

89-19

BEFORE THE WEST VIRGINIA  
BOARD OF ACCOUNTANCY

IN THE MATTER OF JOHN L. BURKARD  
CPA CERTIFICATE NO. 210

CONSENT AGREEMENT

Come now John L. Burkard and the West Virginia Board of Accountancy (hereinafter Board), by counsel, Kelli D. Talbott, Assistant Attorney General, for the purpose of agreeing to what disciplinary action should be taken against John L. Burkard, Certified Public Accountant (hereinafter CPA) Certificate No. 210, by the Board pursuant to W. Va. Code § 30-9-1 et seq. As reflected in this document, the parties have reached an agreement as to the proper disposition of this matter, and the Board, approving said agreement, does hereby find and order.

FINDINGS OF FACT

1. John L. Burkard holds CPA Certificate No. 210, issued by the Board. Mr. Burkard does not hold a license to practice public accounting issued by the Board.

2. During the relevant period of time, John L. Burkard worked for the accounting firm known as "Simpkins and Associates" in Beckley, West Virginia. Such firm is owned and operated by Carroll D. Simpkins, CPA Certificate and License No. 187.

3. In September 1989, a complaint was filed with the Professional Ethics Division of the American Institute of Certified Public Accountants (hereinafter AICPA) by the United States Department of Education alleging that the firm of "Simpkins and Associates" lacked independence to perform an audit of student

financial assistance programs at Beckley College, Beckley, West Virginia, for fiscal year July 1, 1987 through June 30, 1988; and that further, required audit steps were not documented, including, but not limited to, a study and evaluation of internal accounting and administrative controls; and that a finding of noncompliance was not reported and that the working papers were not signed and dated and did not show purpose, source, scope and conclusions; and an engagement letter was not used.

4. Mr. Burkard was the principal individual from "Simpkins and Associates" who was responsible for such audit. In this position, he was charged with the responsibility of performing the entire audit, compiling a report containing the results of such audit, and issuing that report upon completion.

5. Such report dated December 5, 1988, entitled "Auditors' Report on Statement of Changes in SFA Program Fund Balances and Supplementary Analysis of Perkins Loan Program", contained an introductory statement as follows:

We have **examined** the accompanying statement of changes in SFA program fund balances of Beckley College, Inc. as of June 30, 1988. **Our examination was made in accordance with generally accepted auditing standards** and the standards for financial and compliance audits contained in the U.S. General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities, and Function, and accordingly, included such tests of the accounting records and such auditing procedures as we considered necessary in the circumstances.

The accompanying statement was prepared for the purpose of complying with the audit requirement relating to the Student Financial Assistance Programs of the U.S. Department of Education and is limited to activities related to these programs.

In our opinion, the statement referred to above presents fairly the changes in SFA program fund balances of Beckley College, Inc. as of June 30, 1988 in conformity with generally accepted accounting principles applied on a consistent basis.

Our examination was made for the purpose of forming an opinion on the accompanying statement of changes in SFA fund balances taken as a whole. The information included in the supplementary analysis of Perkins Loan Program for the year ended June 30, 1988 is presented for purposes of additional analysis and is not a required part of the accompanying statement of changes in SFA program fund balances. The information has been subjected to the auditing procedures applied in the examination of the accompanying statement of changes in SFA program fund balances of Beckley College, Inc., and in our opinion, is fairly stated in all material aspects in relation to the accompanying statement taken as a whole.

Respectfully submitted,

SIMPKINS & ASSOCIATES

(Emphasis added.)

6. Further, such report, in a portion entitled "Notes to Statement of Changes in SFA Program Fund Balances" and a portion entitled "Auditors Report on Internal Controls Used in Administering Student Financial Assistance Programs", stated, among other things, that the statement of changes in SFA program fund balances had been prepared in accordance with generally accepted accounting principles, and that the purpose of the study and evaluation involved in the audit was to determine the nature, timing, and extent of performing the "auditing procedures necessary for expressing an opinion of the entity's statement of changes in SFA program fund balances."

7. Mr. Simpkins was a member of the board of trustees of Beckley College when he accepted the engagement on behalf of his

firm to perform the above-referenced audit. Further, he continued to be a member of such board when the audit was performed and was a member for the period of time covered by the historical financial statements compiled during such audit.

8. The board of trustees of Beckley College was described on financial statements as setting overall operating policy for the college, including approving large financial commitments.

9. In June 1990, the Governmental Technical Standards Subcommittee of the Professional Ethics Division of the AICPA voted to charge Mr. Burkard with a violation of Rule 101 and Rule 501, as interpreted by Ethics Interpretations 101-1 B.1 and 101-9, and 501-3, respectively, of the AICPA and the West Virginia Society of CPAs Code of Professional Conduct. Rule 101 and its Ethics Interpretations concern the issue of independence; while Rule 501 and its Ethics Interpretation concern the standards to be followed in performing governmental audits.

10. Such charges were referred to the Professional Ethics Executive Committee of the AICPA, which in turn voted to refer the matter to the Joint Trial Board for a hearing. Pursuant to a letter on "Simpkins & Associates" letterhead signed by Mr. Burkard and addressed to the Board, "Simpkins and Associates" agreed to allow the Board to review and act upon the final decision made by the AICPA regarding the complaint filed by the United States Department of Education referred to in paragraph number 3 above.

11. The AICPA statement of charges against Mr. Burkard reads in pertinent part as follows:

In his audit of the student financial aid programs of Beckley College, Inc. for the year ended June 30, 1988, John L. Burkard violated Rule 101 and Rule 501, as interpreted by Ethics Interpretations 101-1 B.1 and 101-9, and 501-3, respectively, of the AICPA and West Virginia Society of CPAs' Code of Professional Conduct.

John L. Burkard, either as partner or employee of Simpkins and Associates (the firm) violated Rule 101, as interpreted by Ethics Interpretations 101-9 and 101-1 B.1 of the AICPA and West Virginia Society of CPAs' Code of Professional Conduct by performing professional services for Beckley College, Inc., an audit client of the firm and/or expressing an opinion the auditor's report on the student financial assistance programs administered by the College, as an employee or partner of the firm during the time Mr. Burkard's employer or partner was serving as a member of the Board of Directors of the College.

Respondent violated Rule 501 (Interpretation 501-3) in that he failed to follow standards and procedures required in governmental audits.

12. Rule 101 referenced above provides that "[a] member in the practice of public accounting shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council." The Professional Ethics Executive Committee is deemed to be such a body and it has adopted Ethics Interpretation 101-1 B.1 referenced above, which provides that "[i]ndependence shall be considered to be impaired if . . . [d]uring the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, a member or a member's firm was connected with the enterprise, as a promoter, underwriter or voting trustee, as a director or officer, or in any capacity equivalent to that of a member of management or of an employee." Further, such

committee has adopted Ethics Interpretation 101-9 which defines certain terms used in Ethics Interpretation 101.

13. Rule 501 referenced above provides that "[a] member shall not commit an act discreditable to the profession." Further, Ethics Interpretation 501-3 provides that:

Engagements for audits of government grants, government units or other recipients of government monies typically require that such audits be in compliance with government audit standards, guides, procedures, statutes, rules, and regulations, in addition to generally accepted auditing standards. If a member has accepted such an engagement and undertakes an obligation to follow specified government audit standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards, he is obligated to follow such requirements. Failure to do so is an act discreditable to the profession in violation of Rule 501, unless the member discloses in his report the fact that such requirements were not followed and the reasons therefor.

14. On January 14, 1991, Mr. Burkard appeared with counsel before a Joint Trial Board of the AICPA to answer to ethics charges brought against Carroll D. Simpkins, a member of the AICPA and the West Virginia Society of CPAs, and himself, an associate in Mr. Simpkins' firm and also a member of the AICPA and the West Virginia Society of CPAs.

15. After hearing all evidence, the Joint Trial Board found, by unanimous vote, that Mr. Burkard was guilty of violating Rule 101 and Rule 501 of the AICPA Code of Professional Conduct.

16. The Joint Trial Board further chose to admonish Mr. Burkard for the above-referenced violations. Such admonishment took the form of publication of Mr. Burkard's name and a report of his case in designated AICPA literature.

17. Mr. Burkard acknowledges that W. Va. Code § 30-9-12(c) provides that the Board may revoke or suspend any certificate or registration and may refuse to issue, or refuse to renew, any license, for the following cause: "[v]iolation of a rule of professional conduct promulgated by the board under the authority granted by this article". Specifically, Mr. Burkard acknowledges that his conduct violated § 1-1-21.1 of the Board's Rules of Professional Conduct which states in pertinent part that:

Neither a certified public accountant or public accountant, nor a firm of which he is a partner, shall express an opinion on financial statements of any enterprise unless he and his firm are in fact independent with respect to such enterprise. . . . A certified public accountant or public accountant, before expressing his opinion on financial statements, has the responsibility of assessing his relationships with an enterprise to determine whether, in the circumstances, he might expect his opinion to be considered independent, objective and unbiased by one who has knowledge of all the facts. A certified public accountant or public accountant will not be considered independent, for example, with respect to an enterprise if he, or one (1) of his partners, . . . (b) during the period of professional engagement, at the time of expressing his opinion or during the period covered by the financial statements, was connected with the enterprise as a promoter, underwriter, voting trustee, director, officer or key employee.

Further, Mr. Burkard also acknowledges that his conduct violated § 1-1-22.2(c) and (e) of such Rules which state as follows:

22.2. Representations in financial statements. -- In expressing an opinion on representations in financial statements which he has examined a certified public accountant or public accountant may be held guilty of an act discreditable to the profession if:

. . . .

(c) He is materially negligent in the conduct of his examination or in making his report thereon; or

. . .

(e) He fails to direct attention to any material departure from generally accepted accounting principles or to disclose any material omission of generally accepted auditing procedure applicable in the circumstances.

18. Mr. Burkard also acknowledges that his conduct violated W. Va. Code § 30-9-6 which restricts the practice of public accounting to those who hold a valid license issued by the Board. Further, Mr. Burkard's conduct violated W. Va. Code § 30-9-6(c) which prohibits non-licensees from claiming to have used "generally accepted accounting principles" or similar designations in connection with preparation of any financial statement; and W. Va. Code § 30-9-6(d) which prohibits non-licensees from using the words "audit," "audit report," "independent audit," "attest" "attestation," "examine," "examination," "opinion," or "review" in a report on a financial statement.

#### CONCLUSIONS OF LAW

1. The Board concludes that the Findings of Fact set forth above support the sanction of disciplinary action pursuant to W. Va. Code § 30-9-1 et seq., pertaining to the practice of public accounting in this state.

2. Specifically, W. Va. Code § 30-9-12(c), states that a licensee and/or certificate holder may be disciplined for "[v]iolation of a rule of professional conduct promulgated by the board under authority of this article". Accordingly, the Board concludes that disciplinary action is warranted pursuant to the



Board's Rules of Professional Conduct, promulgated under W. Va. Code § 30-9-1 et seq. as follows:

a. Section 1-1-21.1 of such Rules mandates that a CPA be independent with respect to an enterprise when expressing an opinion on financial statements of such enterprise. Further a CPA is not considered to be independent with respect to an enterprise if he or a partner, "during the period of his professional engagement, at the time of expressing an opinion or during the period covered by the financial statements, [is] connected with the enterprise as a promoter, underwriter, voting trustee, director, officer or key employee." Because Mr. Burkard's employer, Mr. Simpkins, was a member of the board of trustees of Beckley College at all times relevant to the audit performed by "Simpkins & Associates" on such college, Mr. Burkard's conduct constitutes a violation of this Rule.

b. Section 1-1-22.2(c) and (e) of such Rules mandates that in expressing an opinion on representations in financial statements, a CPA may be held guilty of an act discreditable to the profession if "[h]e is materially negligent in the conduct of his examination or in making his report thereon . . ." or if "[h]e fails to direct attention to any material departure from generally accepted accounting principles or to disclose an material omission of generally accepted auditing procedure applicable in the circumstances." Because Mr. Burkard did not document required audit steps, including, but not limited to, a study and evaluation of internal accounting and administrative controls; failed to

report a finding of noncompliance; did not sign, date, and specify purpose, source, scope and conclusions on working papers; and did not obtain an engagement letter in relation to the audit of Beckley College at issue in this matter, he has violated the dictates of this Rule.

3. Furthermore, W. Va. Code § 30-9-6 prohibits a person who does not hold a valid license issued by the Board from practicing public accounting; claiming to have used "generally accepted accounting principles" or like designations in connection with preparation of any financial statement; and using the words "audit," "audit report," "independent audit," "attest," "attestation," "examine," "examination," "opinion," or "review" in a report on a financial statement.

The practice of public accounting is defined in pertinent part in W. Va. Code § 30-9-2 as "[t]he giving of an assurance, in a report or otherwise, whether expressly or implicitly . . ." The term "assurance" is also defined in such code section and is delineated as "any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards."

Because Mr. Burkard was the principle individual from "Simpkins & Associates" responsible for the audit of Beckley College at issue here, and further because of the written representations made in the report on such audit as set forth in Finding of Fact Numbers 5 and 6 above, Mr. Burkard is guilty of

practicing public accounting without a license and performing other acts prohibited of non-licensees by W. Va. Code § 30-9-6.

CONSENT

John L. Burkard, holder of Certified Public Accountant Certificate No. 210, by affixing his signature hereon, agrees to the following:

1. He acknowledges that he is aware of his option to retain legal counsel and to be represented by legal counsel at a formal hearing before the Board.

2. He intelligently and voluntarily waives his right to a formal hearing before the Board in this matter.

3. He acknowledges that he is fully aware that without his consent, no legal action can be taken against him by the Board, except pursuant to W. Va. Code § 30-9-1 et seq. and other applicable law.

4. He consents to the entry of the following order affecting his license and certificate issued by the Board.

ORDER

On the basis of the foregoing, the Board hereby orders that John L. Burkard, holder of CPA Certificate No. 210 submit to the following:

1. Mr. Burkard shall participate in eight (8) hours of approved Continuing Professional Education on the topic of professional ethics. Such hours must be completed by December 31, 1991, the costs of taking such hours shall be borne by Mr. Burkard, and a certificate, invoice, sworn affidavit, or other comparable

documentation evidencing completion of such hours must be provided to the Board on or before the above-referenced date.

2. Mr. Burkard shall be required to pay back licensure fees for the year 1987-88 in the amount of fifteen dollars (\$15.00) inasmuch as he is deemed to have been practicing public accounting without a license during a period within that time frame when he performed public accounting activities associated with the audit of Beckley College at issue herein.

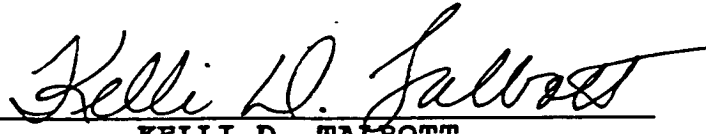
3. Mr. Burkard shall not violate the provisions of W. Va. Code § 30-9-1 et seq. or the provisions contained in the Board's Legislative Rules promulgated under authority of W. Va. Code § 30-9-1 et seq.

4. If the Board is presented with any evidence from any source proving or tending to prove that Mr. Burkard is not in compliance with the terms of this ORDER, the Board shall immediately notify him of the specific nature of the charges, and schedule a hearing regarding further disciplinary action against his certificate and license. Such hearing is to be held within (10) ten days of notification. Mr. Burkard hereby waives the provisions of W. Va. Code § 30-1-1 et seq., requiring 30 days notice prior to hearing.

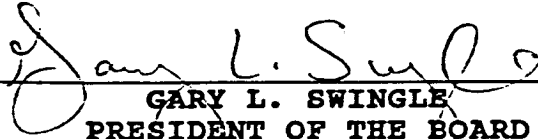
Entered this 21<sup>st</sup> day of October, 1991.

Agreed to:

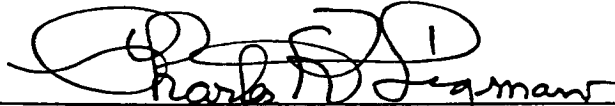
John L. Burkard  
JOHN L. BURKARD



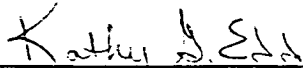
KELLI D. TALBOTT  
ASSISTANT ATTORNEY GENERAL  
COUNSEL FOR THE BOARD



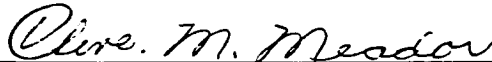
GARY L. SWINGLE  
PRESIDENT OF THE BOARD



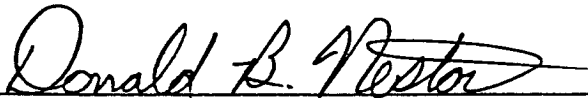
CHARLES R. SIGMAN  
VICE PRESIDENT OF THE BOARD



KATHY G. EDDY  
SECRETARY OF THE BOARD



CLEVE M. MEADOR  
MEMBER OF THE BOARD



DONALD B. NESTOR  
MEMBER OF THE BOARD



BRENDA T. ACKEN  
MEMBER OF THE BOARD