

**ARIZONA STATE BOARD OF TECHNICAL REGISTRATION
MINUTES FOR REGULAR SESSION MEETING**

Tuesday, February 26, 2019, beginning at 9:00 a.m.
1110 W. Washington, Conference Room #240
Phoenix, AZ 85007

1. CALL TO ORDER – 9:02am

2. ROLL CALL – Present: Dr. Alejandro Angel, Jason Foose, Jason Madison, Eugene Montgomery, Jack Gilmore, Neal Jones, Andrew Everroad, Carmen Wyckoff

Staff: Melissa Cornelius, Patrice Pritzl, Douglas Parlin, Robert Stam, Kurt Winter
AAG: Scott Donald

3. CALL TO THE PUBLIC

No one appeared before the Board.

4. ADOPTION OF MINUTES

Review, Consideration, and Possible Action on the following:

A. Approve, modify and/or reject January 22, 2019 Board meeting minutes.

Mr. Jones moved and Mr. Gilmore seconded to approve the minutes; motion carried unanimously.

5. CONSIDERATION OF MOTION FOR REHEARING/REVIEW OF DECISION

A. DePrima, Christopher - Motion of Rehearing of Denial of Application

Nothing discussed, no action taken.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. P19-017, Ryan Ellsworth, Non-Registrant

Dr. Angel expressed his concern that the “minor” red lines in the stamped plans somehow created four additional apartments. Investigator Will explained that Respondent’s ex-employee created the red lines, but no one knows who included the additional four apartments in the plans. Dr. Angel asked if it was typical for an entity to hire an architect to review plans for life and safety. Mr. Jones answered that he hired

a registered architect to review life and safety issues but that he sealed the plans, not the hired architect. Dr. Angel opined that staff further investigate this case.

The Board directed staff to further investigate this matter.

2. P19-016, Timothy Evans, R.L.S. #50988

Dr. Angel stated that the Board should issue a Letter of Concern regarding Respondent's inappropriate language.

Mr. Foose moved and Mr. Jones seconded to dismiss case; motion carried. Dr. Angel and Mr. Montgomery voted Nay.

3. P19-003, Jennifer Vitale, P.E. (Civil) #37891

Mr. Montgomery opined that Respondent acted unprofessionally in her communications.

Mr. Madison moved and Mr. Everroad seconded to dismiss case; motion carried. Foose voted Nay.

B. Complaints Proposed for Resolution by Letters of Concern:

1. HI19-013, Daniel Harris, C.H.I. #38440

Alleger, Alicia Motti, appeared before the Board.

Ms. Motti disagreed with the EAC's findings and she argued that Respondent conducted a substandard home inspection to her detriment as the homebuyer.

Mr. Gilmore asked why the EAC only discovered two de minimus violations in Respondent's report. Investigator Thacker answered that while the allegations were numerous, only two violations fell below the minimum standards. Ms. Motti expressed her belief that the findings were unacceptable as a homebuyer. Dr. Angel explained that anything outside of the minimum standards was beyond the Board's jurisdiction, which was the case with many of her allegations. Ms. Motti argued that the home inspector was friends with the homeowner, which was a conflict of interest. Dr. Angel stated that he trusted the EAC's judgment and explained that the Board received the complaint six months after the inspection. Investigator Thacker stated the Board received her complaint six months after the inspection. Dr. Angel asked Ms. Motti why she waited six months to submit a complaint. Ms. Motti answered she was dealing with the issues of her new home. Investigator Thacker noted that Respondent appeared telephonically at the EAC meeting, that he had not offered any form of restitution to Ms. Motti, and that he gave Ms. Motti \$100 to repair a fan after he accidentally broke it.

Mr. Montgomery expressed his concern that the carport appeared damaged in the photos Ms. Motti provided, yet it did not show up in the home inspection report. Mr. Madison explained that Ms. Motti took the picture of the damaged carport after the inspection, so it was difficult for the EAC and the Board to determine when the damage took place. Dr. Angel opined that Respondent's home inspection report lacked photos and details, but it still followed the minimum standards. Mr. Thacker indicated that Respondent's home inspection report appeared to be a mere duplicate of the minimum standards template. Mr. Noel asked if the Board issued a letter of concern today, could the Board reopen the case after the Board received additional evidence. Staff indicated that the Board could reopen the case. Mr. Everroad expressed his belief that the Board should not recommend possible solutions in matters such as this since there had been plenty of time for the parties to provide evidence prior to the Board meeting.

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

2. HI19-017, Kevin Bortin, C.H.I. #38754

Mr. Everroad moved and Mr. Foose seconded to issue a Letter of Concern; motion passed unanimously.

3. HI19-014, Jeremy Larsen, C.H.I. #66097

Mr. Everroad moved and Mr. Foose seconded to issue a Letter of Concern; motion passed unanimously.

4. HI19-005, Harris Breit, C.H.I. #38058

Respondent appeared before the Board.

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

5. AL19-002, Andrea Kincaid, A. C. P. #66624 and Security Alarm Financing Enterprises, dba Safe Security, Alarm Business #18658

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

6. HI19-010, Jeffrey Hoffman, C.H.I. #59145

Respondent appeared before the Board.

Mr. Montgomery asked if the Board was concerned with Respondent's firm title. Board Members indicated they had no issues.

Mr. Foose moved and Mr. Everroad seconded to issue a Letter of Concern; motion carried. Mr. Montgomery voted Nay.

C. Complaints Proposed to Offer Consent Agreement:

1. P19-014, Christopher Stevens, P.E. (Civil) #15615, R.L.S. #16615 and Yost and Garner Engineers, Inc., Firm #21461

Mr. Everroad recused himself.

Respondent appeared before the Board.

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

2. P18-074, Jay Clary, Non-Registrant and Engineering Construction Design & Associates, Firm # 20711

Alleger, Michael Tobin, appeared before the Board.

Dr. Angel asked what the relationship between Respondent and Mr. Sullivan was. Investigator Hunt answered that Respondent was the owner and Mr. Sullivan a contracted employee. Dr. Angel asked Mr. Tobin what work he used to perform was for Respondent. Mr. Tobin answered that he was available to review and seal documents the Respondent prepared. Dr. Angel expressed his concern that this relationship did not fall under the definition of a bona fide employee and Mr. Sullivan may have violated the Board's practice act. Mr. Parlin pointed out that Mr. Sullivan was the principal of the firm and he wanted to know if that affected Dr. Angel's concerns. Mr. Donald stated that a drafter could not legally pay a professional engineer to seal documents.

Ms. Wyckoff moved and Mr. Madison seconded to accept the signed Consent Agreement; motion carried unanimously.

The Board directed staff to open an investigation against Mr. Sullivan for possibly aiding and abetting a non-registrant.

D. Complaints Proposed for Resolution with Signed Consent Agreements:

1. AL19-004, Victor Johnson, Non-Registrant and Justice Satellite and Security, Non-Registrant Alarm Business

Respondent appeared before the Board.

Dr. Angel opined that the penalty fee in the signed Consent Agreement was too low. Mr. Parlin explained that staff concluded there was a single violation. Dr. Angel asked why staff believed there was only a single violation when there appeared to be proof of

more violations. Investigator Will explained that many of the individuals Respondent had an alarm contract with were unresponsive and solid proof of additional violations were therefore difficult to provide. Dr. Angel asked if Respondent had registered his business. Mr. Will answered 'no.'

Dr. Angel asked Respondent if he planned to register his firm. Respondent answered that he did not own or run an alarm business, and that he was a representative of Cox monitoring and acted as an intermediary. Dr. Angel asked Respondent if he planned to make any changes to his business considering he already signed the Consent Agreement. Respondent stated he was unaware that he signed an admission of guilt. Mr. Foose asked Mr. Donald if the Board could reject the signed Consent Agreement and move this matter to formal hearing. Mr. Donald answered 'yes.' Mr. Madison stated that he would move to reject the signed Consent Agreement because it lacked any assurance of discontinuance language, and he suggested that Respondent sign another consent agreement. Mr. Foose disagreed. Mr. Will noted that Respondent stated, while being recorded, that he understood what he was signing when he signed the agreement. Respondent stated that he tried to become licensed at the 'place that grants licenses' but found the costs too high. Dr. Angel and Ms. Pritzl informed Respondent that the Board grants licenses for Alarm Agents and Controlling Persons.

Mr. Foose moved and Ms. Wyckoff seconded to reject the signed Consent Agreement and send this matter to formal hearing; motion carried after a roll call vote. Mr. Madison voted Nay.

2. P19-029, David Schwinghamer, Non-Registrant

Dr. Angel asked if there were more instances of Respondent using a registrant's seal other than the one staff provided in the board packet. Investigator Will answered staff presumed that Respondent used the seal on multiple occasions, but no proof was available. Dr. Angel expressed his concern that there may be plans in use that an architect did not prepare.

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

The Board referred this matter to the AG's office for criminal proceedings.

3. P19-007, Paul Weiner, R.A. #28540 and DesignBuild Collaborative, Firm #21468

Mr. Foose moved and Mr. Gilmore seconded to accept the signed Consent Agreement; motion passed unanimously.

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

Mr. Everroad recused himself.

Mr. Foose moved and Mr. Gilmore seconded to accept the signed Consent Agreement; motion passed. Mr. Everroad abstained.

5. HI19-026, David Brower, C.H.I. #39078 and DB Home & Commercial Inspections, Firm #12367

Mr. Foose moved and Mr. Gilmore seconded to accept the signed Consent Agreement; motion passed unanimously.

E. Complaints Requiring Board Guidance:

1. P19-030, Phillip Pecord, R.A. #18372

Mr. Jones asked where Respondent resided. Investigator Kraemer answered "Tennessee." Mr. Madison asked how the other Boards disciplined Respondent. Mr. Kramer answered that the information was in the packet. Dr. Angel opined that other Boards already disciplined Respondent enough and that the Board should be lenient.

Mr. Madison moved and Mr. Wyckoff seconded to issue a Letter of Concern; motion passed unanimously.

F. Compliance Monitoring Investigations:

1. P17-088, Gordon Grandy, R.L.S. #17238

Mr. Foose asked staff to explain why the Board should lift the stay of suspension because of Respondent's failure to complete peer-reviewed boundary surveys. Investigator Hunt explained that the peer reviews were part of Respondent's original Order, which he failed to comply with within the period specified in the Order. Mr. Madison noted that if the Board lifted the stay of suspension, Respondent would be unable to complete the peer reviews. Mr. Foose expressed his belief that it was incumbent upon Respondent to seek out boundary surveys to comply with the Board's Order. Ms. Cornelius stated that lifting the stay would give Respondent incentive to reach out to the Board for an extension. Mr. Parlin asked if Respondent, a firm principal, was suspended, what would happen with his firm. Mr. Madison answered staff would send the firm a letter informing them that the firm was invalid until the firm submitted a new principal to the Board. Mr. Hunt informed the Board that Respondent was a registered engineer and therefore the firm was still valid.

Mr. Foose moved and Mr. Madison seconded to lift the stay of suspension; motion carried unanimously.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration after Full Board Review

A. Mosallai, Mojtaba - Application for PE registration #190266

Dr. Angel stated that he knew Applicant but that he could be fair and impartial.

Applicant appeared before the Board.

Applicant requested that the Board grant his registration.

Mr. Everroad asked Applicant why he failed to comply with the Board's Order in 2005 and 2007. Applicant stated that the Board found issues with the plans he submitted and he disagreed with the Board, but he did not intentionally fail to comply with the Order. Dr. Angel stated that the Board's concern was whether Applicant would comply with any potential discipline in the future. Applicant answered 'yes.' Mr. Noel asked if Applicant had paid the fee owed from the 2005 Order. Staff answered 'yes.'

Mr. Foose moved and Mr. Jones 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. Noel seconded to cancel registrations and certifications 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:

The Board took a break at 11:05am and came back at 11:18am.

- A. Pending Legislation 2019 Session - HB2037, SB1448, HB2231, HB2569, HB2146, HB1232, HB2182, and HB2463

Ms. Pritzl reported that SB1448 could place low voltage electric security fences under the Board's jurisdiction; that HB2037 was proceeding through committee; that HB2569 was similar to the Board's bill HB2037, but the Governor's office supported both bills; that HB2231 could allow for the creation of government certifications but would not deregulate Boards; that HB2146 could allow two parties to come to an agreement to waive the need of licensure if a contract between them was for less than \$6,000 and the work was done electronically; HB1232 could allow a hearing to take place after the Board rejected an OAH recommendation to consider whether the rejection was valid; that HB2182 could allow applicants the Board denied to ask for a formal hearing to review the denial; and, that HB2463 could require language regarding review of Board decisions be placed on Board documents.

- B. Computer Issues – status of GL Solutions Litigation, IT Partners Bill, Online Renewals and Credit Card Payments, Board Orders online accessibility and online registrant search.

Ms. Cornelius reported that the AG's office sent an answer to GL Suite's claim and that staff would speak with Deloitte March 6 to discuss a possible new E-licensing system. Mr. Winter presented the registrant search, disciplinary action search, a possible online payment service and website redesign to the Board.

- C. Whether to raise application/ renewal fees

Mrs. Cornelius reported that the Board had not raised fees since 2015 and asked that the Board review the current fees to begin a discussion as to whether to raise fees. The Board asked that staff compile national data regarding Board fees and provide them to the Board for later consideration.

- D. Enforcement of the Generic Titles 'Engineer' and 'Architect'

Mr. Donald explained that the Oregon Board prosecuted a non-registrant for practicing a licensed profession but the courts found that the Oregon Board overextended their jurisdiction and that they could not have jurisdiction over an entity simply because it had the word 'architect' or 'engineer' in its title. Mr. Donald further explained that the court decision did not hold control over Arizona but that it does make a good argument that the words 'engineer' and 'architect' were general use words and he cautioned the Board to not follow Oregon's example.

- E. Delegation of Authority to the Executive Director 2019:

- a. Grant registrations and certifications to applicants who possess National Council records/certificates, and to alarm agents and controlling persons who pass fingerprint background checks.
- b. authorize exams and close and cancel registrations and certifications.

- c. terminate respondents from probationary orders early, after they satisfied all terms of probation, without having to return those cases to the Board for approval.
- d. facilitate payment of restitution to allegeders in the time between meetings, before the Board can decide as a whole whether the Respondent(s) are in compliance with previous orders.
- e. Any other items for delegation to the Executive Director can be considered and discussed at this meeting for future agenda.

Ms. Cornelius and Ms. Pritzl reported that an Ombudsman believed that the Board did not delegate its authority to terminate respondents from probationary orders early without Board approval and they asked the Board to vote to have on record that the Board had delegated the responsibility.

Mr. Everroad moved and Mr. Madison seconded to delegate authority to the Executive Director to facilitate payment of restitution to allegeders in the time between meetings, before the Board could decide as a whole whether the Respondent(s) were in compliance with previous orders; motion carried unanimously. The Board also affirmed its previous delegations to the Executive Director.

F. Consideration and Action on Board Policy with Matrixes for Monetary Penalties

Enforcement staff asked that that Board look at the draft policy and offer guidance. Board members obliged.

G. Whether to rescind substantive policy statements eight and sixteen per HIRSC's recommendation

Mr. Madison reported that the HIRSC members argued that substantive policy statements eight and sixteen were now redundant and they recommended that the Board rescind them.

Mr. Madison moved and Ms. Wyckoff seconded to rescind policy statement 8 and 16; motion carried unanimously.

H. Election of Officers and Group Picture

Dr. Angel moved and Mr. Madison seconded to elect Mr. Foose Chairman, to elect Mr. Gilmore Vice Chairman, and to elect Mr. Jones Secretary; motion carried. Mr. Foose abstained

10. DIRECTOR'S REPORT

A. Budget Update

Ms. Cornelius reported that 58% of the fiscal year was complete and the Board had spent 78% of its revenue and 53% of its appropriations.

B. Previous Meeting Follow-Up

a. ARS 41-1033 GRRC Petition

Ms. Cornelius reported that the GRRC petition would be going in front of the GRRC study committee at the end of March.

b. GRRC 5 Year Rules Review Report

Ms. Cornelius reported that she had filed the report.

c. Computer Status - Online Renewal, Posting of Board Orders, Online Credit Card Payments, Online Registrant Search

Already discussed under agenda item 9b.

d. Status of potential board member appointments

Ms. Cornelius reported that possible board member appointments include David Skinner, a civil engineer, and Eric Kaupanger, an environmental engineer.

C. Statistics Review

Ms. Cornelius quickly summarized the monthly statistics.

11. **BOARD CHAIR'S REPORT** - Nothing to Consider

12. **ASSISTANT ATTORNEY GENERAL'S REPORT** – Status of Public Records Request by Snell & Wilmer regarding GL Solutions

Mr. Donald reported that he was currently working on completing a cumbersome public information request that may take months to complete.

13. **STANDING COMMITTEE REPORTS**

A. Legislation and Rules Committee - Nothing to Report

B. Home Inspector Rules and Standards Committee - February 19, 2019 Meeting

14. **BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES**

A. ASBOG - ASBOG leadership reported support for the Board's Licensure by Endorsement bill.

B. CLARB - CLARB provided Staff with a webinar on social media

C. NCARB - WCARB/NCARB regional meeting in Nashville, TN at the beginning of March.

D. NCEES - Ms. Cornelius and Dr. Angel attended the MBA/MBC meeting in Atlanta, GA at the beginning of February. NCEES Western/Southern Zone meeting in Boise, ID in mid May 2019. NCEES Annual Meeting will be in Washington, DC in August 2019.

15. FUTURE BOARD MEETINGS – March 26, 2019

16. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Add ABET to Board Member Reports on Outside Activities

17. MEETING ADJOURNMENT – 1:27pm



Jason Foose, Chairman

Melissa Cornelius, Executive Director


