

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

Tuesday February 27, 2018
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER** – 9:03am
2. **ROLL CALL** – **Present:** Stephen Noel, Jason Foose, Neal Jones, Dr. Alejandro Angel, Jason Madison, Edward Marley, Jack Gilmore
Not Present: Eugene Montgomery, Andrew Everroad
Staff: 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:

- A. Approve, modify and/or reject, January 23, 2018 Board meeting minutes.

Mr. Foose moved and Mr. Marley second to approve the minutes with a minor modification; motion carried.

- B. Amend December 2016 Board Minutes: Case P17-018, Michael Sanchez

Mr. Donald explained that the minutes did not accurately portray the recording of the minutes regarding the length of time Respondent of case P17-018 had to sign the Consent Agreement before the Board sent the matter to formal hearing.

Mr. Foose moved and Mr. Marley second to amend the minutes to confirm a 30 day timeframe to sign the Consent Agreement; motion carried.

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

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. P18-019, Greg Galowitch, Non-Registrant
Mr. Jones moved and Mr. Gilmore seconded to dismiss the complaint; motion carried.
2. P18-044, Reymundo DeLao, Non-Registrant

Mr. Marley moved and Mr. Jones seconded to dismiss the complaint; motion carried.
3. P18-043, Rene Martinez-Flores, P.E. (Civil) #47518

Mr. Madison moved and Mr. Marley seconded to issue a Letter of Concern; motion carried.

B. Complaints Proposed for Resolution by Letters of Concern:

1. HI18-012, Ray Jackson, C.H.I. #51780

Mr. Marley moved and Mr. Foose seconded to issue a Letter of Concern; motion carried.
2. P17-095, James R. Elson, R.A. #11005

Mr Madison recused himself.

Respondent appeared before the Board.

Mr. Gilmore requested that the Board issue a Letter of Concern regarding the stamping of landscape architecture plans.

Mr. Gilmore moved and Mr. Marley seconded to issue a Letter of Concern; motion carried.
3. P18-007, Mark Dohrmann, R.A. #29578

Mr. Marley moved and Mr. Foose seconded to issue a Letter of Concern; motion carried.
4. HI18-015, Robert Kille, C.H.I. #38351

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

C. Complaints Proposed to Offer Consent Agreement:

1. P18-045, Noah Ruiz, Non-Registrant and Skynetwest, LLC, Non-Registrant Firm

Mr. Foose expressed concern that Respondent Firm's website could mislead the public. The Board asked staff to clarify to Respondent(s) how to revise the firm website.

Mr. Foose moved and Mr. Angel seconded to offer Respondent(s) the proposed Consent Agreement but add an administrative penalty of \$500 to be paid within 90 days and if not signed within 30 days move to hearing; motion carried.

Mr. Madison left the meeting at 1:47pm. The Board was still in a quorum.

2. P17-096, Bret Thorne, Non-Registrant and Orion Architecture, Non-Registrant Firm

Mr. Madison recused himself.

Respondent appeared before the Board with counsel, Spencer Proffitt. Alleger, Kirk Days, appeared before the Board. EAC member Dan Demland appeared before the Board.

Mr. Days argued that Respondent misrepresented himself as a registered architect in violation of the Board's Practice Act. Mr. Jones asked if Alleger was aware that Respondent was a registered architect in California. Alleger answered 'yes'.

Mr. Proffitt stated that the proposed Consent Agreement restricted Respondent's ability to perform the function of a registered contractor, expert witness and consultant.

Mr. Jones asked why Respondent did not seal/sign the plans as a licensed contractor. Mr. Proffitt answered that Respondent shall sign all plans as a licensed contractor moving forward. Dr. Angel opined that the proposed consent agreement did not restrict Respondent's ability to perform the function of a registered contractor, expert witness and consultant and asked for clarification. Mr. Proffitt stated that the proposed consent agreement was not specific enough when defining the practice of architecture. Mr. Jones disagreed, stating that what constituted the practice of architecture was clear. Mr. Marley stated that the proposed consent agreement did not prohibit Respondent from signing plans as a registered contractor and, therefore, the Board should not modify the consent agreement.

Mr. Demland argued that Respondent violated the Board's Practice Act to such an extent that the Board should consider criminal prosecution.

Dr. Angel asked for clarification regarding the violations. Mr. Donald explained that the violations under the Conclusions of Law included the unlawful practice of

architecture, false representation as an architect, and Respondent firm offered architectural services without licensure. Respondent stated the wording under paragraph seven of the Findings of Fact indicated that general contractors could not review work prepared by the architect of record. Mr. Marley disagreed, stating that the Respondent's use of an architecture firm letterhead and signature constituted the practice of architecture and, therefore, the wording in paragraph seven of the Findings of Facts was correct in the context of this matter. Board members opined the penalty was too low. Dr. Angel opined that the Board was proposing the consent agreement in good faith and did not need to raise the penalty amount.

Mr. Marley moved and Mr. Noel seconded to offer Respondent the proposed Consent Agreement but increase the civil penalty to \$6,000, and if not signed within 30 days move to hearing; motion carried. Dr. Angel voted Nay.

3. P17-074, Manuel Montano, P.E. (Civil) #05657, R.L.S. #16580 and Nogales Engineering Company, Firm #15456

Mr. Marley moved and Mr. Foose seconded to accept Respondent(s) signed Consent Agreement; motion carried.

4. P18-020, David Escalante, Non-Registrant and Delta Architectural Design Services, Non-Registrant Firm

Respondent's counsel, Marcos Garciaacosta, appeared before the Board. Respondent did not appear before the Board.

Mr. Garciaacosta asked that the Board reduce the administrative fee and extend the pay period beyond 12 months. Dr. Angel asked staff to clarify how the fees were determined. Mr. Hunt explained that the high number of severe violations determined the \$20,000 amount. Dr. Angel asked if the projects the Respondent sealed went forward. Mr. Garciaacosta answered 'yes'. Dr. Angel expressed concern regarding the public health and welfare regarding these plans. Mr. Noel asked if the owners of the used seals were aware of this matter. Mr. Hunt answered 'yes'. Dr. Angel asked if Respondent sealed any other plans besides those in this matter. Mr. Garciaacosta and Mr. Hunt answered 'yes', stating another case was opened after this case.

Mr. Marley moved and Mr. Madison seconded to offer Respondent the proposed Consent Agreement but extend the pay period to 24 months, Respondent shall notify those affected by the Board's determination within 15 days of signing, and if not signed within 30 days move to hearing; motion carried.

The Board directed staff to pass this case to the AGs office for possible criminal proceedings.

5. P18-005, Ana Essary, Non-Registrant and Arizona Special Inspections Group, LLC, Non-Registrant Firm

Staff tried to reach Respondent telephonically twice but failed. Staff left a message.

Mr. Jones asked if Respondent had been cooperative in the investigation. Mr. Hunt stated Respondent denied the violations and was difficult to reach. Mr. Donald pointed out an issue with the Order signature block.

Mr. Noel moved and Mr. Marley seconded to offer Respondent the proposed Consent Agreement but make the payment time period 24 months, modify the signature block to include Respondent's signature and to inform the City of Phoenix of the matter; motion carried.

6. P18-013, Lane Garrett, P.E. (Electrical)

Respondent appeared before the Board.

Respondent stated that he was unaware that he could only seal plans he, or a bona fide employee, drafted and further stated he did nothing wrong and disagreed with the consent agreement. Dr. Angel stated that ignorance of the law was not a defense and agreed that a violation occurred; though he further stated that it appeared Respondent did so unintentionally.

Mr. Foose moved and Mr. Noel seconded to dismiss the case, but soon after rescinded the motion.

Mr. Marley moved and Mr. Noel seconded to offer Respondent the proposed Consent Agreement with the following changes: Respondent shall voluntary surrender his PE license, shall not pay any penalties fees, and if not signed within 30 days move to hearing; motion carried.

D. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI17-020, Rick Hoffman, C.H.I. #49571

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

2. P18-022, Robert Canady, R.L.S. #53145

Respondent appeared before the Board.

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

3. AL18-001, Desert Fire and Services, LLC, Alarm Business #20809

Nora Cizek and Ken Peyton, Respondents, appeared before the Board. Staff attempted to contact Alleger, Paul Skaggs, telephonically but failed. Staff left a message for Alleger.

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

4. P18-014, Fred Riggs, P.E. (Electrical) #45685

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

5. P17-075, Victor Fontes, Non-Registrant

Board members showed concern that Respondent had ignored previous Board Orders regarding an assurance of discontinuance of land surveying.

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

The Board directed Staff to agendize this matter for the next meeting to consider an injunction against Respondent.

E. Complaints Requiring Board Guidance:

1. P18-006, John Poulsen, Non-Registrant and Providence Development, Inc., Non-Registrant Firm

Respondent and Tommie Lamb appeared before the Board.

Respondent indicated that he, and those working for Respondent firm, assumed that they could use Alleger's stamp on the subdivision lot plans because Alleger stamped the subdivision plans, which encompasses all of the lots, and that the city of Phoenix accepted the sealed plans for every lot. Respondent indicated that he, and Respondent firm, was unaware of the violations and meant no malice or ill intent.

Mr. Foose asked why the city did not refer to the subdivision document Alleger originally stamped. Respondent did not know. Dr. Angel stated due to the 14 year period, he understood why the city requested new documents be sealed. Mr. Madison asked if Alleger or Alleger's firm performed the inspections as was shown on the sealed documents. Respondent answered 'no'. Respondent indicated that Respondent firm hired another professional firm to complete the inspections and the city of Phoenix accepted the inspections even though the new inspection reports did not match Alleger's sealed document. Mr. Madison opined that Respondent and Respondent firm's actions were examples of forgery. Respondent reiterated the city

of Phoenix's acceptance of all new inspections submitted together with Alleger's sealed document and he was unaware of his employee's actions. Dr. Angel stated that it was Respondent's responsibility to know what his employees were doing.

Dr. Angel showed concern that Alleger's signature appeared on documents drafted within the last year. Mr. Madison stated that this was a clear forgery of Alleger's signature. Respondent explained that an employee in the field, on his own volition, fraudulently signed Alleger's name on documents and that Respondent subsequently monetarily disciplined said employee. Mr. Jones asked if said employee still worked at Respondent firm. Respondent answered 'yes'. Mr. Madison expressed his concern about the inspections done on the homes in this matter. Respondent stated a number of professional firms inspected the homes, though the Board was currently investigating one of the firms. Dr. Angel asked staff to consider updating Board Packets in the future with language indicating connections between cases. Dr. Angel asked Mr. Madison if it was typical that a structural engineering firm sign and seal individual plans such as in this matter. Mr. Madison answered 'yes'.

Mr. Madison moved and Mr. Marley seconded to offer a Consent Agreement encompassing the following: Respondent(s) shall agree to an assurance of discontinuance, pay a Civil Penalty in the amount of \$20,000 and the Cost of Investigation within 12 months, notify the city of Phoenix of this matter within 30 days, and if not signed in 30 days move to hearing; motion carried.

The Board directed staff to forward this matter to the AGs office.

The Board entered a short break after finishing this matter.

2. HI17-035, Robert Walsh, C.H.I. #62775

The Board decided to pend the matter.

3. HI18-010, Michael Williams, C.H.I. #38045

Respondent appeared before the Board.

Mr. Madison moved and Mr. Marley seconded to issue a Letter of Concern; motion carried.

4. HI18-009, Gonzalo Marquez, C.H.I. #54583

The Board decided to pend the matter.

5. P18-023, Deirdre Rowles, Non-Registrant

Respondent appeared before the Board. Alleger, Brian Fracasse, appeared before the Board.

Mr. Fracasse stated Respondent fraudulently used his seal. Respondent stated that Mr. Fracasse was aware of and approved of the use of his seal, citing plans found in the Board Packet. Mr. Fracasse stated that Respondent sealed many documents that did not require seals. Respondent disagreed and stated that Respondent submitted this complaint for retaliatory reasons. Mr. Fracasse disagreed.

Dr. Angel asked Mr. Fracasse that, after discovering the use of his seal, did he communicate with Respondent to stop. Mr. Fracasse answered 'yes'. Mr. Foose asked how the seal ended up on the documents. Mr. Fracasse stated that it was part of the title block. Dr. Angel asked Mr. Fracasse to clarify if his seal was on the title block and his signature was on the server. Mr. Fracasse confirmed both were true. Dr. Angel stated that it was a registrant's responsibility to secure their seal. Dr. Angel opined that this was an internal company matter. Mr. Marley agreed.

Mr. Marley moved and Mr. Gilmore seconded to dismiss the case; motion carried.

F. Compliance Monitoring Investigations:

1. M12-033, Mohammad Mahpar, P.E. (Civil) #31926

Respondent appeared before the Board.

Respondent informed the Board that he had not performed any work that included a retaining wall. Therefore, Respondent was unable to comply with his signed Consent Agreement.

Dr. Angel asked Respondent if he would complete a retaining wall design course in lieu of the parallel inspections specified in the original Consent Letter. Respondent answered 'yes'.

Mr. Madison moved and Mr. Marley seconded to offer an alternate Consent Agreement that mirrored the original Consent Agreement with the exception that Respondent complete a Board approved retaining wall design course within one year and not be required to complete three parallel retaining wall inspections; motion carried.

G. Review and Approval of Appointment for EAC Membership:

1. Nicholas Boekenoogen, C.H.I. #42489

Mr. Foose moved and Dr. Angel seconded to approve appointment; motion carried.

2. Paul Baughman, P.E. (Civil) #48654

Mr. Foose moved and Dr. Angel seconded to approve appointment; motion carried.

H. Complaints Proposed to Forward to Hearing:

1. P18-028, Kurt Rederer, Non-Registrant and KPR Consulting Engineers, Non-Registrant Firm

Mr. Foose moved and Mr. Jones seconded to forward to hearing and criminal prosecution; motion carried.

2. P18-050, Carlos Padilla, Non-Registrant and Survey Arizona, Non-Registrant Firm and AAA Survey Arizona, Non-Registrant Firm Branch

Mr. Foose moved and Mr. Marely seconded to forward to hearing and AGs office for injunction; motion carried.

7. LICENSING MATTERS

Review, Discussion, and Receipt of Legal Advice on the following:

- A. Richard Hering, III., Void Architect License Number 58279

Mr. Hering and his counsel, Barry Willits, appeared before the Board.

Mr. Donald explained that the issue of the matter was that the Board granted authorization for Mr. Hering to take the ARE in 2014 but, instead, staff mistakenly issued a professional architect license to Mr. Hering.

Mr. Hering explained the circumstances and the chronological events of the matter to the Board. Mr. Hering informed the Board of his professional experience and responsibilities as an architect. Mr. Hering stated that, through communication with staff during the application process, he was under the impression that the Board was waiving his requirement to take the ARE as a prerequisite for registration due to his work experience. Mr. Hering stated that this matter occurred through no fault of his own. Mr. Hering explained to the Board the consequences to his personal and professional life if he were not to retain licensure and asked the Board to try to find a solution to this matter. Mr. Willits asked that Board to use its discretion to find a solution to this matter that both protected the public and allowed Mr. Hering to retain his license.

Mr. Jones asked Mr. Hering how many years of architect experience he currently had. Mr. Hering answered he had 15 years of experience. Mr. Gilmore asked Mr. Hering whether there were others in his office who could stamp his work. Mr. Hering answered 'yes'. Mr. Gilmore asked Mr. Hering if he would be able to retain his employment since others could stamp his work. Mr. Hering answered 'yes' but not in the same capacity. Mr. Willits further explained that being unlicensed reduced Mr. Hering's job security at his current employer. Mr. Jones, Mr. Marley and Mr. Gilmore disagreed. Dr. Angel asked

Mr. Hering if he did most of his work in Arizona. Mr. Hering stated he had a large client in Arizona but did work all over the world. Dr. Angel expressed his belief that being unlicensed would only affect Mr. Hering's work in Arizona.

Mr. Donald explained to the Board that the Board did not have a decision to make in this matter since the license was not valid; that the Board authorized Mr. Hering to take an exam and a staff member mistakenly granted registration; that a staff mistake couldn't bind or grant powers beyond statute to the Board; that the preceding four years couldn't be changed; that Mr. Hering was capable of receiving licensure in the future; and, that the Board would open itself up to liability if it allowed Mr. Hering to retain his license.

Mr. Foose asked Mr. Hering about his reaction after staff granted licensure. Mr. Hering answered that he called staff to verify that the BTR granted him licensure, which he stated staff did verify, that he knew of others also granted without taking the ARE, and that the BTR granted him licensure based off his years of experience. Ms. Pritzl asked Mr. Hering with whom did he speak with that stated that the ARE was being waived because of his years of experience. Mr. Hering answered that he called the main line. Ms. Pritzl stated she suspected that Mr. Hering spoke with reception who verified through the database that the BTR granted him licensure as opposed to speaking with licensing about a possible error.

Mr. Foose asked for more information regarding the ARE. Architect members obliged. Dr. Angel asked what was to come of Mr. Hering's stamped work. Mr. Willits stated that another staff member would stamp ongoing projects but there were no conclusion regarding old projects. Mr. Madison opined that the Board could not take any action in this matter. Mr. Wilits disagreed with Mr. Madison and Mr. Donald that the Board could not made any decisions in this matter. Dr. Angel asked Mr. Donald if the Board could grant Mr. Hering an exception that allowed him to use the title architect with limitations. Mr. Donald answered that legally he could not recommend any action that would result in an agency not enforcing its statutes.

Mr. Marley moved and Mr. Foose seconded to enter executive session at 12:53pm to seek legal advice. The Board returned to open session at 1:09pm.

Dr. Angel stated that the Board could not make law or break statute. Therefore, the Board could not take action on this matter. This concluded the matter.

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration after Full Board Review

B. Sams, Brian - Home Inspector Application #172669

Applicant appeared before the Board.

Mr. Foose moved and Mr. Marley seconded to grant certification; motion carried.

Lunch Break at 1:19pm. The Board returned to open session at 1:38pm.

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. Marley moved and Mr. Foose seconded to cancel registrations and certifications that had been expired for one full renewal period; motion carried.

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:

- A. HIRSC Recommendation to Hire a Home Inspector through a state recognized temporary employee company to assist Licensing with required Report Reviews only when application backlogs occur.

Board members expressed concern that hiring a temporary worker could demotivate volunteers.

To be agendized for a future meeting.

- B. Legislative and Rules Committee recommendation to reconsider and rescind substantive policy statement #17 “Whether acting as an expert witness constitutes “engineering practice” under Arizona statutes”, issued on October 24, 2017.

Mr. Foose moved and Mr. Marley seconded to enter executive session at 2:22pm to seek legal advice. The Board returned to open session at 2:28pm.

Mr. Foose moved and Mr. Marley seconded to rescind substantive policy statement #17 “Whether acting as an expert witness constitutes “engineering practice” under Arizona statutes”, issued on October 24, 2017; motion carried.

- C. 2018 Legislative session bills for the Board to review and/or take action on:
- HB2062 Permits; licenses; denials;
 - HB2490 Contracts; licensing requirement; waiver
 - SB1045 Home Inspectors clearance cards
 - SB1273 GRRC Review, licensing requirements
 - SB1436 Prohibition, criminal history, occupational regulation
 - HB2065 Public meetings, definition, penalties
 - HB2118 Public records, denial of access
 - HB2207 Public meetings, recording, posting
 - HB2223 Administrative Decisions, Review, Scope
 - HB2523 Administrative Hearings, Procedures
 - SB1184 State compact, temporary professional license

The Board discussed HB 2490 and SB 1436. The Board directed staff to express the Board's concerns with the public safety implications of the bills.

10. DIRECTOR'S REPORT

- A. Budget Update – Pended
- B. Previous Meeting Follow-Up:
- a. Computer System (online renewals, defects and vendor payment negotiations)

Ms. Pritzl reported that online renewals for professionals was working.

- b. Rules (EIS and rule package to be submitted to GRRC)

Ms. Pritzl explained what an EIS was and that staff would submit the Notice of Final Rulemaking to GRRC soon.

- c. Staff (workloads, optimum performance and efficiency)

Ms. Pritzl reported that, even with the loss of two operations staff members, that the BTR was working more efficiency after its restructuring.

- C. Director's Meetings (Robert Stam's meeting with applicants at AIA AZ)

Mr. Stam reported on his meeting at AIA.

- D. National Council News (NCARB, NCEES)

The upcoming meetings were referenced.

- E. Statistics Review (Licensing and Enforcement monthly figures) - Pended

11. **BOARD CHAIR'S REPORT** – Nothing to consider

12. **STANDING COMMITTEE REPORTS**

A. Legislation and Rules Committee – Report on February 20, 2018 L&R Committee Meeting

No future L&R meeting currently scheduled.

B. Home Inspector Rules and Standards Committee – Report on February 13, 2018 HIRSC Meeting

Pended for a future meeting.

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

A. ASBOG – Nothing to report.

B. CLARB – Nothing to report.

C. NCARB – Wichita meeting in March.

D. NCEES – Dr. Angel reported that he will be attending a NCEES finance meeting to discuss raising exam costs.

14. **FUTURE BOARD MEETINGS** – March 27, 2018

15. **SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.** 6D5

16. **MEETING ADJOURNMENT** -2:52pm



JASON E. FOSSE V. CHAIRMAN - ACTING CHAIR

Melissa Cornelius, Executive Director


