

MINUTES
ARIZONA STATE BOARD OF TECHNICAL REGISTRATION
1110 West Washington, Conference Room #240
Phoenix, AZ 85007

Tuesday January 22, 2019
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER** – 9:07am
2. **ROLL CALL** – **Present:** Dr. Alejandro Angel, Jack Gilmore, Neal Jones, Jason Foose, Jason Madison, Carmen Wyckoff, Andrew Everroad and Eugene Montgomery.
Not Present - Stephen Noel
Staff - Melissa Cornelius, Patrice Pritzl, Robert Stam, Douglas Parlin, Kurt Winter

3. **CALL TO THE PUBLIC**

No one appeared before the Board.

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

Nothing to Consider

5. **CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING**

Formal Hearings or Related Proceedings will begin at 9:30 a.m.

Nothing to Consider

6. **ENFORCEMENT MATTERS**

Review, Consideration and Possible Vote on the following:

- A. Complaints Proposed for Resolution by Dismissal or Closure:

1. P19-015, Todd Springer, P.E. (Mechanical) #54476

Alleger, Timothy Keister, appeared before the Board.

Alleger argued that Respondent committed malpractice when he engaged as an expert witness without sufficient expertise.

Mr. Montgomery stated that the courts should decide whether there were technical deficiencies in Respondent's work, that Respondent did not commit malpractice but that

he may have exceeded his area of knowledge, and that the Board should issue a Letter of Concern instead of dismissing the case. Dr. Angel stated that the courts had the responsibility to decide who was an expert witness and that he felt confident in the EAC's recommendation to dismiss. Alleger stated that the court rejected Respondent's expert report proving that Respondent did not have the expertise required, which therefore led to Alleger's decision to submit the complaint. Dr. Angel stated he believed the work Respondent performed was incidental to his profession.

Mr. Montgomery moved and Mr. Jones seconded to dismiss; motion carried unanimously.

B. Complaints Proposed for Resolution by Letters of Concern:

1. HI18-031, William Reed, C.H.I. #51754

Mr. Foose moved and Mr. Gilmore seconded to issue a Letter of Concern; motion carried unanimously.

2. HI19-021, Patrick Zech, C.H.I. #58357

Mr. Foose moved and Mr. Gilmore seconded to issue a Letter of Concern; motion carried unanimously.

C. Complaints Proposed to Offer Consent Agreement:

1. P18-040, Stephen Franey, R.A. #63522 and IPS Engineers and Architects, Firm #20164

Mr. Foose moved and Mr. Jones seconded to accept signed Consent Agreement; motion carried unanimously.

2. P18-073, Richard Moore, R.A. #22679 and RMA Design Group, LLC, Firm #21482

Respondent appeared before the Board.

Mr. Madison asked when Respondent's firm registration lapsed. Dr. Angel answered 2015. Dr. Angel asked if Respondent firm was now current. Respondent answered 'yes.'

Mr. Foose moved and Mr. Gilmore seconded to offer the Consent Agreement and, if not signed within thirty days, proceed to formal hearing; motion carried unanimously.

3. P18-048, Mark E. Orr, P.E. (Civil) #45655

Respondent appeared before the Board.

Respondent explained the circumstances of the complaint: he acknowledged that he had made an error, that he corrected the error, and he made the Board aware that

Maricopa County refused to acknowledge the correction since they had already closed the building permit.

Dr. Angel expressed his concern that Respondent made such an elementary technical error, but stated he did not think Respondent aided and abetted a non-registrant. Mr. Montgomery expressed his concern that the structure could have become a public hazard. Mr. Madison stated he appreciated that Respondent fixed the error, but was dismayed that another engineer had to point out the error to Respondent. Mr. Foose asked if there was an issue with Maricopa County not accepting Respondent's revisions to the property. Mr. Madison stated that that issue was beyond the Board's purview.

Mr. Madison moved and Ms. Wyckoff seconded to offer a Consent Agreement consisting of the following: Letter of Reprimand, stayed restriction of structural practice for a period of 18 months or until such time Respondent passes the 16 hour SE exam, three Peer reviews of structural design work, administrative penalty of \$1,000, cost of investigation of \$419 and, if not signed within 30 days, proceed to formal hearing; motion carried unanimously.

4. P18-057, Lawrence Welton, P.E. (Civil) #30954

Mr. Everroad recused himself.

Respondent and Respondent's attorney, Douglas Folk, appeared before the Board. Alleger, Robert Noone, appeared before the Board.

Mr. Folk offered the Board a red-line of the proposed Findings and Fact and Conclusion of Law to consider, stating Respondent would sign a Consent Agreement with those changes. Mr. Folk further argued that the attorney in this matter who asked for Respondent's opinion and draft plans gave excessive weight to said opinion and draft plans when he prepared his brief.

Mr. Jones stated that he believed Alleger submitted the complaint in error since it relied on a draft report. Dr. Angel agreed, but he opined that Respondent should have drafted his report more carefully. Mr. Montgomery stated that Respondent could have been more explicit with his answers regarding the plans. Mr. Madison disagreed with other Board members that Respondent should not have sealed his draft report, stating the purpose of the rule was for situations such as this where an attorney may use documents in litigation or in a brief. Ms. Wyckoff stated that she questioned the practicality of stamping drafts and other preliminary documents. Mr. Madison stated that Respondent could not remove himself from responsibility with the argument that the document used in litigation was a draft document. Mr. Folk suggested that the Board not require expert witnesses to sign and seal draft reports.

Mr. Foose moved and Mr. Gilmore seconded to enter executive session at 10:30am to seek legal advice. The Board reentered public session at 10:45am

Alleger stated Respondent failed to show proper technical knowledge and skill for this project and that Respondent was not communicative.

Mr. Foose moved and Mr. Jones seconded to postpone this matter for a future meeting so the Board could review Mr. Folks proposed red-lines and a possible updated Consent Agreement; motion carried unanimously.

5. HI19-011, Thomas Sullivan, C.H.I. #38636 and Inspec 10, LLC Firm #12474

Respondent appeared before the Board.

Respondent stated that the Board's investigator sent him a letter indicating he could be present for the December meeting but he gave him the wrong day, that he and his firm had never violated Board rules and statutes, and therefore he asked the Board for leniency.

Mr. Madison stated that to stay consistent with prior Board decisions, he suggested a \$250 fine. Ms. Wyckoff agreed.

Ms. Wyckoff moved and Mr. Everroad seconded to offer Respondent a Consent Agreement and, if not signed in 30 days, proceed to hearing; motion carried unanimously.

D. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI19-007, Edward Robles, C.H.I. #66057

Mr. Foose moved and Mr. Gilmore seconded to accept Signed Consent Agreement; motion carried unanimously.

2. P18-036, Ralph Baca, P.E. (Mechanical) #30637

Mr. Foose moved and Mr. Jones seconded to accept Signed Consent Agreement; motion failed unanimously.

Dr. Angel stated that the Consent Agreement was too lenient considering the egregiousness of the violations in this matter. Ms. Wyckoff asked how staff came to the administrative penalty amount of \$3,000. Investigator Hunt answered that staff determined the amount based upon previous case decisions and the EAC's recommendations.

Ms. Wyckoff moved and Mr. Montgomery seconded to add the following to the original proposed Consent Agreement: increase the administrative penalty to \$5,000 to be paid within 12 months, and 4 hours of ethics course to be completed in 90 days; motion carried unanimously.

3. HI18037, Steven Anderson, C.H.I. #51896 and National Property Inspections, Firm #16753

Mr. Foose moved and Mr. Gilmore seconded to accept Signed Consent Agreement; motion carried unanimously.

4. P19-011, Joel Kramer, R.A. #27000 and Kramer Architecture Firm #19218 (Expired)

Mr. Foose moved and Mr. Gilmore seconded to accept Signed Consent Agreement; motion carried unanimously.

5. HI19-012, Thomas Denton, C.H.I. #59413

Mr. Foose moved and Mr. Gilmore seconded to accept Signed Consent Agreement; motion carried unanimously.

E. Complaints Requiring Board Guidance:

1. P18-065, Richard Waage, R.L.S. #39954

Respondent appeared before the Board. Alleger, Jim Sanders, appeared before the Board.

Alleger argued that Respondent failed to perform a proper survey, was in collusion with the home association president, Mr. Goetzenberger, to perform a survey to the benefit of a particular homeowner, and, all to the detriment of Alleger's mother.

Respondent stated that Alleger based his argument that Respondent's survey was incorrect using GIS maps and other materials that were unreliable to ascertain the boundaries of the plot in this matter. Respondent indicated that the issue in this matter was the 'use of easements' plots in the subdivision.

Mr. Jones expressed his concern that the Cummings, the individuals that hired Respondent, coincidentally hired Respondent because he was a friend of Mr. Goetzenberger. Respondent stated the Cummings found him on Home Advisor. Mr. Foose agreed with the EAC's findings that no technical violation occurred. Mr. Foose asked Alleger if he had another survey conducted on the property. Alleger answered that he received a second opinion from a land surveyor in Prescott. Dr. Angel explained that a second opinion for this matter should be a land survey performed by a registered land surveyor. Mr. Foose indicated that the Board packet consisted of a single survey and he opined that it met the minimum standards but he did not condone Respondent's language in the phone altercation provided to the Board.

Mr. Donald suggested postponing this matter so the Board could examine further evidence. Mr. Everroad opined that there was no need to examine further evidence since a second land survey would not change the Board's opinion whether Respondent's survey met the minimum standards. Mr. Foose asked Mr. Donald if

hypothetically the Alleger, upon receiving the results of another survey, could reintroduce this case after the Board had dismissed it. Mr. Donald answered 'yes,' but suggested the Board administratively close the case if that was a concern. Mr. Everroad and Mr. Madison opined that the Board should not discipline Respondent for the language used in a phone altercation with Alleger. Dr. Angel opined that a Letter of Concern would be appropriate for this matter.

Mr. Foose moved and Mr. Madison seconded to dismiss the case; motion carried. Dr. Angel and Mr. Everroad voted nay. Mr. Jones abstained.

The Board paused for a short break at 12:04pm and returned at 12:11pm. Mr. Gilmore left the meeting at this time. The Board was still in quorum.

2. P19-020, Robert Stephenson, R.L.S. #34562

Respondent's mother, Marsha Stephenson, appeared before the Board.

Dr. Angel stated he appreciated Respondent's candid letter but was concerned with Respondent's actions that lead to his felony conviction. Dr. Angel asked if mental health issues would affect Respondent continuing to practice as a registered land surveyor. Ms. Stephenson stated she did not believe it would be an issue, but stated she assumed he would need help after authorities released him from incarceration. Mr. Foose asked how long Respondent had been incarcerated. Ms. Stephenson answered since 2015. Mr. Foose asked how long before his release. Ms. Stephenson answered one year followed by six months probation. Mr. Foose asked if Respondent was running a professional firm while incarcerated. Ms. Stephenson answered 'no.' Dr. Angel asked if Respondent had a firearm carry permit. Ms. Stephenson answered that Respondent had one in the past but his right to firearms had been lost.

Dr. Angel asked if incarceration automatically triggered the Board suspending a license. Ms. Cornelius answered 'no.' Dr. Angel asked if the Board had the authority to suspend Respondent's registration until he could prove he passed a psychological evaluation. Mr. Foose opined that the Board come to a decision that allowed Respondent to rehabilitate and continue as a registrant. Mr. Donald suggested this matter be moved to next month or enter executive session. Mr. Foose opined agendaing until next meeting.

The Board decided to review this case next month.

3. HI19-027, David Peters, C.H.I. #39925 and Lighthouse Home Inspection Service, Firm #12388

Mr. Madison asked for clarifications regarding the current matter and a previous matter against Respondent. Investigator Loera clarified that the Board had already disciplined Respondent in the previous matter for performing a home inspection while his firm registration was expired, that Respondent had complied with the signed

Board Order for that matter and that the Board required Respondent to refund the Allegers for that home inspection based on the Board's observation that Respondent performed a substandard home inspection. Mr. Everroad asked if the Allegers found any issues with the home inspection in this matter. Ms. Loera answered 'no' but further stated that Respondent communicated that he would be willing to refund the Allegers. Mr. Madison opined that the Board should require a home inspector to pay restitution for substandard work, not because their firm registration had lapsed, and that the Board had already disciplined Respondent for his firm registration lapsing and therefore this matter did not warrant new discipline.

Mr. Madison moved and Mr. Jones seconded to dismiss; motion carried unanimously.

4. P19-012, Ron Darling, Non-Registrant and Darling Designs Residential Architecture and Interiors, Non-Registrant Firm

Alleger, Mike Lynch, appeared before the Board.

Alleger argued that Respondent mislead him into believing he was an architect.

Mr. Everroad asked if the Board could act on Respondent's performance. Dr. Angel answered 'no.' Dr. Angel asked if it was true Respondent stated he would not change any of his letterhead and stationary. Investigator Will answered 'yes.' Dr. Angel stated that there was no proof in the Board materials that indicated Respondent was misleading the public, just the Alleger's testimony, and he opined dismissing the case.

Mr. Everroad moved and Mr. Madison seconded to dismiss the case; motion carried. Dr. Angel voted nay.

F. Compliance Monitoring Investigations:

1. AL19-003, Amber Davison, Alarm Controlling Person #58018 (Expired) and Solvent Security, Inc., Alarm Business #18762 (Expired)

Investigator Hunt explained that staff opened a new case against Respondent for non-compliance with a Board order, that Respondent no longer wished to be registered, and that she asked if the Board would accept a final payment of \$250 and voluntary surrender of her registration in lieu of her paying the final \$1,250 still owed.

Mr. Everroad moved and Mr. Madison seconded to offer a Consent Agreement that included the following: Respondent shall voluntary surrender certificate and pay \$250 administration penalty, upon complying with this Consent Agreement the Board shall close both matters, and, if not signed within 30 days, proceed to hearing; motion carried unanimously.

2. P19-019, Michael Bostic, R.G. #35021 (Suspended)

Investigator Hunt explained that he had been unable to contact Respondent and asked that the Board move this case to hearing.

Mr. Everraod moved and Mr. Madison seconded to move case for formal hearing for revocation; motion carries unanimously.

3. P19-018, John Davis, R.L.S. #26410

Investigator Hunt explained that Respondent failed to pay the administrative penalty fee and complete the peer review requirements of his Board Order and was therefore in violation of that Order and asked the Board for guidance. Mr. Madison opined offering a new Consent Agreement for Respondent to voluntarily surrender their license.

Mr. Madison moved and Mr. Jones seconded to lift the stay of suspension and offer Respondent a new Consent Agreement including the following: voluntary surrender of registration and, if not signed within 30 days, proceed to formal hearing for revocation; motion carried unanimously.

4. HI19-018, Robert Bauer, C.H.I. #60983 (Probation)

Respondent appeared before the Board.

Investigator Hunt explained that Respondent failed to comply with his original signed Consent Agreement, therefore staff opened a compliance case against him.

Dr. Angel asked Respondent why he did not complete the peer reviews required in his signed Consent Agreement. Respondent stated he completed two of the peer reviews, paid his penalty fees late due to miscommunication with investigative staff and allowed his registration to lapse. Dr. Angel asked why he had not completed a peer review since April of 2018. Respondent answered that he was under the assumption that his registration was under probation and he therefore could not perform home inspections. Dr. Angel stated that would be true if the Board had suspended Respondent's registration, which was not the case. Dr. Angel asked staff if the Board should table this matter for next month to allow Respondent time complete his peer review requirements. Investigator Hunt argued against it and explained Respondent had had ample time to comply. Ms. Pritzl stated that the Board Order Respondent signed required Respondent to renew his registration.

Mr. Everraod moved and Dr. Angel seconded to lift stay of suspension from the original agreement for a three-month period and retain the original requirements of that agreement: motion carried unanimously.

Mr. Everroad moved and Ms. Wyckoff seconded to offer a Consent Agreement consisting of the following: Letter of Reprimand, \$500 administrative penalty, \$154 cost of investigation and, if not signed within 30 days, proceed to hearing; motion carried unanimously.

At 1:12pm Ms. Wyckof and Dr. Angel left the meeting. Mr. Foose took over as Chairman. The Board remained in quorum.

G. Complaints Proposed for Administrative Closure:

1. HI19-006, Anthony Harms, C.H.I. #50096 (Revoked) and Allsafe Home Inspection, LLC, Firm #15968 (Expired)

Investigator Loera explained that Respondent moved out of state, failed to update his financial assurance, and that the Board subsequently revoked Respondent's registration. She asked that the Board administratively close this case so that staff could pursue the case later if Respondent reapplied as a home inspector in Arizona.

Mr. Madison moved and Mr. Jones seconded to administratively close complaint; motion carried unanimously.

H. Reconsideration of Prior Board Action:

1. P19-009, Lee Shaw, Non-Registrant and Lee Shaw Architecture, Non-Registrant Firm

Respondent and Respondent's attorney, Douglas Folk, appeared before the Board.

Mr. Folk argued that the use of the word 'Architecture' was not a violation of Board rules and Respondent would not sign the Consent Agreement in its current form.

Dr. Angel asked Mr. Folk if he believed that unintentionally misleading the public into believing you were an architect was a violation. Mr. Folk stated that if Respondent represented himself as an architect or offered services outside of residential then those actions might be a violation of Board rules, which he argued Respondent had not done. Dr. Angel stated that Respondent firm's website included pictures of commercial projects, which he opined might be misleading to the public. Mr. Folk explained that a licensed architect was involved in those commercial projects. Dr. Angel reiterated his concerns about the website. Mr. Foose and Mr. Madison did not have issues with Respondent firm's website and opined that the Board dismiss this case. Mr. Montgomery stated his concern with the word 'Architecture' in Respondent firm's title. Mr. Everroad stated, prior to being a Board member, the Board generally precluded residential design firms from using the term 'Architecture' in their firm title, which he disagreed with. Ms. Wyckoff suggested the Board issue a letter to Respondent asking him to clarify his role in projects shown on his firm's website. Mr. Foose and Mr. Jones opined that Respondent did not violate Board rules or statutes. Mr. Montgomery reiterated his concern that the Board's prior decisions indicated that the use of the word 'Engineering' in a firm title implied the firm had a registrant principal, but in this matter the word 'Architecture' did

not.

Mr. Jones moved and Mr. Foose seconded to dismiss: motion carried unanimously.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration after Full Board Review

A. DePrima, Christopher- Application for PE registration #182949

Applicant appeared before the Board.

Mr. DePrima argued that the Board should grant his registration.

Dr. Angel opined that Applicant did not recognize the Board's authority and therefore the Board could not regulate him. Ms. Wyckoff asked if Applicant's application showed a year's worth of experience since the last application. Licensing Manager Robert Stam answered that Applicant only submitted two months of work experience, which his employer did not certify. Mr. Jones asked Applicant why his employer did not certify his work experience. Applicant answered that he did not know. Mr. Jones opined denying registration because his application was incomplete. Ms. Cornelius asked Mr. Jones if he believed Applicant demonstrated his good moral character and ability to practice safely. Mr. Jones answered 'no.'

Mr. Jones moved and Mr. Everroad seconded to Deny registration based upon Applicant's failure to demonstrate good moral character and ability to practice safely; motion carried. Mr. Foose voted Nay.

B. Thorne, Bret- Application for Architect registration -#182888

Applicant appeared before the Board.

Dr. Angel opined granting Applicant's registration.

Mr. Jones moved and Ms. Wyckoff seconded to Grant registration; motion carried unanimously.

8. LICENSING CONSENT AGENDA

A. Review, Consideration, and Action on Staff Recommendations for the following:

1. Cancellation of registrations and certifications that have been expired for one full renewal period;

Mr. Madison moved and Mr. Jones seconded to cancel registrations and certificates that have been expired for one full renewal period; motion carried unanimously.

2. Review of the List of registrations and certifications granted by the Executive Director pursuant to A.R.S. § 32-122.05, 32-122.06, and A.R.S. § 32-123.

List available for public review upon request.

9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

Mr. Everroad left the meeting at 1:33pm. The Board was no longer in a quorum at that time and the Board adjourned.

- A. Whether to Raise Fees to Save Money for a New E-Licensing System, and specifically, whether to Raise Home Inspector fees to offset Enforcement Costs.

Continued to next month's meeting due to a lack of quorum.

- B. Status of Legislation in the 2019 Session – HB2037 technical registration board; endorsement registration

Tabled to next month's meeting due to a lack of quorum.

- C. Enforcement Policy regarding Monetary Payments and Penalties

Continued to next month's meeting due to a lack of quorum.

- D. Update on Computer Issues, including the Website's Registrant Search, Online Renewals and Credit Card Payments and Online Board Orders.

Tabled to next month's meeting due to a lack of quorum.

10. DIRECTOR'S REPORT

Pushed to next month's meeting due to a lack of quorum.

- A. Budget Update-figures available at the meeting.
- B. Previous Meeting Follow-Up: GRRC Petition regarding Rule R4-30-102, and discussion about the 'generic' term 'engineer.'
- C. National Councils Updates
- D. Licensing and Enforcement Statistics Review

11. BOARD CHAIR'S REPORT – Nothing to Consider

12. STANDING COMMITTEE REPORTS

- A. Legislation and Rules Committee – Nothing to Report
- B. Home Inspector Rules and Standards Committee – February 19, 2019 Meeting Scheduled

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG – Nothing to report
- B. CLARB – Nothing to report
- C. NCARB - Regional Meeting in Nashville, TN early March 2019. Annual Meeting in Washington DC mid-June 2019
- D. NCEES – Western/Southern Zone meeting in Boise, ID mid-May 2019.

14. FUTURE BOARD MEETINGS –February 26, 2019

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Enforcement of titles

16. MEETING ADJOURNMENT – 1:33pm

Dr. Alejandro Angel, Board Chairman



Melissa Cornelius, Executive Director

