
Florida Bar Number 0879673  
Department of Business and  
Professional Regulation  
Office of the General Counsel  
Northwood Centre  
1940 North Monroe Street, Suite 60  
Tallahassee, Florida 32399-2202  
ERH/ecb

PC: Borcheck, Caldwell + Shinn  
1-31-08