

**BOARD OF EMPLOYEE LEASING COMPANIES
GENERAL BUSINESS MEETING MINUTES
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
1940 NORTH MONORE STREET
TALLAHASSEE, FLORIDA 32399-0767**

**FEBRUARY 16, 2006
10:00 a.m. EST**

I. CALL TO ORDER

The meeting was called to order at approximately 10:05 a.m. EST by Ms. Celeste Dockery, Board Chair.

II. ROLL CALL

MEMBERS PRESENT

Celeste D. Dockery, Chair
Carlos Rodriguez, Vice Chair
Frank W. Crum, Jr.
Kelly Lanza
Ryan S. Moore

MEMBERS ABSENT

None

STAFF PRESENT

John T. Knap, Executive Director, DBPR
Krista B. Woodard, Government Analyst II, DBPR
Mary Ellen Clark, Board Counsel, Office of Attorney General
Eric Hurst, Assistant General Counsel, DBPR

OTHERS PRESENT

Lisa Johnson, Florida Senate
Ronald Safford, Alternative Dispute Resolutions, DBPR
Grant Clifford Logan, Regulations, DBPR
Della Brabson, Division of Service Operations, DBPR
Winnifred Christian, Division of Service Operations, DBPR
Maxine Jefferson, Division of Service Operations, DBPR
Dan Sumner, Department of Financial Services, Division of Workers' Compensation
Tasha Carter, Department of Financial Services, Division of Workers' Compensation
Derek Richardson, Department of Financial Services, Division of Workers' Compensation
Michael Miller, Kunkel, Miller & Hament, P.A. and FAPEO
Timothy Tack, Kunkel, Miller & Hament, P.A.
Marty Gray, BAPEO
Ed Rawls, Enterprise
David Tanner, BAPEO
Michael Corley, Progressive
Mark Perlberg, Oasis
Joe Ott
Cesar Martinez, MRS
Linda Alcathe, NELCO
Tim Tucker, NAPEO

Ginny Dorris, NELCO
Tom Lambert, Smart Payroll
Doug Mishler, NELCO
Anthony Giudicy, SBRUS
Juan Gutierrez, HR Fusion
John Wortman, FRM
Robert Skrob, FAPEO
Jerry Lancaster, PPC Insurance Company
Jim Brainerd, Florida Association of Insurance Agents
Henry Abbott, SEIC Insurance
Bill Agall, Allstaff
Bruce Miller, Southeast Personnel Leasing
Lee Smith, NELCO/Fortune
Tina Boswell

The meeting was opened with a roll call and a quorum was established.

III. PRESENTATIONS

A. Daniel Y. Sumner, Assistant Division Director, Division of Workers' Compensation

Mr. Sumner addressed the board regarding the subject of liability for coverage when a PEO has relied on client-based workers' compensation coverage that turns out to be non-existent.

He pointed out that his division is responsible for the oversight and administration of Chapter 440, Florida Statutes, which is the workers' compensation law.

Mr. Moore thanked Mr. Sumner for attending and stated that the board held a workshop in October 2005 addressing workers' compensation within the PEO industry and numerous questions were raised as to client-based policies versus master policies and insurance carriers that may be liable for client-based policies. Mr. Moore asked Mr. Sumner to elaborate on the issues stated.

Mr. Sumner mentioned the portion of the workers' compensation law that mentions the term that is used in meeting the legal requirements which is the securing of payment of compensation, which means that the employer meets the requirements with regards to covering its employees.

Mr. Sumner stated in Chapter 440.381, F.S. there are two ways in which an employer can secure the payment of compensation: either by purchasing a contract of insurance from an authorized insurer or they can self insure under the self insurance provision of Chapters 440.38 and 440.381, F.S.

He stated the question is how this particular law translates into an employee leasing type of arrangement. He stated in terms of the workers' compensation law, there is one employer.

Mr. Sumner stated in an employee leasing arrangement there is a contractual relationship between a client company and an employee leasing company; however, for workers' compensation purposes, by contract, any person who is employed by the employee leasing agency, the employee leasing company is the employer and employee leasing company is

responsible for securing the payment of compensation for that person. He stated the employee leasing company does not take responsibility, under the workers' compensation law as applied, until and through a contractual arrangement. Once that occurs the responsibility for securing payment of compensation moves from the client company to the employee leasing company.

Mr. Sumner stated employee leasing rules indicated that there is a third way of demonstrating securing payment of compensation for the employee leasing company as the employer, which is confirming that the employee of the employee leasing company is covered by the client company. He stated that section does not mean that the employee is an employee of the client company, but it is simply a way of the employee leasing company meeting its obligation through coverage by the client company.

Mr. Sumner stated he did not find any authority in Chapter 440, F.S. for that third alternative for an employer to meet its responsibility. He stated it is up to the board to decide if the employee leasing law carves out a different option or not. He reiterated that option is not derived from Chapter 440, F.S.

He stated that an employee leasing company's responsibility for covering leased employees that utilize client based coverage remains the same. The employee leasing company is still liable. It only utilized a client company policy as a means of meeting the workers' compensations liability.

Mr. Rodriguez asked what happens if DFS issues a cease and desist order or other any other sanction which would prohibit an insurance company from writing new insurance, and the PEO that has that insurance company as its workers' compensation provider continues to add new clients. He asked if the PEO is violating the order of the department. He stated from a public policy standpoint he would not want the PEO to continue writing new business on an insurance company that the department has basically stated is insolvent or needs corrective action.

Mr. Sumner stated that is a bad policy. However, the technical ramifications of that situation is that a PEO, like any policy holder in a workers' compensation arena, that gets a workers' compensation policy, that policy is payroll driven not person driven, unlike an employee leasing agreement which is person driven. Therefore, from a technical point of view, the employee leasing company is, as a policy holder, only responsibility is to report accurately the payroll and the classification and characteristics of the employees so that the policy can be properly rated. That is the technical responsibility of the PEO who is insured.

He further stated when an insurer is limited in their ability to write business due to their own issues of solvency, and an insurance regulator states the company cannot write new business, that normally means additional policies, not that existing policies are limited in their capacity to incur more payroll.

Ms. Lanza stated the issue is about adding new clients.

Mr. Sumner stated is strictly a payroll issue.

Mr. Moore stated based on that information a PEO can still add new clients.

Mr. Sumner stated one thing that could happen to alleviate the board's concerns is for the regulator to have a more in-depth consent order with that company, which would state no new business in addition to any additional exposure to additional client companies.

Ms. Dockery thanked Mr. Sumner for attending.

B. Ronald A. Safford, Coordinator, Alternative Dispute Resolutions Program, DBPR

Mr. Safford addressed the board regarding recommendations from OPPAGA for greater use of Alternative Dispute Resolutions (ADR) for handling of complaints. He stated it was discovered that it is a lot easier to settle the complaints in a mutually agreeable voluntary manner than it is to conduct an investigation.

Mr. Safford provided handouts to the board members pertaining to ADR.

The consensus of the board was that the program is not applicable to most of the violations encountered by the profession.

Ms. Dockery thanked Mr. Safford for attending.

IV. REVIEW AND APPROVAL OF THE OCTOBER 18, 2005, LEGISLATIVE DISCUSSION MEETING MINUTES

MOTION: Mr. Moore moved to approve the minutes.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

V. REVIEW AND APPROVAL OF THE JANUARY 18, 2006 TELEPHONE CONFERENCE CALL MEETING MINUTES

MOTION: Mr. Moore moved to approve the minutes.

SECOND: Mr. Crum seconded the motion and it passed unanimously.

VI. DISCIPLINARY PROCEEDINGS – Office of the General Counsel

A. HEARING(S) NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

- | | | |
|----|--|--------------------|
| 1. | Bill Agall | 2004-047261 |
| 2. | AllStaff Payroll, Inc.
(PCP: Lanza and Crum, April 20, 2005) | 2004-047259 |
| 3. | AllStaff Payroll, Inc. | 2005-032804 |
| 4. | AllStaff Payroll, Inc.
(PCP: Lanza and Crum, October 19, 2005) | 2005-032799 |

Mr. Eric Hurst presented the cases explaining they stem from violations involving failure to ensure AllStaff's 2003 annual assessment was timely submitted, failure to submit quarterly reports for 2004 as well as March and June 2005, and failure to submit the annual report for

2003 and 2004. He stated all reports have subsequently been filed and the Respondent is current with all obligations.

Ms. Clark noted for the record that Mr. Crum and Ms. Lanza were recused due to participation on the probable cause panel.

MOTION: Ms. Dockery moved to adopt the allegations of fact and conclusions of law in the administrative complaint as those of the board.

SECOND: Mr. Moore seconded the motion and it passed.

Mr. Bill Agall and Ms. Tina Boswell were present and sworn in by the court reporter.

Mr. Agall addressed the board apologizing for the late reports. He informed that he was diagnosed with prostate cancer and was operated on during the time of the violations. He advised that the company is a two man operation with no other controlling persons other than himself. He stated he was not in a position to handle his responsibilities and was very apologetic for the violations.

Ms. Clark made mention of two prior cases wherein he was fined and reprimanded and that the parties did enter into a settlement stipulation that was rejected.

After further discussion, the following motion was made.

MOTION: Mr. Moore moved to impose an administrative fine of \$500 per violation for a total of \$4500, costs of \$151.07 and probation for one (1) year.

SECOND: Mr. Rodriguez seconded the motion and it passed.

- | | | |
|-----------|--------------------------|--------------------|
| 5. | HR Fusion, Inc. | 2005-036520 |
| 6. | Juan C. Gutierrez | 2005-036524 |
- (PCP: Lanza and Crum, October 19, 2005)

Mr. Hurst presented the cases explaining they stem from violations involving failure to submit the annual report for 2004 and failing to maintain workers' compensation coverage. He further stated the Respondents state they have never done business in Florida and have presented their licenses for relinquishment.

Ms. Clark noted for the record that Mr. Crum and Ms. Lanza were recused due to participation on the probable cause panel.

MOTION: Ms. Dockery moved to adopt the allegations of fact and conclusions of law in the administrative complaint as those of the board.

SECOND: Mr. Moore seconded the motion and it passed.

Mr. Gutierrez was present, sworn in by the court reporter and represented by Mr. Michael Miller.

Mr. Gutierrez addressed the board stating he has proof of workers' compensation coverage for the period of July 21, 2004 through July 21, 2005. He stated he requested cancellation of the policy on December 15, 2004 due to non-operation of the company. He further stated he abandoned the employee leasing company in September 2004.

After further discussion, the following motion was made.

MOTION: Mr. Moore moved to impose an administrative fine of \$500 and costs of \$88.86.

SECOND: Ms. Dockery seconded the motion and it passed.

B. MOTION FOR WAIVER OF RIGHTS AND FINAL ORDER

- 1. Dominick Crea** **2005-030507**
(PCP: Crum and Bloomer, August 17, 2005)

Mr. Hurst presented the case explaining it stems from violations involving failure to submit an annual financial statement for 2004, failure to ensure Payroll Services Plus, Inc. complied with the Net Working Capital requirements, and failure to submit a quarterly report for quarter ending March 2005.

Mr. Crum was recused due to his participation on the probable cause panel.

MOTION: Ms. Dockery moved that the Respondent's failure to respond to the Administrative Complaint has waived its right to request a hearing in which there is a disputed issue of material fact.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

MOTION: Ms. Dockery moved to adopt the allegations of fact and conclusions of law in the administrative complaint as those of the board.

SECOND: Mr. Moore seconded the motion and it passed.

MOTION: Mr. Moore moved to impose an administrative fine of \$3000, costs of \$59.24, and revocation of the license.

SECOND: Mr. Rodriguez seconded the motion and it passed.

C. SETTLEMENT STIPULATIONS

- 1. Teamwork Services, Inc.** **2005-036777**
- 2. Gregory J. Bell Jr.** **2005-036784**
(PCP: Lanza and Crum, November 8, 2005)

Mr. Hurst presented the cases explaining they stem from violations involving failure to timely submit the annual report for 2004, and failure to timely submit a quarterly report for quarters ended September and December 2004 and March 2005. Mr. Hurst stated that the settlement stipulation provides for a reprimand of both licenses, an administrative fine of \$2625, costs of \$88.86 and joint and several liability for payment of the fine and costs.

Ms. Clark noted for the record that Mr. Crum and Ms. Lanza were recused due to participation on the probable cause panel.

MOTION: Mr. Rodriguez moved to adopt the terms of the stipulation as the final order of the board.

SECOND: Ms. Dockery seconded the motion and it passed.

The board recessed at 11:30 a.m.

The meeting reconvened at 11:45 a.m.

VII. EMPLOYEE LEASING COMPANY/CONTROLLING PERSON APPLICATIONS

A. Adams Keegan-GA Inc.

Robert G. Adams, Controlling Person Applicant
James F. Keegan, Controlling Person Applicant
Marty B. Barton, Controlling Person Applicant
George E. Early III, Controlling Person Applicant

Ms. Woodard presented the applications explaining they were presented at the January 18, 2006 meeting. She stated at that meeting the board tabled discussion of the applications until a representative of the company could appear to answer questions about the workers' compensation policy included with the application materials.

Ms. Dockery asked if a representative of the company was present. No one answered.

Ms. Clark stated she received a phone call from the attorney representing the applicants stating he had spoken with someone at the Department of Insurance, who offered the opinion that the new letter from WAUSAU Insurance Company would be sufficient.

Mr. Moore stated all of the policies that were submitted with the applications had expired. He further stated he wanted explanation for the different policies.

After further discussion the following motion was made.

MOTION: Mr. Moore moved to table discussion of the applications until the March 2006 meeting.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

B. Business Personnel Solutions, Inc.

George C. Norton III, Controlling Person Applicant

Ms. Woodard presented the company application stating that all exhibits were submitted and complete. She further stated that workers' compensation was being provided by the FWCJUA.

Ms. Dockery stated the letter included in the application materials from the FWCJUA was not the correct letter. She stated the letter normally states "ready to bind coverage for the employer upon written notification from DBPR that the employer has been approved for licensure." She further stated the policy does not state for leased employees.

Ms. Lanza also stated that the policy is a minimum premium policy.

Mr. Moore asked is a representative for the company was present. No one answered.

After further discussion, the following motion was made.

MOTION: Mr. Moore moved to table discussion of the applications until the March 2006 meeting at which time a representative could appear to answer questions about the workers' compensation policy.

SECOND: Ms. Lanza seconded the motion and it passed unanimously.

**C. Physicians Rightpath, LLC
Donald R. Locke, Controlling Person Applicant**

Ms. Woodard presented the application stating that all exhibits were submitted and complete. She further stated that workers' compensation was confirmed by DFS on December 13, 2005.

Ms. Woodard advised that the year end financial statements for 2004 did not meet the net working capital requirements. However, the interim financials, which were not audited or reviewed, did meet the requirements.

Mr. Moore asked if a representative was present. No one answered.

Mr. Moore stated he had questions about the application materials in general. He stated he was not aware that FCCI was writing workers' compensation policies for employee leasing companies again. He stated he also had questions about the healthcare provider.

MOTION: Mr. Rodriguez moved to deny the applications due to failure to submit reviewed financial statements with a tangible net worth of \$50,000 in accordance with Section 468.525(3) (e), F.S. and failure to provide evidence of workers' compensation that covers leased employees in accordance with Section 468.529 (2), F.S.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

D. Mark C. Perlberg, Controlling Person Applicant
Oasis Outsourcing, Inc. – GL 42
Oasis Outsourcing II, Inc. – GM 91
Oasis Outsourcing IV, Inc. – GM 178
Oasis Outsourcing Benefits II, Inc. – GM 240
Oasis Outsourcing V, Inc. – GL 54
Oasis Outsourcing VI, Inc. – GM 109
Oasis Outsourcing VII, Inc. – GM 213
Oasis Outsourcing VIII, Inc. – GM 110

Ms. Woodard presented the application stating all exhibits were submitted and complete and the criminal history reports from the Florida Department of Law Enforcement (FDLE) and FBI were returned clear.

Ms. Dockery recused herself from the vote due to being an employee of the companies listed.

MOTION: Mr. Crum moved to approve the application.

SECOND: Ms. Moore seconded the motion and it passed.

VIII. CHANGE OF OWNERSHIP APPLICATION

- A. National Employee Leasing Co. Inc. – GL 36**
 - NELCO Benefit Group, Inc. – GM 73**
 - NELCO International, Inc. – GM 74**
 - NELCO Master Corporation, Inc. – GM 75**
 - NELCO Three, Inc. – GM 286**

Ms. Woodard presented the applications stating that Fortune Financial, Inc. would be the new owner for the company. Ms. Woodard advised that the controlling persons would remain the same.

MOTION: Mr. Moore moved to approve the applications.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

- B. NELCO Six, Inc. – GL 69**
 - NELCO Seven, Inc. – GM 142**
 - NELCO Eight, Inc. – GM 141**
 - NELCO Two, Inc. – GM 285**
 - NELCO One, Inc. – GM 287**

Ms. Woodard presented the applications stating that Fortune Financial, Inc. would be the new owner for the company. Ms. Woodard advised that the controlling persons would remain the same.

MOTION: Ms. Dockery moved to approve the applications.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

- C. Oasis Outsourcing, Inc. – GL 42**
 - Oasis Outsourcing II, Inc. – GM 91**
 - Oasis Outsourcing IV, Inc. – GM 178**
 - Oasis Outsourcing Benefits II, Inc. – GM 240**

Ms. Woodard presented the applications stating that Oasis Outsourcing, LLC would be the new owner for the company. Ms. Woodard advised that the controlling persons would remain the same.

MOTION: Mr. Moore moved to approve the applications.

SECOND: Mr. Rodriguez seconded the motion and it passed unanimously.

- D. Oasis Outsourcing V, Inc. – GL 54**
 - Oasis Outsourcing VI, Inc. – GM 109**
 - Oasis Outsourcing VII, Inc. – GM 213**
 - Oasis Outsourcing VIII, Inc. – GM 110**

Ms. Woodard presented the applications stating that Oasis Outsourcing, LLC would be the new owner for the company. Ms. Woodard advised that the controlling persons would remain the same.

Ms. Dockery recused herself from the vote due to her being an employee of the companies listed.

MOTION: Mr. Moore moved to approve the applications.

SECOND: Mr. Crum seconded the motion and it passed.

IX. REVIEW AND CONSIDERATION OF TERMINATION OF EMPLOYEE LEASING COMPANY OPERATIONS

A. Professional Leasing Alliance, Inc. – EL 159

Ms. Woodard advised that the termination was being pulled from the agenda.

X. REPORTS

A. Office of the Attorney General – Mary Ellen Clark

Ms. Clark stated there was no rules report for this month because the only rule that is in play is the one that was noticed for rule development to get a form adopted which is listed on agenda.

B. Office of the General Counsel – Eric Hurst

Mr. Hurst reported that the prosecuting attorney's report was included in the agenda materials.

C. Executive Director – John T. Knap

Mr. Knap gave a brief synopsis of the following reports:

- Office of General Counsel's Unlicensed Activity Report from January 1, 2005 through December 31, 2005,
- the monthly enforcement report, and
- the Operating and Unlicensed Activities financial reports ended September 30, 2005

Mr. Knap advised that he attended a meeting about board finances and was questioned about the cash balances for this profession. He stated he explained that the board lowered the assessment fees, by rule, and it would be wise to wait to see the effects of the change.

Mr. Knap mentioned that the Department has established a newsletter publication deadline and included a generic format of the newsletter to be used in the agenda materials. Mr. Knap requested help in gathering information and articles for the newsletter.

Mr. Knap also mentioned enhancements to the Department's web pages such as the link directly to the Florida Administrative Codes so that rules assessed will always be up-to-date and a new link on employee leasing's web page indicating critical dates. He stated the changes will make the web pages more user friendly.

D. Chairperson – Celeste Dockery

No Report.

XI. CORRESPONDENCE

A. Letter from Jennifer Morehead, SPC, AFLAC – Suncoast Region

Ms. Dockery mentioned the letter from Ms. Morehead included in the agenda materials stating she did not feel the issue raised is within the board's scope of responsibility and she would prepare a response.

XII. NEW BUSINESS

A. Compliance Form for Rule 61G7-10.0014, F.A.C.

Ms. Clark stated the only changes she would make to the form are to add Section 468.529, F.S. to the end of the first paragraph. She stated it is always good to have a statutory cite. She also stated in certain areas rule should be plural wherein it talks about more than one rule being cited.

Mr. Rodriguez reminded the members of Mr. Sumner's presentation wherein he stated he did not see how the third option existed.

Ms. Clark stated what she understood Mr. Sumner to say was that such an option was not consistent with Chapter 440, F.S.

Ms. Clark stated a rule can be challenged at any time, and presently there is no challenge to the rule and the board has to assume that there was thorough review of the rule at the time it was adopted for underlying statutory authority.

After further discussion the following motion was made.

MOTION: Mr. Rodriguez moved to withdraw the rule.

SECOND: Mr. Crum seconded the motion.

Ms. Dockery, Mr. Moore and Ms. Lanza opposed. The motion did not pass.

Ms. Dockery stated she did not think that the rule should be withdrawn at this time without having a workshop to allow the industry to come forth and discuss this particular rule. She stated withdrawing this rule would affect many employee leasing companies in the state of Florida and it would be out of line to act so hastily.

Mr. Rodriguez stated the board should establish a way of confirming coverage if individual policies are allowed.

Ms. Dockery stated she agree that the rule was put in place in haste in order to save some companies.

Ms. Clark stated as far as the proposed form that is in the agenda materials, she thinks that it is in compliance with the rule as written. She further stated if the board is expressing dissatisfaction with the rule as written, they may not want to move forward with a form at this time.

Mr. Moore stated there is legislative talk about a proposed Senate bill that would remedy this situation, which would eliminate client-based policies.

The board decided not to take action on the form and to notice a discussion/workshop for the possibility of withdrawing Rule 61G7-10.0014(2) (c) for the April 2006 meeting.

Mr. Rodriguez stated to clarify his motion, he wants to fix the problem, not necessarily withdraw the rule.

B. Proposed 2005/2006 Board Meeting Schedule

The members of the board agreed to review the proposed meeting schedule and report at the April 2006 meeting any conflicts with the schedule.

XIII. OTHER BUSINESS

A. Tim Tucker, NAPEO

Mr. Tim Tucker from NAPEO addressed the board regarding alternate licensing provisions, and in particular the Employer Services Assurance Corporation (ESAC) program.

B. Lisa Johnson, Senate Banking and Insurance Committee

Ms. Johnson addressed the board in regards to employee leasing arrangements and other types of employment agencies dealing with deferring workers' compensation insurance fraud. She stated there have been concerns regarding the regulation of employee leasing companies.

In other business, Mr. Crum suggested that board staff should attend the FAPEO and NAPEO conventions to obtain knowledge of the profession.

XIV. OLD BUSINESS

None

XV. ELECTION OF OFFICERS

The board voted to re-elect Ms. Celeste Dockery as Chair and Mr. Carlos Rodriguez as the Vice Chair.

The board also voted to change the make-up of the Probable Cause Panel to include Ms. Kelly Lanza and Mr. Ryan Moore. Ms. Lanza would be Chair of the Panel.

Ms. Dockery asked staff to inquire into the status of appointments to the board.

XVI. ADJOURNMENT

MOTION: Mr. Crum moved to adjourn.

SECOND: Mr. Moore seconded the motion and it passed unanimously.

The meeting adjourned at 1:09 p.m.