

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

Tuesday, December 8, 2020 beginning at 9:00 a.m.
1110 W. Washington, Conference Room #240
Phoenix, AZ 85007

1. **CALL TO ORDER** – 9:18am
2. **ROLL CALL** –

Telephonic – Dr. Alejandro Angel, Clarence McAllister (left the meeting at 1pm), Stephen Noel, Neal Jones, Jack Gilmore, Jason Foose, Andrew Everroad, Carmen Wyckoff (appeared between 11am and 1pm)

AAG – Scott Donald, Deanie Reh, Seth Hargraves

Staff – Melissa Cornelius, Robert Stam, Douglas Parlin, Kurt Winter

3. **CALL TO THE PUBLIC**

Mr. Findlay appeared telephonically.

Mr. Findlay asked that the Board reconsider case number HI19-023 at a future Board Meeting date.

Dr. Angel asked that staff follow up with Mr. Findlay.

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

- A. Approve, modify and/or reject, October 27, 2020 Board meeting minutes.

Dr. Angel moved and Mr. Jones seconded to approve the minutes; motion carried. Mr. Everroad abstained.

- B. Approve, modify and/or reject, October 27, 2020 executive session Board meeting minutes.

Dr. Angel moved and Mr. Foose seconded to approve the minutes; motion carried. Mr. Everroad abstained.

5. CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING

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

A. Review, Discuss and Take Possible Action on Signed Consent Agreement in lieu of Hearing

1. AL20-004 Mitchell, Ronald and The Alarm Crew, Inc

Respondent appeared telephonically. Deanie Reh, AAG, appeared telephonically representing the State. Seth Hargraves, AAG, appeared telephonically to give legal advice.

Ms. Reh opined that the signed consent agreement was fair and reasonable. Respondent asked that the Board accept the signed agreement.

Dr. Angel moved and Mr. Foose seconded to accept the signed consent agreement and vacate the hearing; motion carried unanimously.

Mr. Foose moved and Mr. Gilmore seconded to vacate the hearing; motion carried unanimously.

2. HI20-012, Berry, David and DJ's Horizona Home Inspection, LLC

Respondent appeared telephonically. Deanie Reh, AAG, appeared telephonically representing the State. Seth Hargraves, AAG, appeared telephonically to give legal advice.

Ms. Reh explained that the signed consent agreement before the Board mirrored the Board's original proposed consent agreement and she asked that the Board accept it. Respondent asked that the Board accept the signed consent agreement.

Mr. Foose moved and Mr. Gilmore seconded to accept the signed consent agreement and vacate the January 26, 2020 hearing; motion carried unanimously.

B. Review, Discuss and Take Possible Action on State's Motion to Rescind and take other action to resolve the case

1. HI20-033, Vallone, Frank and Arizona Executive Home Inspections LLC

Respondent did not appear. Deanie Reh, AAG, appeared telephonically representing the State. Seth Hargraves, AAG, appeared telephonically to give legal advice.

Ms. Reh explained that she wished to discuss this matter with the Board but the Board could not discuss or take action on this matter until the Board rescinded its prior vote to hearing. She asked that the Board rescind its prior vote.

Mr. Foose moved and Dr. Angel seconded to rescind the Board's prior vote to hearing; motion carried unanimously.

Ms. Reh opined that the State might fail if it pursued this matter in a formal hearing and asked that the Board to dismiss the matter. Dr. Angel agreed. Investigator Thacker stated that Respondent firm's name was misleading to the public. Enforcement manager Parlin agreed. Dr. Angel asked how Respondent conducted his business. Investigator Thacker explained that Respondent took a percentage of a home inspection fee for referring a home inspector to a client. Mr. Gilmore asked if staff had any contact with Respondent. Investigator Thacker answered 'no.' Dr. Angel stated that Respondent and Respondent Firm do not appear to be performing home inspections and therefore might not be violating the Board's Practice Act.

Mr. Foose moved and Dr. Angel seconded to dismiss the case; motion carried unanimously.

C. Review, Discuss and Take Possible Action on ALJ's Recommended Order

1. P19-023 & P20-031, Halhber, Ahler aka James Halarewicz

Respondent did not appear. Mr. Donald, AAG, appeared telephonically representing the State. Mr. Hargraves, AAG, appeared telephonically to give legal advice.

Through a roll call vote, all Board members affirmed that they received and reviewed all of the materials for this matter.

Mr. Donald asked that the Board adopt the ALJ's recommended Findings of Fact and Conclusions of Law. He further asked that the Board adopt the ALJ's recommended order with a minor correction of a statutory reference.

Dr. Angel moved and Mr. Foose seconded to adopt the ALJ's recommended Findings of Fact as drafted; motion carried unanimously.

Dr. Angel moved and Mr. Foose seconded to adopt the recommended ALJ's Conclusions of Law as drafted; motion carried unanimously.

Mr. Foose moved and Mr. Gilmore seconded to accept the ALJs recommended Order but with the following modifications: the attorney's fees and investigation costs shall be paid within 30 days or staff will forward the matter to collections, strike and remove the civil penalty, and correct an inaccurate statutory reference under fees and penalties; motion carried unanimously.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. P21-026, Gregory Dunnan, P.E. (Civil) #33300 and DKG Civil, LLC, Firm #16266

Respondent appeared telephonically.

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

2. P21-027, Milo Meacham, R.A. #51169 and Milo Meacham/Architect, PLLC, Firm #16484

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

3. AL21-002, Michael Wilbur, Non-Registrant and Wise Home Solutions, Non-Registrant Alarm Business

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

4. P21-021, Buckley Blew, R.S.L. #59542

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

5. P20-044, Michael Willis, P.E. (Civil) #35750

Respondent appeared telephonically. Respondent's counsel, Mr. Righi, appeared telephonically. Alleger, Mr. Peters, appeared telephonically.

Mr. Peters suggested to the Board that investigative materials be accessible to Allegers prior to Board meetings and that a registrant be required to show proof of good standing with the board registration upon request. Mr. Peters also asked if the Board had any influence with the State legislature to propose statutory changes requiring cities to retain engineering documents. Ms. Cornelius stated that the Board, by law, could not lobby the State legislature but Mr. Peters could write to his state representative.

Respondent stated that he and his fellow employees never visited Mr. Peters's property. Mr. Righi asked that the Board dismiss the matter.

Dr. Angel asked if there were open cases against Mr. Ong, Mr. Stiemsma or Mitek. Investigator Correll answered 'no,' but she was concerned with Mr. Ong's replies to this case and the lack of response to the Board's subpoena from Mr. Ong and Mitek. Dr. Angel asked staff if the Board should open investigations against both. Investigator Correll opined that the Board had already exhausted its subpoena authority and proceeding with an investigation could prove to be unproductive. Ms. Cornelius stated that the Board could open an investigation against both for refusing to obey a Board issued subpoena. Investigator Correll informed the Board that Mr. Ong did reply to the subpoena, but he did not have any evidence that would help the case.

Mr. Jones moved and Mr. Foose seconded to dismiss/close the case; motion carried. Mr. McAllister was absent from the vote.

The Board directed staff to open an investigation against Mitek for failure to respond to a Board issued subpoena.

6. HI21-009, Michael Meske, C.H.I. #70545

Alleger, Mr. Smith, appeared telephonically.

Mr. Smith stated that Respondent's home inspection report misrepresented needed repairs and thereby placed him at a disadvantage when negotiating the sale of his home and asked that the Board not dismiss the case.

Dr. Angel asked Mr. Smith how much he settled with the buyer. Mr. Smith answered \$4,000. Mr. Foose asked Mr. Smith if he had another home inspection done on his home. Mr. Smith stated that a buyer had a home inspection done six weeks prior to Respondent's home inspection report. Mr. Foose asked if the two reports were similar. Mr. Smith stated they were not; Respondent's home inspection report contained many issues the early home inspection did not. Ms. Cornelius suggested sending this matter to an EAC for review. Dr. Angel agreed.

Mr. Foose moved and Dr. Angel seconded to send this matter to an EAC; motion carried unanimously.

B. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI21-010, Galen Folsom, C.H.I. #69731 and Penny Brook Home Inspections, Firm #22840

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

2. P20-039, David Swinghamer, Non-Registrant and 3DDD/Third Dimension Design, LLC, Non-Registrant Firm

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

Dr. Angel opined directing staff to suggest to Respondent to review the Board's Practice Act.

3. HI21-012, Erik Diener, C.H.I. #57902 and A 'N' B Home Inspections, Firm #18787

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

4. HI20-032, Steve Tinsley, C.H.I. #62662 and Platinum Property Inspections, Firm #22590

Respondent appeared telephonically. Respondent counsel, Ms. White, appeared telephonically. Alleger, Ms. Preston, appeared telephonically.

Ms. White asked that the Board accept the signed consent agreement.

Ms. Preston argued that Respondent violated the Board's Practice when he failed to note visible mold, among other things, in this home inspection report. She further stated her home was unlivable because of the mold and asked that the Board consider this when making its final determination. Respondent stated his contract specified that he did not check for mold.

Dr. Angel asked Respondent if he noticed any mold during his inspection. Respondent answered 'no.' Dr. Angel asked Respondent to elaborate on his relationship with the home seller. Respondent stated that he never met the seller and that he was friends on Facebook with the listing agent but was not friends with her outside of social media. Dr. Angel asked Respondent if he had inspected the property previously. Respondent answered 'no.' Dr. Angel stated that the EAC could not substantiate that mold was visible during the time of the home inspection with the materials presented to them and that he agreed with that assessment. Dr. Angel opined that the Board reject the signed consent agreement and offer a new consent agreement that included restitution of the home inspection fee to Ms. Preston. Mr. Foose disagreed. Dr. Angel commented that he had concerns with Respondent's comments during the EAC meeting regarding visible black spots during the inspection.

Mr. Foose moved and Mr. Gilmore seconded to accept the signed consent agreement; motion carried. Dr. Angel voted Nay.

5. P21-023, Dennis Shirley, R.G. #26393 and Synergy Environmental, LLC, Firm #16318
Respondent appeared telephonically.

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

C. Complaints Proposed to Offer Consent Agreement:

1. P21-004, Susan Link, R.A. #43079 and Link Architecture, PC, Firm #15078

Not discussed. Meeting lost its quorum at 1:58pm.

2. P21-007, Jeffery Garcia, Non-Registrant and Wood River Consulting, LLC, Non-Registrant Firm

Not discussed. Meeting lost its quorum at 1:58pm.

3. HI21-002, Kent Lamb, C.H.I. #40585 and Arizona Inspections, Inc., Firm #21076

Alleger, Ms. Butler, appeared telephonically.

Ms. Butler argued that Respondent's comments during the home inspection mislead her into purchasing unneeded major appliances. Dr. Angel disagreed, stating that Respondent's comments were not purely conjecture.

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

4. HI20-034, Harry Jim Bacon, C.H.I. #44513 and Pillar to Post, Inc., Firm #16623

Alleger, Ms. Helm, appeared telephonically. Ms. Helm stated that she agreed with the disciplinary measures within the proposed consent agreement.

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

5. HI20-035, Steven Callahan, C.H.I. #39079 and Canyon State Property Inspections, Firm #12603

Mr. Jones moved and Mr. Foose seconded to offer the proposed consent agreement and if not signed within 30 move to formal hearing; motion carried unanimously.

6. HI21-003, Anthony Harms, Non-Registrant and Allsafe Home Inspections, LLC, Non-Registrant Firm

Respondent appeared telephonically. Alleger, Ms. Pappas, appeared telephonically.

Ms. Pappa stated that Respondent misrepresented himself, was a convicted felon, and she feared Respondent's retaliation.

Respondent stated that, at the time of the home inspection, he was not aware that his firm registration was expired and his registration revoked. He further stated that his felony conviction occurred after the home inspection and the details of the conviction had nothing to do with home inspecting.

Dr. Angel asked whether staff considered the Alleger's request for restitution of her home inspection fee due to technical knowledge and skill. Investigator Correll answered that the investigation did not look at technical knowledge and skill because Respondent was not a licensed home inspector, but she did comment that she had no issue adding restitution to the proposed consent agreement. Dr. Angel asked that the Board add restitution of the home inspection fee to its proposed consent agreement. Mr. Donald stated that the Board did not have the statutory authority to request a non-registrant to pay restitution.

Mr. Foose moved and Mr. Noel seconded to offer the proposed consent agreement and if not signed within 30 move to formal hearing; motion carried unanimously.

7. P21-003, Martin Kuhn, P.E. (Metallurgy) #10560 and Minerals Advisory Group, LLC, Firm #14952

Mr. Jones moved and Mr. Foose seconded to offer the proposed consent agreement and if not signed within 30 move to formal hearing; motion carried unanimously.

The Board took a break at 1:31 and returned at 1:36pm

D. Compliance and Monitoring Investigations:

1. P20-054, Ahmad Zarifi, P.E. (Civil) #41872

Not discussed. Meeting lost its quorum at 1:58pm.

2. P21-013, Gary Hokanson, R.A. #51987

Not discussed. Meeting lost its quorum at 1:58pm.

E. Complaints Requiring Board Guidance:

1. P21-009, Jennifer Vitale, P.E. (Civil) #37891

Not discussed. Meeting lost its quorum at 1:58pm.

2. P19-056, Mills, Greg and Southwest Engineering Concepts, LLC.

Mr. Foose moved and Mr. Gilmore seconded to enter executive session to receive legal advice at 11:55am; motion carried unanimously. The Board returned to open session at 12:07pm.

Mr. Foose moved and Mr. Noel seconded to direct counsel to pursue resolution of this matter jointly with civil action CV 2019-013509; motion carried unanimously.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Universal Licensure - Whether to Grant or Close Application after Full Board Review

- A. Holderman, Timothy- Application for Registration as a Civil Engineer #202123

Mr. Foose moved and Dr. Angel seconded to grant registration based upon the Board's determination that the applicant's state of original registration's practice level was equivalent to Arizona; motion carried unanimously.

- B. Fernandez, Richard- Application for Registration as a Civil Engineer #202024

Mr. Foose moved and Dr. Angel seconded to grant registration based upon the Board's determination that the applicant's state of original registration's practice level was equivalent to Arizona; motion carried unanimously.

- C. Ranney, Thomas- Application for Registration as a Home Inspector #202105

Mr. Foose moved and Dr. Angel seconded to grant registration based upon the Board's determination that the applicant's state of original registration's practice level was equivalent to Arizona; motion carried unanimously.

Whether to Grant or Deny Registration after Full Board Review

- D. Feight, Austin- Application for Registration as a Home Inspector #202009

Licensing Manager Stam explained that Applicant submitted his home inspector application but eight of his thirty parallel inspections Applicant performed took place after the parallel inspector received disciplinary action. Mr. Stam stated that he requested Applicant resubmit eight new parallel inspections, which he did two days later albeit with the same parallel inspector. Mr. Stam asked that the Board review the application.

Dr. Angel asked Mr. Stam if he could spot check the eight new parallel inspections. Mr. Stam answered that it was not his normal procedure but he could do so. Mr. Foose asked if it was normal for a home inspector applicant to perform more than the required 30 parallel inspections. Mr. Stam answered ‘no.’

Dr. Angel moved and Mr. Noel seconded to pend applicant’s certification until such time that staff could confirm two already submitted parallel inspections met the Board’s standards and grant certification, or brings back to the Board; 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. Jones moved and Mr. Noel seconded to cancel all 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:

- A. CV 2019-013509 – Mills v. Arizona State Board of Technical Registration: upon motion and vote, the Board may hold an executive session to receive legal advice pursuant to A.R.S. § 38-431.03(A)(4) [Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body’s position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.]

Mr. Foose moved and Dr. Angel seconded to go into executive session at 11:04am to receive legal advice; motion carried unanimously. The Board returned to open session at 11:54am.

The Board directed legal counsel to pursue resolution of CV 2019-013509 – Mills v. Arizona State Board of Technical Registration.

- B. Whether to send a letter addressed to Arizona's plat reviewing authorities regarding the removal of factual information from submitted plats prior to acceptance

Not discussed. Meeting lost its quorum at 1:58pm.

- C. Election of Officers

Not discussed. Meeting lost its quorum at 1:58pm.

10. DIRECTOR'S REPORT

- A. Budget Update

- a. Office of Strategic Planning and Budgeting quarterly meeting

Not discussed. Meeting lost its quorum at 1:58pm.

- B. Previous Meeting Follow-Up

- a. NCARB

- i. Remote Proctoring
- ii. NCARB Disciplinary Database

Not discussed. Meeting lost its quorum at 1:58pm.

- b. NCEES

- i. Board President's Assembly
- ii. Western Zone Update

Not discussed. Meeting lost its quorum at 1:58pm.

- c. CLARB

- i. Legislative Webinar

Not discussed. Meeting lost its quorum at 1:58pm.

- d. ASBOG

- i. Annual Meeting Nov. 4, 2020
- ii. Spring Meeting April 8-9
- iii. 2021 Annual Meeting October

Not discussed. Meeting lost its quorum at 1:58pm.

- e. AZSLS

- i. November and December Candidates

Not discussed. Meeting lost its quorum at 1:58pm.

f. Board Composition Update

Ms. Cornelius reported that the Governor's office reviewed two architect applicants, one being current Board Member Wyckoff, for appointment to the Board.

g. Land Surveyor Standards of Practice Update

Not discussed. Meeting lost its quorum at 1:58pm.

h. Staff Update

Not discussed. Meeting lost its quorum at 1:58pm.

C. Statistics Review

Not discussed. Meeting lost its quorum at 1:58pm.

11. BOARD CHAIR'S REPORT

Nothing to Consider

12. ASSISTANT ATTORNEY GENERAL'S REPORT

Nothing to Consider

13. STANDING COMMITTEE REPORTS

A. Legislation and Rules Committee

November 17, 2020 L&R meeting

Not discussed. Meeting lost its quorum at 1:58pm.

B. Home Inspector Rules and Standards Committee

November 10, 2020 meeting cancelled.

Not discussed. Meeting lost its quorum at 1:58pm.

14. FUTURE BOARD MEETINGS – January 26, 2021

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Findlay HI19-023, Call in procedure, payment renewal procedure, skip tracing

16. MEETING ADJOURNMENT – Meeting lost its quorum at 1:58pm.

DRAFT