

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

Tuesday March 28, 2017
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER** – 9:03am

2. **ROLL CALL** - Jason Madison, Stephen Noel, LeRoy Brady, Jason Foose, Neal Jones, Eugene Montgomery, Andrew Everroad. Dr. Alejandro Angel, Edward Marley.
Staff: Melissa Cornelius, Patrice Pritzl, Michelle Fleming, 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 February 28, 2017 Board meeting minutes.

Mr. Brady moved and Mr. Foose seconded to accept the minutes with some scrivener corrections; motion carried.

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

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

A. Formal Administrative Hearing and/or Review, or Discuss and Take Possible Action on Motion to Rescind the Board's Vote to Formal Complaint and Notice of Hearing:

1. P15-009, Mark Morris, Non-Registrant

Mark Harris, AAG, appeared before the Board to give legal advice.

Scott Donald, AAG, indicated that it was not in the State's best interest to pursue prosecuting this case for the following reasons: Respondent posed no danger to Arizona residents since there isn't any proof that an Arizona Resident has used Respondent's services, the Attorney General's office has failed to obtain a valid address for service of the Complaint and Notice of Hearing thus halting any progress in the case, and it would be cost prohibitive to attempt personal service.

Mr. Noel asked if a Letter of Concern could be sent to Respondent to act as a future indicator to the public and staff of the issues brought up in this case. Dr. Angel was concerned that closing the case could infer that ignoring the Board is a legitimate anti-disciplinary method for Respondents to pursue. Dr. Angel asked if the Board could request Respondent to remove materials from his website. Mr. Donald was against any action targeting Respondent's website. Mr. Donald stated that other methods of service could be used to get in touch with Respondent but it would be expensive.

Mr. Marley expressed concern that Respondent might attempt to become registered in Arizona in the future. Ms. Cornelius stated that a Letter of Concern would attach itself to Respondent's name and would raise flags if Respondent applied in the future. Mr. Donald stated that the case could be pended but the Board would need to seek advice from Mr. Harris in that regard.

Dr. Angel moved and Mr. Brady seconded to accept the motion to rescind the Board's vote to formal hearing and direct staff to administratively close the case; motion carried.

Mr. Harris advised the Board to send a letter expressing the Board's concerns instead of a Letter of Concern since Letters of Concern are usually reserved for applicants and registrants.

Dr. Angel moved and Mr. Marley seconded to direct staff to send Respondent a letter expressing the Board's concerns and for Respondent to discontinue advertising architect services in Arizona; motion carried.

Dr. Angel moved and Mr. Marley seconded to direct staff to contact the Utah Board in regards to this case; motion carried.

After the vote, Mr. Noel inquired if there is a trigger that would inform staff about this matter at a later time. Ms. Cornelius stated that the information will be available in the minutes and possibly the Newsletter.

B. Review, Discuss and Take Possible Action on Proposed Consent Agreement

1. P15-011, John Anthony & John Anthony Drafting & Design, Non-Registrant

Neither Mr. Anthony or his attorney were present.

Mr. Donald, AAG, asked the Board to accept the signed Consent Agreement.

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

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI17-010, Isaac Cabrera, C.H.I. #42713

Dr. Angel moved and Mr. Marley seconded to dismiss the complaint; motion carried.

2. P17-049, Benjamin Aranda, Non-Registrant

Mr. Jones informed Mr. Madison that he knew the Allegor but felt that he could be impartial in this matter.

Alleger, Brian Spencer, appeared before the Board.

Alleger stated that Respondents' firm advertised services in Arizona without being registered. Dr. Angel opined that Respondents' website could be misleading to the public. Mr. Marley agreed with Dr. Angel and believed other jurisdictions where Respondents do business should be alerted. After the initial motion was made, Alleger opined that a penalty be included in order for the consent agreement to be consistent with past cases. Mr. Noel agreed with Alleger. Mr. Foose asked if other State Boards should be informed of this matter. The other Board members indicated staff could be directed to inform the other State Boards.

Dr. Angel moved and Mr. Marley seconded to offer a Consent Agreement to include an Assurance of Discontinuance of Respondents advertising themselves as architects, cost of investigation, a civil penalty of \$1000, and, if not signed in 30 days, go to hearing; motion carried.

3. P17-048, Chris Lasch, Non-Registrant

Dr. Angel moved and Mr. Marley seconded to offer a Consent Agreement to include an Assurance of Discontinuance of Respondents advertising themselves as architects, cost of investigation, a civil penalty of \$1000, and, if not signed in 30 days, go to hearing; motion carried.

4. P17-021, Jerry Webster, R.L.S. #33881

Dr. Angel moved and Mr. Marley seconded to dismiss the complaint; motion carried.

5. P17-054, Jerry Webster, R.L.S. #33881

Dr. Angel moved and Mr. Marley seconded to dismiss the complaint; motion carried.

6. AL17-012, Stephen J. Cofer, Non-Registrant

Dr. Angel moved and Mr. Marley seconded to dismiss the complaint; motion carried.

B. Complaints Proposed for Resolution by Letters of Concern:

1. P17-016, Jerry Webster, R.L.S. #33881

Mr. Foose suggested that the Board consider issuing a Letter of Concern. Dr. Angel opined that a Letter of Concern might not be warranted due to the EAC's low severity judgment of Respondent's actions. Mr. Foose stated he disagreed with the EAC, specifying the lack of continuity between surveys created an inconsistent record.

Mr. Noel and Dr. Angel were concerned with the manner in which the Allegor filled out the Complaint Form and whether such complaints should be investigated. Mr. Parlin stated that the Board can receive and investigate anonymous complaints. Mr. Foose stated that he evaluated the survey in this case no differently than any other case.

Mr. Foose moved and Mr. Everroad seconded to issue a Letter of Concern; motion carried. Dr. Angel voted Nay, specifying that he believed some of the issues raised in the Letter of Concern were not previously discussed with Respondent.

2. P17-017, Jerry Webster, R.L.S. #33881

Mr. Foose moved and Mr. Everroad seconded to issue a Letter of Concern; motion carried. Dr. Angel voted Nay, specifying that he believed some of the issues raised in the Letter of Concern were not previously discussed with Respondent.

3. P17-039, Lawrence C. Gross, P.E. (Electrical) #63183, and Relay Application Innovation, Inc., Firm #20038

Mr. Montgomery asked the Board what the law stated regarding handing out a business card which identified the individual as a professional engineer from another jurisdiction. Board members agreed that soliciting one's services as a professional engineer outside of their registration jurisdiction may be unlawful based on the circumstances.

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

C. Complaints Proposed for Resolution with Signed Consent Agreements:

1. P17-067, Thomas Miller, P.E. (Electrical) #45416, and March Adams & Associates, Firm #20193

Mr. Foose moved and Mr. Noel seconded to accept the signed consent agreement; motion carried.

2. P17-059, Jamie Richards, Non-Registrant

Alleger, Brian Fracasse, appeared before the Board.

Alleger stated that Respondent stole company information and presented himself in a fraudulent manner. Dr. Angel empathized with Alleger but stated there wasn't enough evidence to implicate Respondent. Alleger stated the matter would be settled to his satisfaction if the highest penalty were issued. Dr. Angel stated he did not feel comfortable arbitrarily penalizing Respondent without proof. Mr. Marley showed concern that Respondent's firm was supposedly shut down in 2013, yet more recent sealed work from the firm exists. Alleger indicated Respondent's firm is active but not registered.

Mr. Montgomery showed concern over Respondent's lack of ethics. Mr. Madison stated that Respondent is a non-registrant and therefore ethics courses cannot be added to the consent agreement.

Mr. Marley moved and Mr. Foose seconded to not accept the signed consent agreement and refer the case back to investigation; motion carried.

D. Complaints Proposed to Offer Consent Agreement:

1. HI17-011, Bruce Lewis, C.H.I. #42597

Mr. Montgomery asked if the incidental damage, spoilage costs, to the home owner's property should be included in the consent agreement. Mr. Madison stated that it is not within the Board's jurisdiction to impose fees for property damage. Dr. Angel opined sending Respondent a Letter of Concern and not offer the proposed consent agreement. Mr. Montgomery expressed his concern that the EAC members found additional deficiencies with Respondent's home inspection not specific to the complaint.

Mr. Foose moved and Mr. Marley seconded to offer the proposed consent agreement; motion carried.

2. P16-046, John Ware, R.L.S. #37937

Respondent, John Ware, appeared before the Board to answer any questions.

Dr. Angel opined that the Consent Agreement was too lenient.

Mr. Foose moved and Mr. Marley seconded to accept the signed consent agreement; motion carried.

3. P17-061, Andre van Belkom, Non-Registrant, and Andre van Belkom Studio, Non-Registrant Firm

Mr. Marley moved and Mr. Foose seconded to offer the proposed consent agreement; motion carried.

4. P17-047, Stacy Waite, R.L.S. #53794, and J. Marbles Land Surveying, LLC, Firm #17927

Mr. Foose believed that the Findings of Fact and Conclusions of Law in the Consent Agreement were not consistent and wanted them updated to better reflect the EAC's assessment. Mr. Madison asked if the administrative penalty should be increased. Mr. Foose answered no.

Mr. Foose moved and Dr. Angel seconded to offer the proposed consent agreement with updates to the Conclusions of Law; motion carried.

E. Complaints Proposed for Formal Hearing:

1. P17-045, Christopher DePrima, P.E. (Civil) #48220

Respondent, Christopher DePrima, appeared before the Board.

Mr. Everroad asked staff if the compliance conference scheduled for March 21, 2017 went forward. Staff stated it had not.

Respondent stipulated that Mr. Madrid was a bona fide employee and asked the Board to close the case. Respondent further stated that he felt there was miscommunication between himself and staff.

Mr. Everroad asked Respondent if the notes regarding Mr. Madrid stating he was not an employee of Respondent were inaccurate. Respondent stated they were inaccurate. Dr. Angel asked Respondent if he had provided documentation to the Board proving Mr. Madrid was his bona fide employee. Mr. Jones asked Respondent if he paid Mr. Madrid. Alleger stated Mr. Madrid is a bona fide employee since they worked together on the same contracts with Respondent supervising. Mr. Marley asked Respondent if he paid Mr. Madrid. Respondent refused to answer the question.

Dr. Angel stated to Respondent that the contracts Respondent presented to the Board indicate equal payment to Respondent and Mr. Madrid and, therefore, Mr. Madrid was not Respondent's bona fide employee. Dr. Angel further explained that Respondent would need to submit documentation to the Board to prove Mr. Madrid is his bona fide employee. Respondent responded that he did not have to prove his innocence.

The investigator of the case stated that the March 21 compliance conference was scheduled but Respondent was absent. Respondent stated that he had informed staff that he would be unable to make the conference. Respondent further stated that the Board failed to send him a Letter of Concern. Dr. Angel clarified to Respondent that a Letter of Concern is an outcome of an investigation, not a step taken during the investigation. Dr. Angel further clarified that a Board meeting is not a Criminal Hearing and both are subject to different rules and laws. Mr. Madison explained to Respondent that the Board was considering whether to move the case to hearing at which time Respondent can make his case if he chose to forego signing a consent agreement. Respondent indicated he disagreed with the findings of fact and conclusions of law in the previously offered consent agreement.

Dr. Angel asked Respondent if he, or Mr. Madrid, was a registered land surveyor. Respondent stated he was a professional engineer. Dr. Angel asked Respondent if he conducted land surveys. Respondent indicated he did, but followed the law. Dr. Angel, expressing concern, disagreed. Dr. Angel asked Mr. Foose, the land surveyor board member, for his opinion. Mr. Foose stated he didn't have enough information at that time to make an educated opinion.

Mr. Foose moved and Mr. Montgomery seconded to forward this case to the Office of Administrative Hearings; motion carried.

F. Reconsideration of Prior Board Action.

1. AL13-013, Paul Sargenti, Alarm Controlling Person #57792, and Security Alarm Financing Enterprise, DBA: SAFE, Alarm Business #18658

Dr. Angel moved and Mr. Marley seconded to rescind the signed consent agreement and order in case no. A117-013 and dismiss the complaint against Respondent and Respondent's Alarm Business; motion carried.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration after Full Board Review

- A. Nieri, Lucas Architect Application #161175

Applicant, Lucas Nieri, appeared before the Board.

Mr. Marley moved and Mr. Jones seconded to grant registration; motion carried.

Whether to Grant or Deny Request for Extension of Licensing Timeframes

B. Lambarria, Daniela Architect Application #162546

Mr. Marley moved and Mr. Jones seconded to grant a timeframe extension of six months; motion carried.

Criminal History

C. Bowden, Randall Alarm Agent Application #162710

Dr. Angel asked staff why Applicant wanted an extension considering Applicant's prior convictions would prevent his registration. Ms. Cornelius answered that Respondent was challenging his criminal record with DPS.

Mr. Foose moved and Mr. Marley seconded to grant a timeframe extension of three months; motion carried.

D. Martinez, Rejinaldo Alarm Agent Application #161802

Applicant, Rejinaldo Martinez, appeared before the Board telephonically.

Dr. Angel expressed his concern that Respondent's application indicated that Respondent lacked remorse for his past actions. Respondent stated he was remorseful. Mr. Noel asked if Respondent could be trusted. Respondent stated he will not have access to sensitive information while on the job. Mr. Noel opined that Respondent's past crimes do not correlate with the responsibilities and ethics required of a registered Alarm Agent, but agreed that Respondent should be granted licensure.

Dr. Angel moved and Mr. Jones seconded to grant registration; motion carried.

E. Zwicker, Joshua Alarm Agent Application #162594

Mr. Marley moved and Mr. Foose seconded to grant a timeframe extension of 3 months; motion carried.

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 have been expired for one full renewal period.

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. Whether to Draft a NCARB Resolution Proposing to Make Membership in Regions Voluntary or Pursue Other Options.

Ms. Cornelius reported that she, Ms. Prtizl and Mr. Marley attended the March WCARB meeting. At the WCARB meeting, Ms. Cornelius expressed her concern that multi-disciplinary Boards such as Arizona pays WCARB annual fees but don't see any real benefits to membership, but no action was taken. Mr. Marley made a presentation at the meeting in the hope of reducing dues over an eight-year period.

The Board directed staff to draft a letter addressed to NCARB as a follow-up to the discussions at WCARB to be reviewed at the next Board Meeting.

- B. Authorizing the NCEES "Auto-Approval" Process for Applicants to Take the PE.

Board Members discussed whether to authorize the NCEES "Auto-Approval" Process. Board Members showed concern that many recent graduates would fail their NCEES exam; however, Board Members agreed individuals should have the choice of when to take NCEES's exams.

The Board decided to authorize the Auto-Approval process for examinees who have a degree from an ABET accredited institution, have passed the FE or had the FE waived and have 60 months of educational experience.

- C. Board approval of Foreign Education Equivalency Evaluators.

The Board reviewed materials from entities that evaluate foreign degrees and approved three in addition to NCEES and NCARB.

The Board directed Staff to work with Mr. Donald to draft language for website publication regarding the following evaluation organizations: Educational Credential Evaluator, Inc., Educational Perspectives, and Span Tran.

- D. Letter to NCEES regarding Adding a Plumbing Option to the Mechanical Engineering PE.

The Board directed Staff to send the drafted letter with minor modifications to NCEES.

E. Legislative Update.

Ms. Cornelius and Ms. Pritzl reported on the following Bills:

SB1186 – Alarm Industry Fingerprint Bill
SB1437 – Right to Work Bill

F. American Board of Architecture Advertising that Arizona Accepts Its Educational Standard and Examination for Registration.

The Board directed Staff to send a letter to ABA requesting they discontinue providing the public misleading information that the Board accepts ABA accredited degrees.

G. Draft Proposed Rules for Governor’s Office Review.

Ms. Cornelius explained the proposed rule changes to the Board.

Points of discussion included:

- Removing rules regarding Assayers and Remediation Specialists
- Foreign Applicant Exemptions
- Applicant Experience Requirements
- Adopting APLES Surveyor Standards
- Continuing Education for Professions
- Rules to Clarify Statutes
- Professional Seals

Mr. Brady moved and Mr. Foose seconded to submit proposed rule changes to the Governor’s office; motion carried.

H. Whether to Create a Catalog of Remedial Education for Land Surveyors.

Mr. Foose informed the Board of the difficulties for land surveyors to find remedial education courses and wished to compile a list of remedial education programs. The other Board Members were not opposed.

Mr. Foose will create a list of remedial education for Land Surveyors to be submitted to staff for publication.

10. DIRECTOR'S REPORT

A. Budget Update

Ms. Cornelius reported that 67% of the budget year had elapsed, the agency spent 51% of its appropriation and 93% of its revenue.

B. Previous Meeting Follow-Up

Ms. Cornelius reported that the computer system is set to go live in July due to unexpected staffing shortages from both sides.

Ms. Cornelius reported DPS sent a representative last month to review and audit the agency's fingerprint security processes. The auditor selected 32 application files to review. DPS was pleased with the agency's fingerprint policy and only made one suggestion for improvement to how the agency stores applicant notification letters in its shared computer drive.

Ms. Cornelius reported the auditor general planned to run an inquiry regarding Board Member pay but stated she was unconcerned since AZBTR Board Members are paid lower than Board Members of other agencies.

C. Director's Meetings

Ms. Cornelius reported Jason Foose and she attended an APLS meeting last month and they were well received. Mr. Foose identified Michele Guy as the APLS representative and praised her as being very active with the Board.

Ms. Cornelius identified Missy Sutton, a representative of CLARB, to Board Members and acknowledged she was present at the meeting to take notes and report back to CLARB.

Ms. Cornelius reported Mr. Kraemer planned to retire at the end of the fiscal year.

D. Statistics Review

11. BOARD CHAIR’S REPORT

Nothing to report.

12. STANDING COMMITTEE REPORTS

A. Legislation and Rules Committee

No meeting scheduled

B. Home Inspector Rules and Standards Committee

No meeting scheduled

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG - ASBOG will hold a test writers’ symposium in Flagstaff on April 6 and 7, 2017 and will be honoring Ron Dalrymple, former executive director.
- B. CLARB – Ms. Cornelius attended a Board of Directors’ meeting in Salt Lake City, Feb. 22-26, 2017, where revising the governing structure of CLARB was discussed.
- C. NCARB – Mr. Marley, Ms. Pritzl, and Ms. Cornelius attended the WCARB/NCARB regional meeting in Jersey City, NJ, March 10-11, 2017.
- D. NCEES – Mr. Montgomery, Mr. Foose, Ms. Pritzl and Ms. Cornelius plan to attend the Zone Meeting in Denver, May 18-20, 2017.

14. FUTURE BOARD MEETINGS – April 25, 2017

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Discuss Firm Registration. Review proposed letters.

16. MEETING ADJOURNMENT – 12:49pm

Jason Madison Chairman



Melissa Cornelius, Executive Director

