

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

Tuesday, October 25, 2016
9:00 a.m.
OPEN SESSION

1. CALL TO ORDER – 9:02

- 2. ROLL CALL – Board Members Present:** Dr. Alejandro Angel, Jason Foose, Jason Madison, Edward Marley, Stephen Noel, Andrew Everroad, Eugene Montgomery **Board Members Absent:** LeRoy Brady, Neal Jones **Staff Present:** Melissa Cornelius, Patrice Pritzl, Douglas Parlin, Michelle Fleming, and Kurt Winter

3. CALL TO THE PUBLIC

No one addressed the Board

4. ADOPTION OF MINUTES

Review, Consideration, and Possible Action on the following:

- A. Approve, modify and/or reject September 27, 2016 Board meeting minutes.

Mr. Noel moved and Mr. Foose seconded to approve the minutes; motion carried.

5. CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING

- A. Formal Administrative Hearing and/or Review: Discuss and Approve, Modify or Reject the Recommended Administrative Law Judge Decision.

1. Case No. 14F-MO35-BTR, Ahmad Zarifi, P.E., (Structural) #32008, (Civil) 41872

Mr. Marley opened the matter. Roll call was taken and a quorum established. Michael Raine, A.A.G., appeared on behalf of the State. Marc Harris, A.A.G., was present to advise the Board. Respondent, Mr. Zarifi, appeared before the Board without counsel.

Mr. Raine argued to modify the ALJ decision to remove footnote two under the Findings of Fact, asked the Board to consider some sort of peer review and/or education review to show that Respondent is competent after a two-year suspension, and argued for the suspension of Respondent's structural engineering license until he can prove his competence.

Mr. Zarifi questioned the initial review of his work indicating his belief that either the reviewer was not qualified to review the work or he did not visit the review site. Mr. Zarifi argued that another reviewer, Mr. Stephenson, was incorrect in his evaluation and his numerous hearing continuances impeded the process. Mr. Zarifi agreed he was in violation for not registering his firm.

In rebuttal, Mr. Raine stated that Mr. Zarifi exaggerated the impact, reasoning, and number of Mr. Stephenson's continuances and failed to identify the continuances he himself requested. Mr. Raine argued for suspension with a mechanism to gauge Respondent's competence.

Mr. Madison moved and Mr. Noel seconded to modify the Findings of Fact with a modification to footnote two; motion carried.

Mr. Madison moved and Mr. Foose seconded to adopt the proposed Conclusions of Law; motion carried.

Mr. Madison moved and Mr. Everroad seconded to accept the ALJ Order; motion rescinded.

Mr. Montgomery questioned the parties as to whether the structure in question was demolished after it was examined and found unfit for habitation. Mr. Raine commented that to his knowledge the structure had not been demolished. Mr. Zarifi stated that the structure was not demolished.

Mr. Marley asked for the status of Mr. Zarifi's structural engineering license. Mr. Raine commented that as of the hearing it was in delinquent status. Mr. Zarifi stated that he decided not to renew his license while the hearing was proceeding. Ms. Cornelius stated that the license was expired but not yet canceled.

Mr. Noel questioned whether the work done in this matter was structural or civil in nature. Mr. Zarifi stated that the project was structural in nature and he stamped the plans with his structural engineer stamp. Mr. Raine commented that the State did not disagree with Mr. Zarifi's statement.

Dr. Angel moved and Mr. Noel seconded to modify the ALJ recommended order to include the following order: Respondent shall pay a civil penalty in the amount of \$2500 within 15 days, serve a two-year suspension of his structural license which will be lifted upon taking and passing the NCEES 16-hour structural engineering exam, have his civil license restricted from structural engineering which will be lifted upon taking and passing the current NCEES 16-hour structural engineering exam, failure to take and pass the 16-hour exam within two years will be considered a violation of the Board Order; motion carried.

B. Formal Administrative Hearing: Discuss and Approve, Modify or Reject State's Motion

to Deem.

1. Case No. HI15-023, Matthew Barry, Non-Registrant

Mr. Marley opened the matter. Scott Donald A.A.G. appeared on behalf of the State. Marc Harris A.A.G. was present to advise the Board. Respondent did not appear before the Board and was not represented by counsel.

Mr. Donald argued that the Respondent had failed to respond to the Notice of Hearing and Complaint within 30 days and asked the Board to approve the motion to deem.

Mr. Noel moved and Mr. Everroad seconded to grant the State's motion and deem the allegations in the Complaint and Notice of Hearing as admitted; motion carried.

Mr. Foose moved and Dr. Angel seconded to adopt the Factual Allegations and the Alleged Violations from the Complaint and Notice of Hearing as Findings of Fact and Conclusions of Law; motion carried.

Mr. Donald argued that a civil penalty be applied.

Mr. Madison moved and Dr. Angel seconded to enter in the following order: Respondent shall pay a civil penalty of \$2500.00 and pay the cost of investigation in the amount of \$680.00, both to be paid within 12 months; motion carried.

2. Case No. AL16-008, Paul Varley, Alarm Agent, #57759

Mr. Marley opened the matter. Scott Donald A.A.G. appeared on behalf of the State. Marc Harris A.A.G. was present to advise the Board. Respondent did not appear before the Board and was not represented by counsel.

Mr. Donald stated that the Respondent failed to respond to the Notice of Hearing and Complaint within 30 days and argued for the approval of the motion to deem.

Mr. Noel moved and Mr. Montgomery seconded to grant the State's motion and deem the allegations in the Complaint and Notice of Hearing as admitted; motion carried.

Mr. Noel moved and Mr. Foose seconded to adopt the Factual Allegations and the Alleged Violations from the Complaint and Notice of Hearing as Findings of Fact and Conclusions of Law; motion carried.

Mr. Donald argued for a heavier penalty to protect the health and welfare of the

public.

Mr. Madison moved and Dr. Angel seconded to enter the following order: Respondent shall receive a Letter of Reprimand, pay the cost of investigation in the amount of \$455.00 to be paid within three months, pay a civil penalty in the amount of \$500.00 to be paid within three months, and a stay of revocation to be lifted if all terms of the Order are not met in a timely manner; motion carried.

C. Review, Discuss and Approve or Deny Motion for Rehearing/ Review

1. Case No. P14-001, William Eric Nau, Non-Registrant

Mr. Marley opened the matter. Michael Raine, A.A.G., appeared on behalf of the State. Marc Harris, A.A.G., was present to advise the Board. Respondent did not appear before the Board and was not represented by legal counsel.

Mr. Raine argued to deny the motion for Rehearing.

Mr. Everroad moved and Mr. Foose seconded to deny the request for rehearing or review; motion carried.

D. Review, discussion, and possible action to Summarily Suspend the registration of Carlos A. Padilla, R.L.S. #46474, Case numbers A13-015, A13-018, P14-082, M13-002, M13-033, P15-045 and P15-090, until the administrative law judge renders a recommended Decision and Order, and the Board acts upon it.

Mr. Foose recused himself.

Mr. Marley opened the matter. Roll call was taken and a quorum established. Mr. Raine appeared before the Board on behalf of the State. Seth Hardgraves, A.A.G, was present to advise the Board. Mr. Padilla appeared before the Board with his counsel Mr. Gonzales.

Mr. Raine argued to summarily suspend Mr. Padilla until the administrative law judge renders a recommended Decision and Order and the Board acts upon it on the grounds that the case has been continued numerous times, the Board has shown that it may entertain a summary suspension if the hearing were continued and that there are now four new cases pending against Mr. Padilla.

Mr. Gonzales argued that the Respondent did not receive proper due process to this matter due to the dilatory actions of BTR staff and therefore a continuance was required and not in violation of the agreement in August. Mr. Gonzales stated that Mr. Padilla would like to propose having his work peer reviewed in the interim between the Board meeting and the hearing.

In rebuttal, Mr. Raine stated that the State refuted the claims that the Respondent's due

process rights were violated and that BTR staff acted dilatory in their duties.

Dr. Angel moved and Mr. Montgomery seconded to enter Executive Session to review confidential records and seek legal advice at 11:06 am. Board exited executive session and returned to open session at 11:30am.

Mr. Everroad, Mr. Montgomery, and Mr. Madison questioned whether the allegations against Mr. Padilla rose to the level of harming the public health and safety. Dr. Angel argued that they did. Mr. Marley cautioned Board members to not put too much emphasis on the four pending cases and advised Mr. Gonzales that the Board cannot act upon Mr. Padilla's proposed use of peer reviewers due to the limitations set in Board statues and rules. Mr. Gonzales stated that Respondent was willing to undergo peer reviews voluntarily. Mr. Raine inquired if the Respondent would be ready for the December hearing. Mr. Gonzales stated he had no issues with going to hearing in December.

Mr. Everroad moved and Dr. Angel seconded to not summarily suspend Respondent and move to hearing as scheduled; motion carried. Mr. Montgomery voted nay.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI16-030, Douglas Zumach, C.H.I. #48113

Mr. Madison moved and Mr. Foose seconded to dismiss the complaint.

2. P17-005, Sam Fratantoni, Non-Registrant

Mr. Madison moved and Mr. Foose seconded to dismiss the complaint.

B. Complaints Proposed for Resolution with Signed Consent Agreements:

1. P16-071, Felix Steele, R.L.S. #28234

Mr. Foose showed concern that accepting the signed consent agreement may cause ramifications in a possible land dispute. Staff indicated that no lawsuit currently existed.

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

2. P16-059, Raymond Jones, R.L.S. #05713

Dr. Angel moved and Mr. Montgomery seconded to approve the consent agreement; motion carried.

3. P17-015, Darrin Skonieczny, P.E. (Civil) #50899

Respondent appeared telephonically. The Board asked Respondent questions regarding his misdemeanors and past actions. Respondent explained the circumstances regarding the misdemeanors and stated he no longer abuses alcohol and had taken an obligatory substance abuse course.

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

4. P17-013, Tamara Caraway, R.A. #22538, Hunt & Caraway Architects, Firm #10556

Dr. Angel moved and Mr. Montgomery seconded to approve the consent agreement; motion carried.

5. P17-006, Richard Oehler, R.A. #12821

Respondent appeared before the Board to answer questions.

Dr. Angel moved and Mr. Montgomery seconded to approve the consent agreement; motion carried.

6. P17-011, Paul O'Connor, R.A. #15952, POCA Architecture and Design, LLC, Non-Registrant Firm

Dr. Angel moved and Mr. Montgomery seconded to approve the consent agreement; motion carried.

C. Complaints Proposed to Offer Consent Agreement:

1. P16-072, David Madrid, Non-Registrant

Dr. Angel moved and Mr. Foose seconded to offer the proposed consent agreement and to be moved to hearing if not signed within 30 days; motion carried.

Board directed staff to open an investigation against Mr. DePrima in regards to his involvement in this matter.

2. AL17-005, Edward Devine, A.A. #59045

Respondent appeared before the Board. Mr. Devine stated that he had paid the required renewal fees and would therefore like the case dropped.

Mr. Raine stated that the matter at hand was whether Mr. Devine was in violation of

B. Chapman, Thomas Civil Engineer Application #161775

Mr. Madison moved and Dr. Angel seconded to administratively close the case; motion carried.

C. Pirela, Alexander Electrical Engineer Application #162076

Madison Moved and Mr. Noel seconded to grant registration; motion carried.

Whether to Reopen and Grant or Deny Registration

D. Oder, Cynthia Civil Engineer Application #161554

Mr. Everroad moved and Mr. Noel seconded to reopen registration; motion carried.

Whether to Grant or Deny Authorization to take Professional Examination

E. Ayala-Martinez, Esmeralda Civil Engineer Application #161878

Mr. Madison moved and Mr. Noel seconded to grant authorization to take professional examination; motion carried.

F. Baliga, Sunil Electrical Engineer Application #161934

Mr. Madison moved and Mr. Foose seconded to deny waiver of the professional examination but grant to sit for the fundamentals examination; motion carried.

G. Beard, Drew Mining Engineer Application #161987

Mr. Madison moved and Mr. Noel seconded to grant authorization to take professional examination; motion carried.

H. Patchin, Daniel Control Systems Engineer Application #161833

Mr. Madison moved and Mr. Everroad seconded to grant authorization to take professional examination; motion carried.

Whether to Grant or Deny Certification:

Criminal History

I. Bennett, Daylon Alarm Agent Application #160817

Dr. Angel moved and Mr. Madison seconded to continue this matter; motion carried.

Dr. Angel left at 1:15pm and returned at 1:42pm. Board was still in a quorum.

J. De La Garza, Paul Alarm Agent Application #161510

Mr. Noel moved and Mr. Foose seconded to grant certification; motion granted.

K. Linhart, Timothy Alarm Agent Application #161014

Mr. Noel moved and Mr. Everroad seconded to grant certification; 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;

Dr. Angel moved and Mr. Everroad seconded to cancel the registrations and certifications that have been expired for one full renewal period; motion carried.

B. 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.

Nothing to consider.

List available for public review upon request.

9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

A. Draft Board Response to the September 1, 2016 Study ADOA sent to the Governor's Office and to representatives in the Legislature.

Board reviewed and discussed additions and modifications to the letter.

Mr. Everroad left the Board at 1:55pm. The Board still had a quorum.

B. The Next Edition of the Board Newsletter.

Board reviewed and discussed additions and modifications to the tentative Newsletter.

C. Election of Officers.

Mr. Noel moved and Mr. Montgomery seconded to elect Mr. Madison Chair, Dr. Angel Vice Chairman, and Mr. Foose Secretary; motion carried. Madison voted nay.

D. Traditional Board Holiday Luncheon.

Board discussed and approved the Holiday Luncheon.

E. Approval of the Proposed Meeting Dates in 2017.

Mr. Foose moved and Mr. Noel seconded to approve the proposed meeting dates for 2017; motion carried.

10. DIRECTOR'S REPORT

A. Budget Update –

Ms. Cornelius reported that the budget is on track; the transferring of money to ADEQ has surprised other agencies; and rent was paid.

B. Previous Meeting Follow-Up

Ms. Cornelius reported that the laptops discussed in the last meeting had arrived; the agency is on track for its new computer system; and there has been no new news regarding the AG's formal opinion.

C. Director's Meetings –

Ms. Cornelius reported that she and Ms. Pritzl attended the September FARB meeting; Ms. Cornelius's attendance of the CLEAR meeting in Portland has prompted CLEAR to request that she present a seminar at the next meeting, which she has yet to accept; and, Ms. Cornelius and Ms. Pritzl attended the 90/10 Board Meeting to discuss deregulation amongst other State Boards.

D. Statistics Review

Ms. Cornelius reported that the number of Geology exam takers had not decreased after the option of voluntary regulation was passed.

11. BOARD CHAIR'S REPORT

12. STANDING COMMITTEE REPORTS

A. Legislation and Rules Committee – Nothing to report.

B. Home Inspector Rules and Standards Committee - Committee discussed rule revisions for docketing to Governor's Office, if approved.

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG – Ms. Pritzl plans to attend the ASBOG meeting early November in Kansas.
- B. CLARB – Ms. Cornelius will have a telephonic meeting next week.
- C. NCARB – Mr. Marley and Ms. Cornelius will attend the late October meeting in Columbus Ohio; West CARB telephonically in December.
- D. NCEES – Discussion of the occupational reform act.

14. FUTURE BOARD MEETINGS – November 15, 2016

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Discuss reopening of cases being delegated to staff. EAC meeting need to be cleaned up.
Substantive policy change.

16. MEETING ADJOURNMENT – 2:39

Jason Madison, Chairman



Melissa Cornelius, Executive Director


