

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

Tuesday October 24, 2017
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER** - 9:01am

2. **ROLL CALL** –

Present, Stephen Noel, Jason Foose, Neal Jones, Eugene Montgomery, Andrew Everroad,
Dr. Alejandro Angel

Not Present: Jason Madison, Edward Marley, Jack Gilmore

Staff: Melissa Cornelius, Patrice Pritzl, Robert Stam, 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 September 26, 2017 Board meeting minutes.

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

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

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

A. Formal Administrative Hearing and/or Review, or Discuss and Take Possible Action on
Motion to Deem:

1. P17-072, Stephen Maslan, P.E. (Civil), #31790

Dr. Angel opened the matter. Scott Donald, A.A.G., appeared before the Board on behalf of the State. Seth Hargraves, A.A.G., appeared before the Board to provide legal advice. Respondent did not appear before the Board.

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

Dr. Angel asked when the Board served the notice. Mr. Donald provided the date when the Board mailed the notice.

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

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

Mr. Donald argued that the Board revoke Respondent's registration since Respondent failed to comply with a past Board order and, therefore, the Board could not regulate him. Mr. Donald suggested that if the Board did not wish to pursue revocation that they could move to suspend the Respondent and impose an administrative penalty.

Mr. Foose moved and Mr. Everroad seconded to revoke Respondent's registration and seek reimbursement for the cost of investigation and attorney fees; motion carried.

B. Review, Discuss and Take Possible Action on Proposed Consent Agreement in Lieu of Hearing:

1. P14-048, Timothy Spangler, Non-Registrant, and Arizona Alta Specialists, Registered Firm, #18700

Scott Donald, A.A.G., appeared before the Board on behalf of the State. Seth Hargraves, A.A.G., appeared before the Board to provide legal advice. Respondent did not appear before the Board.

Mr. Foose expressed his belief that the signed consent agreement was too lenient considering the gravity of the Respondent's violations. Dr. Angel agreed.

Mr. Foose moved and Dr. Angel seconded to reject the signed consent agreement and move to hearing; motion carried.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI18-004, Steven Itami, C.H.I. #62417

Mr. Foose moved and Mr. Jones seconded to dismiss the complaint: motion carried.

B. Complaints Proposed for Resolution with Signed Consent Agreements:

1. AL17-014, Michael DeLay, C.P. #64692, and Red Hawk Fire & Security, Alarm Business #20423

Dr. Angel asked staff if Respondent firm's registration was current. Staff confirmed that it was.

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

2. HI17-023, John Haag, C.H.I. #50226 (expired)

After review of the consent agreement, Dr. Angel asked staff if there was a less severe option for Respondent than voluntary revocation. Mr. Warner explained that Respondent intended to get his personal affairs in order and reapply for registration later. Dr. Angel asked if the Respondent was aware of the gravity of a revocation. Mr. Warner stated Respondent was aware. Mr. Parlin informed the Board that Respondent's registration was due for cancellation.

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

C. Complaints Requiring Board Guidance:

1. P18-010, Robert Whitton, Non-Registrant

Mr. Jones opined that this investigation seemed unnecessary. Mr. Noel noted that Respondent designed homes for himself. Dr. Angel commented that he was concerned about a local newspaper article detailing Respondent's work and Mr. Jones opined that the information in the article was misleading and the author(s) did not do enough research prior to publication. Mr. Everroad asked whether the Respondent advertised himself as an architect. Mr. Jones answered no. The investigator, Ms. Soto, added that Respondent did not list his address on his website and there was no indication besides the newspaper article that he resided or worked in Arizona.

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

2. P17-084, Andrew Kwasniak, P.E. (Civil) #52919, and Tatum Group, LLC, Non-Registrant Firm

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

Respondent appeared before the Board.

Respondent stated that the opposing expert witness in a case he provided testimony in submitted the complaint against him; that he and a number of his peers also had not

sealed expert witness reports in the past (Respondent passed around examples of non-sealed peer drafted expert witness reports); that courts in Arizona accept the testimony of non-registered expert witnesses; that Arizona was unique in its requirements for expert witness testimony (Respondent cited California and Federal laws); that attorneys can disclose expert witness verbal statements and opinions, which an expert witness cannot seal; that Steve Warner, Respondent described him as a widely known expert witness, wrote an opinion that Respondent's testimony was not required to be sealed and it was rare to find expert witness reports sealed anywhere in the United States; that Respondent did not intentionally violate the Board's rules; and, that Respondent's firm was currently registered.

Mr. Montgomery asked if a case's sitting judge decided whether an individual was an expert witness. Respondent answered yes. Dr. Angel indicated to the Board that the use of engineering principals was not limited to drafting and the Board's rules clearly state that documents prepared for litigation needed to be signed and sealed, but he admitted that he did not agree with the rule. Mr. Foose asked Respondent if an attorney would have commissioned him as an expert witness if he had not registered with the Board. Respondent answered yes and stated that in a case in California the court concluded that testimony does not constitute the practice of a profession and was outside of jurisdiction of government administrative agencies. Mr. Foose asked if that court case was in Arizona. Respondent answered no, it was a federal case in California. Mr. Montgomery expressed his belief that an expert witness's testimony was not merely a reverberation of events, such as an actual witness's testimony, and did rise to a level that only a professional engineer could perform and, therefore, the expert witness should designate they were a PE on the report. Dr. Angel reminded the Board that the rule does not specify that all expert witnesses need to register with the Board, but that if an expert witness was registered, they need to seal their testimony.

Mr. Foose moved and Mr. Jones seconded to issue a Letter of Concern; motion carried.

3. P17-085, James Sparks, P.E. (Civil) #10898, and Traffic and Transportation Consultation Services

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

The investigator, Mr. Warner, indicated that Respondent usually sealed his testimony, but simply forgot in this instance due to outside circumstances.

Mr. Foose moved and Mr. Jones seconded to issue a Letter of Concern; motion carried.

D. Compliance Monitoring Investigations:

1. M12-033, Mohammad Mahpar, P.E. (Civil) #31926

Dr. Angel asked staff why Respondent could not complete his peer reviews. Mr. Hunt answered Respondent did not have any projects requiring retaining walls. Mr. Everroad asked if the issue was that Respondent lacked projects for review, not that he was trying to get out of peer reviews. Mr. Hunt answered that Respondent had a lack of projects but there was no guarantee he was being truthful. Dr. Angel asked if the Board could revise the consent agreement. Mr. Donald answered yes, but Respondent would need to accept the new consent agreement.

Mr. Foose moved and Mr. Everroad seconded to offer a revised consent agreement with an indefinite restriction of structural practice until Respondent passed the structural exam and the Board removed the peer review language from the original consent agreement; motion carried.

2. M08-037 and M08-086, Tony Enriquez, R.A. #33297

Dr. Angel asked if the Board could revise the consent agreement so Respondent could change his status to retired or inactive. Staff answered no because Respondent needed to be in “good standing” status. Mr. Everroad opined that removing the peer review language would allow Respondent to skirt the issue. Mr. Hunt informed the Board that the Respondent’s violations were not technical in nature. Dr. Angel asked if the Board could revise the agreement to compel Respondent to retire. Mr. Donald answered not in a single document.

Mr. Everroad moved and Mr. Noel seconded to offer a revised consent agreement that removed the peer review language of the original consent agreement and closed the matter; motion carried.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration after Full Board Review

A. Glover, Eric - Alarm Agent Application #171020

Applicant appeared before the Board.

Dr. Angel asked Applicant to explain his past arrests to the Board. Applicant explained that he was young and naïve at the time of his arrests and he has had a clean record since.

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

After the vote, Applicant asked the Board when staff would grant his registration. Staff answered the Applicant would be granted that day.

B. Schaff, Eric - Alarm Agent Application #171273

Applicant appeared before the Board.

Mr. Montgomery expressed concern over the negative appearance of the Board granting a known sex offender access to people's homes, even given with the particularities of the case in which the crime was a singular event that occurred nearly 17 years in the past.

Mr. Montgomery asked the Applicant to explain why the Board should grant the certificate. Applicant stated he had been selling security systems to homeowners for over 7 years under direct supervision, the crime in question was a singular event, and he was now a respectable and responsible individual. Dr. Angel opined granting registration due to the mitigating circumstances disclosed.

Mr. Foose moved and Mr. Neal seconded to grant registration; motion carried.

C. DePrima, Christopher - Engineer Application for Registration # 172229

Applicant appeared before the Board.

Mr. Foose asked Applicant if he had taken any sort of remedial course since he voluntarily surrendered his license in August 2017. Applicant answered no but said that he drafted and worked on projects with other engineers. Dr. Angel asked Applicant if anything had changed between Applicant's revocation and that day's meeting that would prove to the Board that the Board could regulate him. Applicant tried to reassure the Board that he planned to follow all rules and laws.

Ms. Pritzl asked Applicant if he was planning to perform civil or structural engineering once registered. Applicant answered structural. Ms. Cornelius commented that Applicant would need to take and pass the structural exam. Dr. Angel noted that the application was for civil engineer registration. Ms. Cornelius commented that Applicant's background was in mechanical engineering. Applicant stated that a professional engineer could perform a number of engineering services. Mr. Noel asked if Applicant used the correct application. Applicant answered yes.

Mr. Noel commented that perhaps the Board should deny the application until the Applicant passed the structural engineering exam could be an option. Dr. Angel stated that this matter regarded the Applicant's moral repute, not technicalities with the application or his work prior to revocation. Ms. Cornelius suggested that the Board discuss whether they can regulate the Applicant if they granted the Applicant's registration. Dr. Angel asked Mr. Donald if there was another option of the Board to vote upon besides denial or approval for this matter. Mr. Donald answered no. Mr. Montgomery opined that the Applicant needed to provide proof, such as remedial education or reference letters describing the Applicant's moral character, to the Board in order to prove the Board could regulate him.

Mr. Foose moved and Mr. Jones seconded to deny registration; 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. Everroad moved and Mr. Noel seconded to cancel registrations and certifications that have been expired for one full renewal period; motion carried.

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 Contractors Who Claim Tax Credits are Practicing Engineering-IRS Language

Dr. Angel stated that general contractors were applying for research and development tax credits through the IRS. The IRS contacted Dr. Angel to start a dialogue between the Board members on the matter.

Mr. Jones expressed his belief that general contractors cannot claim the tax credit but the contracted engineer or architect could claim the tax credit. Dr. Angel was concerned that the general contractor design team may have unlawfully practiced engineering. Mr. Donald cautioned the Board from creating an advisory opinion without all the facts on the matter.

The Board directed staff to draft a reply with Dr. Angel's signature for the Board to review at the next meeting.

B. Whether to Adopt the Proposed Substantive Policy Statement regarding Expert Witness Testimony.

Fred Zeder, A.A.G., and Brock Heathcotte, A.A.G., appeared before the Board. Steve Boschen, Director of Infrastructure Delivery and Operations at ADOT, appeared before the Board.

Mr. Heathcotte stated that the Attorney General had no official stance on the adoption of the substantive policy statement. He further stated that the AG's office filed a motion in a pending case to prevent the appointment of a non-registrant expert witness and he expressed his belief that the Board's decision on this matter would be helpful to the court.

Mr. Jones asked if the motion only pertained to traffic accident cases. Mr. Heathcotte stated it was up to the Board to determine. Dr. Angel stated that the policy statement would affect all Board registered engineering disciplines.

Mr. Heathcotte stated that a majority of expert witnesses in Arizona cases were registered in Arizona. Mr. Montgomery asked if this matter affects state or federal courts. Mr. Heathcotte answered both. Mr. Donald clarified that the AG's office asked to put this matter before the Board so the Board could interpret the Board's rules, not create regulation for courts. Dr. Angel commented that expert witness testimony in civil court matters probably would not affect public safety and well-being while a case involving the State may.

Douglas Kraemer asked if this matter would affect law enforcement officers who serve as accident reconstructionists. Mr. Zeder answered no, unless the reconstructionist was an engineer. Mr. Noel asked when a witness was determined to be an expert. Mr. Hachcotte answered that the court determined who was an expert. Mr. Montgomery asked if the policy statement would handicap judges. Mr. Hachcotte answered no; it would help guide them to a decision. Mr. Everroad stated that the policy statement would define testifying as an expert witness in Arizona without registration as the unlawful practice of a profession requiring registration.

Mr. Foose and Dr. Angel asked what benefit the State would receive by reducing the pool of expert witnesses. Mr. Boschen stated that, for numerous reasons, the expert testimony of a non-registrant proved determinate in a number of cases that included the interpretation of the Arizona standards and he argued that this outcome was not good for the people of Arizona.

Mr. Everroad stated he had no issues with the policy statement, though some issues may arise in the future. Mr. Montgomery expressed his concerns with potential future issues. Dr. Angel commented that perhaps the Legislation and Rules committee should review the policy before adoption. Mr. Donald explained to the Board that they were not creating new regulation and, if they subsequently found issues, could retract the statement and have the Legislation and Rules committee review the existing statute for possible changes.

Mr. Everroad commented that shrinking the possible pool of expert witnesses would not necessarily benefit one side of a case over another. Dr. Angel commented he was hesitant. Mr. Zeder stated that most expert witnesses reside outside of the State, but were registered in State. Mr. Foose commented that he believed accepting the statement would raise the bar for Arizona professionals. Mr. Montgomery agreed. Dr. Angel stated that he would be in favor of adoption if he was guaranteed that the Legislation and Rules Committee reviewed the results of the adoption in the future.

Mr. Foose moved and Mr. Everroad seconded to adopt the proposed substantive policy statement; motion carried.

Break at 10:58am and returned at 11:07am

C. Whether to Continue Licensing Firms.

Board members discussed adding language to the AZBTR's forms to educate the registrant population to register their firms. The Board decided to continue licensing firms.

D. Whether to Request an Invitation to Observe ABET Discussions at the State's Accredited University Engineering Programs.

After discussion, the Board directed staff to draft a letter to ABET to request inclusion in ABET's accreditation of state university engineering programs.

E. Alarm Agent Renewal Issues.

Ms. Pritzl informed the Board that alarm agents denied a clearance card could apply for an exemption through the fingerprint board.

F. Whether to Endorse NCARB's Tri-National Mutual Recognition Agreement for the International Practice of Architecture.

Mr. Foose moved and Mr. Jones to endorse the agreement; motion carried. Jones voted nay.

G. Holiday Plans

The Board discussed holiday plans for after the December Board meeting.

10. DIRECTOR'S REPORT

Ms. Cornelius reported on the current issues with the new computer system; she will lecture at ASU about attorney jobs in the state; WCARB fees were due, CLARB fees were increased.

11. BOARD CHAIR'S REPORT – Nothing to Report

12. STANDING COMMITTEE REPORTS

- A. Legislation and Rules Committee – Possible meeting to review rules, but nothing
- B. Home Inspector Rules and Standards Committee – upcoming meeting November 16

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG – Mr. Foose and Mr. Stam will attend the meeting in Portland at the end of October.
- B. CLARB – Nothing to report
- C. NCARB – Nothing to report
- D. NCEES – Dr. Angel reported that NCEES ended the year with a surplus.

14. FUTURE BOARD MEETINGS – December 12, 2017

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

IRS Letter Review, ASBOG Questionnaire

16. MEETING ADJOURNMENT – 12:29pm

Dr. Alejandro Angel, Board Chairman



Melissa Cornelius, Executive Director


