

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

Tuesday, July 23, 2019, beginning at 9:00 a.m.
1110 W. Washington, Conference Room #240
Phoenix, AZ 85007

1. **CALL TO ORDER** – 9:05am

2. **ROLL CALL** – **Present:** Dr. Alejandro Angel, Jason Madison, Eugene Montgomery, Stephen Noel, Jason Foose, Jack Gilmore, Neal Jones, Carmen Wyckoff
Not Present: Andrew Everroad
Staff: Melissa Cornelius, Patrice Pritzl, Robert Stam, Douglas Parlin, Kurt Winter
AAG: Scott Donald, Deanie Reh, Michael Raine
The Board took a break at 11:35am and returned at 11:48am.
The Board took a break at 12:33am and returned at 12:36pm

3. **CALL TO THE PUBLIC**

Helmuth Hack appeared before the Board.

Mr. Hack opined that the Land Surveyor EAC members were incorrect in their findings and conclusions with regard to case in which Mr. Hack was a respondent and; therefore, the Board should dismiss the case against him.

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

- A. Approve, modify and/or reject, June 25 2019 Board meeting minutes.

Mr. Noel moved and Mr. Gilmore seconded to approve the minutes; motion carried. Mr. Madison 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 Approve or Deny Motion for Rehearing/Review

1. AL19-004 Johnson, Victor, Jr. and Justice Satellite and Security, Non-Registrants

Respondent appeared before the Board. Respondent was not represented by council. Scott Donald, AAG, appeared representing the State. Michael Raine, AAG, was present to advise the Board.

Respondent argued that he was Victor Johnson Jr., not ‘Victor Johnson’ as written in the Board Order and therefore the Board mistakenly identified him as the Respondent in this case.

Mr. Donald argued that there was no question that the Board had brought this case against Respondent; that there was a scrivener’s error in the Order in which the suffix ‘Jr.’ was accidentally omitted from Respondent’s name and that Respondent had failed to present any new evidence. For those reasons, Mr. Donald asked that the Board deny Respondent’s motion for rehearing.

Respondent claimed that this was a matter of mistaken identity and that he was not involved with Justice Satellite until very recently.

Dr. Angel opined that Respondent was disingenuous, that he was alternating names to mislead the Board and that he had been involved with Justice Satellite for a number of years.

Dr. Angel moved and Mr. Gilmore seconded to Deny the Motion for Rehearing and directed staff to correct the Order’s scrivener error; motion carried unanimously.

B. Formal Administrative Hearing and/or Review, or Discuss and Take Possible Action on State’s Motion to Deem Respondent’s Admission to the Allegations in the Complaint and Notice of Hearing:

1. AL14-009 Bouthner, Christopher, Alarm Agent #55019

Respondent did not appear before the Board. Deanie Reh, AAG, appeared representing the State. Michael Raine, AAG, was present to advise the Board.

Ms. Reh explained that the Complaint and Notice of Hearing contained an incorrect allegation and requested that the Board withdraw the State’s Motion to Deem so that she could correct the Complaint and Notice of Hearing so that it could be resent to Respondent.

Mr. Foose moved and Dr. Angel seconded to Accept the State’s Motion to Withdraw Motion to Deem and to File an Amended Complaint; motion carried unanimously.

2. AL17-007 Stevens, Nathaniel, Alarm Agent #57304

Respondent did not appear before the Board. Deanie Reh, AAG, appeared representing the State. Michael Raine, AAG, was present to advise the Board.

Ms. Reh asked the Board to omit some the allegations in the Complaint and Notice of Hearing and deem the remaining allegations. Dr. Angel expressed his concern that not including all allegations would make the case moot. Ms. Reh disagreed, but suggested

that the Board withdraw the State's Motion to Deem so that she could correct the Complaint and Notice of Hearing so that it could be resent to Respondent. Mr. Raine agreed and recommended the same.

Mr. Madison moved and Ms. Wyckoff seconded to Accept the State's Motion to Withdraw Motion to Deem and to File an Amended Complaint; motion carried unanimously.

3. HI18-021 Gossard, Theodore and Fine Tooth Home Inspections, Non-Registrant

Respondent did not appear before the Board. Deanie Reh, AAG, appeared representing the State. Michael Raine, AAG, was present to advise the Board.

Ms. Reh recommended that the Board accept the State's Motion to Deem.

Dr. Angel moved and Ms. Wyckoff seconded to Accept State's Motion to Deem; motion carried unanimously.

Mr. Madison 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 unanimously.

Board members asked if the Board could revoke a registrant's license if the Board had already cancelled their registration. Mr. Raine answered 'yes,' stating there was case law that set that precedent.

Mr. Madison moved and Dr. Angel seconded to revoke Respondent's license and Respondent Firm's license; motion carried unanimously.

4. P14-030 Johnson, David, Non-Registrant

Respondent did not appear before the Board. Deanie Reh, AAG, appeared representing the State. Michael Raine, AAG, was present to advise the Board.

Ms. Reh recommended that the Board accept the State's Motion to Deem.

Dr. Angel moved and Ms. Wyckoff seconded to Accept States Motion to Deem; motion carried unanimously.

Dr. Angel moved and Mr. Jones 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 unanimously.

Dr. Angel moved and Ms. Wyckoff seconded to draft an Order comprising of: a \$4,000 civil penalty, cost of investigation, and assurance of discontinuance; motion carried unanimously.

C. Review, Discuss and/or Take Possible Action on Signed Consent Agreement in lieu of Formal Hearing

1. HI17-018 Bashford, Troy and Amerigo Property Inspections, LLC, Home Inspector #58611

Respondent appeared before the Board and was not represented by council. Scott Donald, AAG, appeared representing the State. Michael Raine, AAG, was present to advise the Board.

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

Dr. Angel asked why the Board should accept a more lenient Consent Agreement after Respondent disappeared for a year and half. Respondent answered that he had not disappeared. Ms. Cornelius informed the Board that the delay in processing the hearing was the fault of the Board and AGs office. Ms. Wyckoff asked whether this consent agreement conformed to the Board's attempt to streamline disciplinary actions. Mr. Donald answered 'yes.' Ms. Pritzl noted that Respondent had already completed parallel inspections and had not had any additional complaints against him. Mr. Madison asked if Respondent had renewed, and if so, did he indicate that he had a pending investigation on the renewal. Mr. Stam answered that Respondent did renew and that he had indicated that he had a pending investigation.

Ms. Wyckoff moved and Mr. Jones seconded to accept signed consent agreement and vacate previous motion to send this matter to hearing; motion carried unanimously.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI19-039, John Thorp III, C.H.I. #40941 and Lake Havasu Home Inspection, Firm #20132

Ms. Wyckoff moved and Mr. Jones seconded to Dismiss this case; motion carried unanimously.

B. Complaints Proposed for Resolution by Letters of Concern:

1. P19-047, Daniel Francetic, R.L.S. #33874

Respondent appeared before the Board.

Respondent stated that the property in question bordered the Salt River, therefore there was not a statutory obligation to set a monument, and he requested that the Board dismiss the case. Mr. Foose agreed.

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

2. HI19-032, Charles Williams, C.H.I. #62475

Ms. Wyckoff moved and Mr. Jones seconded to issue a Letter of Concern; motion carried unanimously.

3. HI19-033, David Sturgeon, C.H.I. #40109

Respondent's employer and owner of the firm, Dutch Jones, appeared before the Board.

Dr. Angel expressed his concern that Mr. Jones wrote that all home inspectors were involved in 'pay to play' program with realtors. Mr. Jones denied stating or writing Dr. Angel's mentioned statement and further stated that his company and employees had never participated in a 'pay to play' program. Dr. Angel specified that he wanted Mr. Jones to explain the 'pay to play' programs mentioned in his letter. Mr. Jones obliged. Dr. Angel asked Mr. Jones to explain the draft preferred vendor contract between his business and Realty One. Mr. Jones explained that his business had been a preferred vendor with Realty One for an extended period, but he nor the business had ever paid to be a preferred vendor.

Mr. Madison moved and Mr. Montgomery seconded to dismiss case; motion carried. Dr. Angel voted Nay.

4. P19-065, John Meissner, R.A. #62304

Respondent appeared before the Board.

Dr. Angel asked who was in responsible charge of the project in this matter. Respondent answered that he was the responsible charge.

Ms. Wyckoff moved and Mr. Jones seconded to issue a Letter of Concern; motion carried unanimously.

C. Complaints Proposed to Offer Consent Agreement:

1. P19-044, Ricardo Jimenez, Non-Registrant and RJ Design, Non-Registrant Firm

Mr. Montgomery opined that the violations in this matter were egregious. Dr. Angel asked if the architect, Mr. Platt, had a case opened against him. Investigator Loera answered 'yes.' Board members discussed the omission of 'assurance of discontinuance' language in the consent agreement.

Dr. Angel moved and Mr. Montgomery seconded to offer proposed Consent Agreement with the inclusion of an assurance of discontinuance and, if not signed within 30 days, move to hearing; motion carried unanimously.

2. P19-038, Edgar Reynolds, R.L.S. #31031

Respondent appeared telephonically.

Respondent argued that his land surveying fieldwork was correct, that the drawing being scrutinized in this matter was just a sketch, that he chose not to record his survey since he was under the impression that surveys of subdivisions did not require recording, and asked that the Board disregard the EAC's recommendation for voluntary surrender.

Dr. Angel asked if Respondent would undergo remedial education and/or peer reviews. Respondent answered 'no.' Ms. Wyckoff commented that she did not know how this issue could be resolved without Respondent undergoing remedial education or peer reviews. Mr. Foose asked Mr. Donald what the Board would need to do if they chose to revoke Respondent's license. Mr. Donald obliged. Mr. Foose opined that the violations in this matter were serious in nature. Dr. Angel agreed.

Dr. Angel moved and Mr. Noel seconded to offer a Consent Agreement encompassing the following: peer reviews on Respondent's next four boundary surveys, Respondent shall complete a 2-hour boundary survey training course, pay a \$1,000 administration penalty, cost of investigation and, if not signed in 30 days, move to hearing; motion carried unanimously.

After the motion, Mr. Donald explained the next steps to the Board and Respondent.

3. P19-057, Michael Menn, R.A. #28654 and Michael Menn LTD, Firm #21903

The Board attempted to connect telephonically with Respondent, but were unable to. Respondent did not appear before the Board.

Dr. Angel asked if Respondent did any work outside of residential homes. Investigator Thacker explained that the issue was that Respondent did not know he needed to register his firm in Arizona. Mr. Noel asked if Respondents were currently registered. Investigator Thacker answered 'yes.'

Mr. Madison moved and Mr. Jones seconded to offer proposed Consent Agreement and if not signed in 30 days proceed to formal hearing; motion carried unanimously.

D. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI19-031, Michael Hamilton, C.H.I. #61079

Ms. Wyckoff moved and Mr. Jones seconded to accept signed Consent Agreement; motion carried unanimously.

2. HI19-029, Kristopher Rosser, C.H.I. #63806

Alleger, Cynthia Moreno, appeared before the Board.

Ms. Moreno argued that Respondent's home inspection did not meet the minimum standards and asked that the Board include restitution, in whole or part, of Alleger's home warranty deductible used to pay for damages to her home.

Mr. Montgomery asked if the minimum standards obligated Respondent to test the basement water pump. Investigator Will answered ‘no.’ Dr. Angel asked if the Board could order Respondent to pay restitution of the home inspection cost to Alleger. Ms. Cornelius answered ‘yes.’ Mr. Madison expressed his concern that the Board should not order Respondent to pay restitution when the original complaint did not include it in the allegations, as it would create a bad precedent. Mr. Montgomery and Ms. Wyckoff disagreed.

Dr. Angel moved and Mr. Montgomery seconded to offer a modified Consent Agreement that included restitution of the cost of inspection along with the original terms; motion carried. Mr. Jones abstained. Mr. Madison voted Nay.

3. P19-028, Norman Fain, P.E. (Civil) #25969 and Fluid Solutions Inc., Firm #10283

Ms. Wyckoff moved and Mr. Jones seconded to accept signed Consent Agreement; motion carried unanimously.

E. Complaints Requiring Board Guidance:

1. P19-073, James Belville, Non-Registrant and Concrete Repairman, LLC, Non-Registrant Firm

Respondent appeared before the Board with council, Jeff Laskin.

Mr. Laskin argued that Respondent did not violate the Board’s practice act and he stated that a competitor filed the complaint against Respondent.

Dr. Angel asked Respondent how he evaluated projects. Respondent answered if the project was outside of his expertise, he would recommend the client seek the advice of an independent engineer.

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

2. P19-055, Richard Waage, R.L.S. #39954

Respondent with council, Michael Harper, appeared before the Board.

Mr. Harper argued that Respondent was innocent of the alleged violation of gross negligence as stated in the complaint and asked that the Board dismiss the case.

Dr. Angel opined that the Board issue a Letter of Concern reminding Respondent to act professionally with courtesy when dealing with the public and other registrants. Mr. Foose stated that he was concerned for Mr. Waage’s wellbeing. Mr. Harper assured the Board that Respondent’s wellbeing was a non-issue and that Respondent had no issues performing as a registered land surveyor. Mr. Harper further cautioned the Board from issuing any medical findings based upon the information provided. Mr. Foose stated that he made his statement based upon the materials in the Board packet and that he was not making any medical conclusions from them. Mr. Montgomery stated that a Respondent should act professionally after receiving notice of a complaint against them and that they should not intimidate anyone involved with the case. Mr. Harper reiterated that the violation in the complaint was for gross negligence.

Investigator Hunt explained that ARS § 32-128(C) included ‘other misconduct,’ which was the focus of the complaint. Mr. Harper stated that Respondent would accept a Board issued Letter of Concern.

Dr. Angel moved and Mr. Madison seconded to issue a Letter of Concern; motion carried unanimously.

3. P19-049, Ramakrishna Inti, R.L.S. #17286

Respondent appeared before the Board. Gerard Gomez appeared before the Board.

Mr. Gomez stated that Respondent did not intend to record his survey since it was a draft for preliminary work. Dr. Angel asked why the survey did not have language indicating it was preliminary. Mr. Gomez stated that Respondent used the survey in a presentation for the city of Avondale, but did not pursue the project when it became apparent that it would be financially burdensome. Mr. Foose opined dismissing the case as it appeared deminimus. Mr. Madison agreed. Dr. Angel disagreed, stating that once Respondent placed his stamp on the document, the document should be at its best.

Mr. Foose moved and Mr. Jones seconded to dismiss the case; motion carried. Dr. Angel voted Nay.

F. Complaints Proposed to Forward to Hearing:

1. P19-023, James Halarewicz, P.E. (Civil) #44459, R.A. #50925, P.E. (Architectural) #46059

Mr. Madison moved and Mr. Gilmore seconded to forward this case to hearing; motion carried unanimously.

2. AL19-015, Amanda Hensley, C.P. #67706

Mr. Madison moved and Mr. Noel seconded to forward this case to hearing; motion carried unanimously.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Nothing to Discuss

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. Madison moved and Mr. Noel seconded to cancel 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. HB2569 - Limited Reciprocity for discussion and executive session for legal advice.

Ms. Cornelius opined that this bill would only affect Home Inspectors. The Board discussed the bill and its implications for the Board's application processes.

The Board directed staff to select documents that the Board would accept as proof for establishing residency in Arizona for the Board to consider at its next meeting.

- B. NCEES items to be voted upon: change to model law and land surveyor exam changes

Board members discussed NCEES's proposed changes to its model law and land surveyor exam.

10. DIRECTOR'S REPORT

- A. Budget Update -

Ms. Cornelius reported that she was still waiting for the Board budget.

- B. Previous Meeting Follow-Up
IT Updates - Data Migration, Online Payments

Ms. Cornelius reported that the data migration was proceeding and that the online payment site was now active for testing.

- C. Director's Meetings
 - a. Meeting with Governor's Advisor on HB2569

Ms. Cornelius reported that she and Ms. Pritzl met with the Governor's advisor to discuss HB2569 and its implications.

- D. Statistics Review

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 - No new date set
- B. Home Inspector Rules and Standards Committee - Next Meeting August 9, 2019

14. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG - Annual meeting November 4, 2019 in Minneapolis MN
- B. CLARB - Annual meeting September 26-28, 2019 in St. Louis, MO
- C. NCARB - Annual meeting June 20-23, 2019 in Washington DC
- D. NCEES - Annual meeting August 2019 in Washington DC.
- E. ABET - Update regarding possible Board review of ABET accredited online degree programs

15. FUTURE BOARD MEETINGS – August 27, 2019

16. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Minimum standards task force add to agenda item 14, Oregon Case feedback for September meeting, 9a

17. MEETING ADJOURNMENT – 1:53pm

Jason Foose, Board Chairman



Melissa Cornelius, Executive Director


