

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

Tuesday, October 22, 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** – Jason Foose, Stephen Noel, Jack Gilmore, Jason Madison, Neal Jones, Eugene Montgomery
Not Present – Carmen Wyckoff, Dr. Alejandro Angel, Andrew Everroad
AAG – Scott Donald, Deanie Reh, Marc Harris

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, September 24, 2019 Board meeting minutes.

Mr. Noel moved and Mr. Gilmore seconded to accept the minutes; motion carried. Mr. Montgomery and Mr. Jones abstained.

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

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

- A. Whether to accept, modify or reject the signed consent agreement in lieu of a hearing.

1. HI16-023 Fidel, Scott, Home Inspector (52986) and Fidelity Home Inspection (17216)

A.A.G. Scott Donald appeared before the Board on behalf of the State. A.A.G. Marc Harris appeared before the Board to give independent advice.

Mr. Donald recommended the Board accept the signed consent agreement.

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

2. P18-064 Hack, Helmuth, Land Surveyor (32226)

Respondent appeared before the Board. A.A.G. Scott Donald appeared before the Board on behalf of the State. A.A.G. Marc Harris appeared before the Board to give independent advice.

Respondent requested that the Board reconsider this matter and possibly dismiss it or issue a Letter of Concern considering the complications and nuances of the survey in this matter.

Mr. Donald recommended the Board accept the signed consent agreement.

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

3. P16-070 Fox, Dennis, Electrical Engineer (23794) and RMI Engineering LLC (18803)

A.A.G. Scott Donald appeared before the Board on behalf of the State. A.A.G. Marc Harris appeared before the Board to give independent advice.

Mr. Donald recommended the Board accept the signed consent agreement.

Mr. Madison moved and Mr. Jones seconded to accept the signed consent agreement; motion carried unanimously.

4. P17-043 Sommers, Wendell (Non-registrant)

A.A.G. Deanie Reh appeared before the Board on behalf of the State. A.A.G. Marc Harris appeared before the Board to give independent advice.

Ms. Reh recommended the Board accept the signed consent agreement.

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

B. Whether to accept, modify or reject state's recommendation to rescind hearing.

1. AL17-006 Smart Family Protection, Alarm Business (19635)

A.A.G. Scott Donald appeared before the Board. A.A.G. Marc Harris appeared before the Board to give independent advice.

Mr. Donald informed the Board that the Board lost jurisdiction over Respondent firm in this matter as the Board cancelled the registration before the case could be prosecuted and requested the Board rescind the vote to formal hearing.

Mr. Madison moved and Mr. Jones seconded to accept the State's recommended motion to rescind the CNOH and administratively close the matter; motion carried unanimously.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI20-004, Robert Frederick, C.H.I. #38570

Alleger, Brian Stephany, and Respondent appeared before the Board.

Mr. Stephany argued that Respondent failed to note in his home inspection the adverse conditions of specific windows in the inspected home. He stated that Respondent therefore violated the Board's Practice Act, and he asked that the Board not dismiss the case.

Respondent argued that, at the time of the inspection, the windows in question did not show signs of adverse condition. Alleger disagreed, stating it was improbable that between the time of inspection and when he occupied the home for the windows to change so dramatically in condition.

Mr. Montgomery stated that the time between the inspection and occupation of the home made it difficult to ascertain when the adverse condition of the windows occurred. Mr. Madison stated that Respondent noted adverse conditions of numerous other windows in the home during the inspection, and for him to omit the windows in question showing the apparent damage indicated in Alleger's photos seemed unlikely. Investigator Hunt stated that a window contractor accompanied Respondent during his home inspection and that Respondent recommended that the Allegers hire a window expert to examine the windows and make necessary repairs, which Allegers did, but only months after the home inspection.

Mr. Madison moved and Mr. Noel seconded to dismiss the case; motion carried unanimously.

2. AL19-018, Frederick Verbos, C.P.#67787 and Defenders Inc., Alarm Business #18200

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

B. Complaints Proposed for Resolution by Letters of Concern:

1. HI20-006, David Sandoval, C.H.I. #38462

Respondent appeared before the Board.

Respondent asked the Board to dismiss the case. Mr. Foose informed Respondent that a Letter of Concern was not a disciplinary action.

Mr. Madison moved and Mr. Jones seconded to issue a letter of concern; motion carried unanimously.

2. P19-067, Paul Almond, R.A. #21330

Mr. Madison opined that the Board dismiss this case.

Mr. Madison moved and Mr. Noel seconded to dismiss the case; motion carried unanimously.

3. HI20-005, Bryck Guibor, C.H.I. #38101

Mr. Montgomery questioned staff's recommendation to issue a letter of concern when the investigation concluded that Respondent violated the Board's Practice Act. Investigator Kraemer explained that the EAC considered the violations in this matter as de-minimus, so he recommended a letter of concern. Mr. Madison agreed the violations were de-minimus.

Mr. Montgomery moved and Mr. Madison seconded to issue a letter of concern; motion carried unanimously.

4. HI19-040, Adam Pitman, C.H.I. #51753

Mr. Madison moved and Mr. Noel seconded to issue a letter of concern; motion carried unanimously.

5. HI19-037, Michael Legatt, C.H.I. #38156

Mr. Madison moved and Mr. Noel seconded to issue a letter of concern; motion carried unanimously.

C. Complaints Proposed to Offer Consent Agreement:

1. P19-072, Mark Benjamin, Non-Registrant and PHI-D&E Inc., dba Crown Jade Design and Engineering, Non-Registrant Firm

Mr. Madison moved and Mr. Jones seconded to accept signed consent agreement;

motion carried unanimously.

2. P19-056, Greg Mills, Non-Registrant and Southwest Engineering Concepts, Non-Registrant Firm

Mr. Montgomery opined that Respondent would not respond to the Board if the Board chose to offer a Consent Agreement. Mr. Madison and Mr. Jones opined that the suggested administrative penalty was too low. Investigator Kraemer read an email he received from Respondent to the Board, which indicated that Respondent was seeking legal counsel.

Mr. Foose moved and Mr. Madison seconded to offer the proposed consent agreement but raise the administrative penalty to \$6,000, and if not signed within 30 days move to formal hearing; motion carried unanimously.

3. P18-070, Peter Takach, P.E. (Civil) #44085 and Takach Design & Building Services, Inc., Firm #19655

Mr. Madison recused himself. The Board was still in a quorum.

Respondent appeared before the Board with counsel, Mr. Williams.

Mr. Williams argued that Respondent did not prepare or seal the plans in this matter; a Mr. Dominguez prepared and fraudulently used Respondent's seal. Furthermore, he stated that the Board could regulate Respondent and he asked the Board for a more lenient disciplinary action, such as probation.

Mr. Noel asked if ADP used Respondent's seal. Mr. Williams answered "yes." Investigator Hunt stated that Mr. Williams was only speculating, and that in a now closed case in which the Respondent was the Alleger, the Board received a signed affidavit from an ADP employee that indicated that Respondent signed the plans. Investigator Hunt further explained that the EAC members' recommended revocation due to the lack of communication from Respondent, which postponed this matter for over a year, as well as the severity of the technical deficiencies in the plans. Mr. Williams stated that the recommended discipline was too harsh. Mr. Jones asked why Respondent did not adequately communicate with investigators. Respondent disagreed that his communication was inadequate. Mr. Foose asked if Respondent could offer a counter offer if the Board moved this matter to hearing. Mr. Donald answered "yes."

Mr. Foose moved and Mr. Noel seconded to combine this matter with case no. P19-031 and to send to formal hearing for violations as outlined in the P18-070 case file; motion carried unanimously.

The Board took a break at 11:18am and returned at 11:32am.

4. P20-001, Yasser ElSerwi, Non-Registrant

Respondent appeared before the Board.

Respondent stated that he did not forge any documents and that his role in this matter was submitting plans on behalf of a friend to the City of Phoenix.

Mr. Montgomery asked if Respondent had the contact information for those whom Respondent alleged had prepared the plans. Respondent indicated that he submitted email communication between himself and those he alleged prepared the plans to investigation staff and further stated that his friend did not pay for the plans since his friend contracted to not pay the people who prepared the plans until his friend received a permit.

Investigator Will stated that the information Respondent provided to him was questionable in its authenticity and usefulness in acquiring the identity of the alleged preparers, and he questioned whether the alleged preparers existed. Respondent disagreed stating he had cooperated with the investigation and was only a victim. Ms. Pritzl stated that the investigative report indicated that Respondent's residence address was the address for a gas station. Respondent stated he owned the gas station. Investigator Will indicated that the Corporation Commission did not list Respondent under said gas station. Respondent stated that the Corporation Commission listed the business under his cousin.

Mr. Foose asked if the investigation had established who prepared the plans. Investigator Will answered that all the contact information Respondent provided to him for the alleged preparers were inoperative. Mr. Montgomery asked Respondent if he had a contract with the alleged preparers. Respondent answered "no," his friend had the contract with the alleged preparers; he only facilitated the transaction. Respondent further stated that it was probable the alleged preparers would not communicate with the Board after scamming someone. Mr. Montgomery asked Respondent if he was aware that the public could look up licensees on the Board website. Respondent answered "yes," but he only became aware after submitting the plans.

Ms. Cornelius asked Investigator Will if he considered sending this case to the AG's office for criminal prosecution. Investigator Will answered "yes." Mr. Foose opined sending this case to the AG's office for criminal prosecution. Mr. Montgomery agreed. Mr. Madison commented that there did not appear to be any concrete evidence that Respondent prepared the plans and fraudulently applied the seals.

Mr. Madison moved and Mr. Noel seconded to administratively close this matter and refer it to the AG's office for criminal prosecution; motion carried unanimously.

D. Complaints Proposed for Resolution with Signed Consent Agreements:

1. P19-076, Eric Spry, R.A. #43500 and Spry Architecture, Firm #14754

Mr. Noel moved and Mr. Gilmore seconded to table this matter for a later date; motion carried unanimously.

2. P20-015, Glen Salcedo, R.A. #63506 and EZ Plans Inc., Non-Registrant Firm

Mr. Jones moved and Mr. Madison seconded to accept the signed consent agreement; motion carried unanimously.

3. HI19-043, Donald Huth, C.H.I. #40519

Mr. Madison moved and Mr. Jones seconded to accept the signed consent agreement; motion carried unanimously.

4. AL19-021, Patrick McGuire, A.A. #55289

Mr. Madison asked for clarification of the language in the proposed consent agreement regarding the disciplinary action “indefinite suspension and stay of revocation.” Mr. Parlin obliged. Mr. Foose asked how Respondent could reinstate his certification. Mr. Parlin answered Respondent would need to submit proof of a valid DPS clearance card.

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

5. AL20-001, Donovan Maden, C.P. #65274 and Lydia Security Monitoring, Inc., dba COPS Monitoring, Alarm Business #20728

Respondent and counsel, Samantha Southall, appeared telephonically.

Ms. Southall stated that Respondent Firm was now being proactive in making sure that all service providers it contracted with were lawfully registered. Mr. Foose asked why staff recommended a \$1,000 civil penalty. Investigator Will answered that he took into account Respondents’ cooperation with a number of investigations and its proactive measures to have its constituents register. Ms. Cornelius expressed her concern that the civil penalty was too low.

Mr. Madison moved and Mr. Gilmore seconded to accept the signed consent agreement; motion carried. Mr. Jones voted Nay.

E. Complaints Requiring Board Guidance:

1. P19-069, Jan Dunkelberg, P.E. (Structural) #11645

Respondent appeared before the Board.

Mr. Madison asked if Respondent had a registered firm. Investigator Thacker answered “no.” Mr. Madison suggested to Respondent to be careful when he was the only professional sealing documents for a project without a disclaimer as he could become liable for everything in said documents. Respondent stated he only sealed the areas requiring structural calculations. Mr. Madison stated the only issue he saw in this matter was a lack of firm registration. Mr. Winter confirmed that Respondent did have firm registration and that it was active. Mr. Stam confirmed Respondent was the principal of the firm.

Mr. Madison moved and Mr. Montgomery seconded to dismiss the case; motion carried unanimously.

F. Complaints Proposed for Criminal Prosecution:

1. P20-016, Carlos Padilla, Non-Registrant and AAA Survey Arizona, LLC, Non-Registrant Firm

Mr. Foose moved and Mr. Jones seconded to forward this matter to the AG’s office for criminal prosecution; motion carried unanimously.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant based on Universal Licensure Law

- A. Oakland, Michael - Universal Licensure Application for Home Inspector Certification #192178

Mr. Foose asked if Applicant was qualified. Mr. Stam explained that only the Board could make that determination, but he opined that Applicant was qualified. Ms. Pritzl and Mr. Donald explained that the Board needed to determine whether the level of practice for home inspectors in Applicant’s original state of registration was comparable to Arizona’s level of practice for home inspectors. Mr. Foose expressed reluctance in being able to make that determination. Mr. Montgomery and Mr. Noel expressed concern that home inspectors applying through this path were not taking the pools and spas course work required of the normal application path.

Mr. Noel moved and Mr. Madison seconded to approve and grant certification; motion carried. Mr. Foose abstained.

Mr. Jones left the meeting at 12:23pm. The Board remained in a quorum.

Request for Application Extension

B. Pounds, Ashlee - Application for registration as a Civil Engineer #192115

Mr. Madison moved and Mr. Gilmore seconded to grant application extension to 9/4/2020; 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. Noel moved and Mr. Gilmore seconded to cancel registrations and certification that have been expired for one full renewal period but omit registrant 26292 since registrant 26292 was able to renew before the Board meeting; 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:

A. Discussion and possible action regarding A.R.S. § 32-122.02(B)(2), Home Inspector proof of net assets

Ms. Pritzl explained that the language under A.R.S. § 32-122.02(B)(2) regarding home inspectors providing proof of net assets to fulfill the requirement that they provide proof of financial assurance to the Board was not clear to staff and asked for guidance. Mr. Madison stated that a home inspector putting up his own collateral as financial proof was a business decision. Mr. Foose disagreed, explaining that if the home inspector's financial situation changed, the public might be unable to collect and therefore the home inspector's decision would have harmed the public.

The Board decided to treat each submission of this nature case by case and asked that staff look into striking the language from the statute during a future legislative session.

B. Proposed Rulemaking; Registration under A.R.S. § 32-4203 as an Architect, Engineer, Geologist, Landscape Architect, Land Surveyor and Home Inspector

Ms. Pritzl suggested the Board look at this matter at a later meeting. The Board agreed.

C. Letters of Interest for HIRSC position and appointment to the HIRSC

Hal Kunnen appeared before the Board.

The Board interviewed Mr. Kunnen and decided to table this matter for the next meeting to hear others interested in the position.

D. December Board Meeting Holiday Lunch

The Board discussed plans for the December Board Meeting Holiday Lunch.

The Board decided to sponsor the lunch.

E. Board Meeting 2020 Schedule

Mr. Noel moved and Mr. Gilmore seconded to approve staff's submitted Board Meeting 2020 schedule.

10. DIRECTOR'S REPORT

A. Budget Update - Nothing discussed

B. Previous Meeting Follow-Up

a. Computer Updates - Data Cleanse, Online Renewals

Ms. Cornelius reported that Expert Technologies should complete the data cleanse in November. Mr. Stam reported that online renewals were becoming more popular.

b. Staff Updates

Ms. Cornelius reported that the AG's Office and the Maricopa county Attorney's office were prosecuting a former AZBTR employee.

c. Possible new Board Members - No new information.

- d. Community Outreach - United Surveyors of Arizona Podcast, APLS/CLSA/NALS ‘present a program,’ CLEAR committee participation

Ms. Cornelius reported that she recently presented on the United Surveyors of Arizona Podcast; that APLS/CLSA/NALS invited her to present at their upcoming meeting; and, that she wanted the Board’s permission to volunteer for CLEAR.

- C. Director’s Meetings - Nothing discussed
- D. Statistics Review

Ms. Cornelius presented statistics to the Board.

11. BOARD CHAIR’S REPORT - AZ specific test inquiry

Mr. Foose reported that he planned to meet with the Oregon Board November 12 to discuss some form of cooperation between Arizona and Oregon in creating a state specific exam.

12. ASSISTANT ATTORNEY GENERAL’S REPORT - Nothing to report

13. STANDING COMMITTEE REPORTS

- A. Legislation and Rules Committee - No new meeting date
- B. Home Inspector Rules and Standards Committee - November 5, 2019

14. BOARD MEMBER REPORTS/DISCUSSION ON OUTSIDE NATIONAL COUNCIL ACTIVITIES, NEWS AND MEETINGS

- A. ASBOG - Possible Board Member report/discussion after November 2019 annual meeting.
- B. CLARB - Mr. Gilmore and Mr. Winter reported on the late September CLARB meeting held in St. Louis, Missouri.
- C. NCARB- Possible Board Member report/discussion. Nothing reported
- D. NCEES - Possible Board Member report/discussion. Nothing reported
- E. ABET - Mr. Montgomery reported on this visit to NAU.
- F. Land Surveyor Task Force - Mr. Foose reported on the status of the Minimum Standards Task Force.

15. FUTURE BOARD MEETINGS – December 10, 2019

16. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

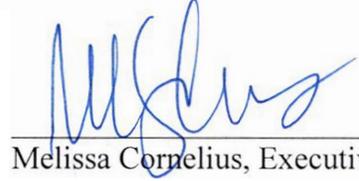
HB2569 Home Inspector

17. MEETING ADJOURNMENT – 1:20pm

Approved and signed this 10th day of December, 2019



Jason Foose, Board Chairman



Melissa Cornelius, Executive Director