

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

Tuesday January 24, 2017

9:00 a.m.

OPEN SESSION

1. **CALL TO ORDER** – 9:02am
2. **ROLL CALL – Board Members Present:** Dr. Alejandro Angel, Jason Foose, Jason Madison, Edward Marley, Stephen Noel, Andrew Everroad, Eugene Montgomery, LeRoy Brady, Neal Jones
Staff Present: Melissa Cornelius, Patrice Pritzl, Douglas Parlin, Michelle Fleming, and Kurt Winter
Assistant Attorney General Present: Scott Donald

3. **CALL TO THE PUBLIC**

- a. Christoph Lohr, representing the American Society of Plumbing Engineers (ASPE), appeared before the Board. Mr. Lohr expressed the ASPE's desire for the addition of a plumbing section to the NCEES exam and asked the Board to consider sending a letter to NCEES to communicate it's agreement with the ASPE.

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

- A. Approve, modify and/or reject December 13, 2016 Board meeting minutes.

Mr. Marely moved and Dr. Angel seconded to approve the minutes with minor modifications; motion carried.

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

- A. Formal Administrative Hearing and/or Review, Discuss and Take Possible Action to Deem Respondent(s) Admission to the Complaint and Notice of Hearing:

1. Case No. P14-062, Evan Crane, Non-Registrant

Mr. Madison opened the matter. Scott Donald, A.A.G., appeared on behalf of the State. 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.

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

Mr. Marely 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 suggested imposing a civil penalty of \$2000.

Mr. Marley moved and Mr. Noel seconded to enter the following order: Respondent shall be issued an assurance of discontinuance of practicing and advertising architectural services, pay a civil penalty of \$6000 within 12 months and pay the cost of investigation within 30 days; motion carried.

2. Case No. P15-009, Mark Morris, Non-Registrant

Scott Donald, A.A.G., representing the State, appeared before the Board. Respondent did not appear.

Mr. Donald requested the case be pended because of the possibility that the complaint was sent to an incorrect address.

Mr. Marley moved and Mr. Foose seconded to pend the State's motion to deem the allegations in the Complaint and Notice of Hearing as admitted; motion carried.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI17-006, Peg Hanning, C.H.I. #41299 (Delinquent)

Mr. Marley moved and Mr. Everroad seconded to dismiss the complaint; motion carried.

2. P17-041, Joseph O'Brien, R.L.S. #35317

Mr. Foose moved and Mr. Marley seconded to send a Letter of Concern with language that "every registrant surveyor should possess a working familiarity with regulatory obligations outside of fieldwork when so engaged"; motion carried.

3. HI17-007, Jerry Brooks, C.H.I. #39415 (Retired)

Mr. Marley moved and Mr. Everroad seconded to dismiss the complaint; motion carried.

4. HI17-009, Robert Kille, C.H.I. #38351

The Board attempted to contact Alleger telephonically but there was no answer.

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

B. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI17-005, James Ricker, C.H.I. #60420

Mr. Foose moved and Mr. Marley seconded to approve the signed consent agreement; motion carried.

2. P17-044, James Samer, R.L.S. #16193, and Arizona ALTA Specialists, Firm #18700

Mr. Foose moved and Mr. Marley seconded to approve the signed consent agreement; motion carried.

3. HI17-012, John G. Thorpe, C.H.I. #40941, and Lake Havasu Home Inspections, Non-Registrant Firm

Mr. Foose moved and Mr. Marley seconded to approve the signed consent agreement; motion carried.

4. P17-020, Jayanti Patel, P.E. (Mechanical) #54307

Mr. Marley inquired whether a Letter of Concern could be sent when there is a signed consent agreement. Staff indicated that a letter could be sent.

Mr. Foose moved and Mr. Brady seconded to approve the signed consent agreement and send a Letter of Concern regarding the proper use of seals; motion carried.

5. P17-033, James Bordenave, P.E. (Mechanical) #35957

Respondent, James Bordenave, appeared before the Board. Dr. Angel asked Respondent why he failed to fully disclose his prior convictions on his application. Respondent stated at the time of filling the application he felt that the convictions would be set aside but agreed that what he did was wrong.

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

C. Complaints Proposed to Offer Consent Agreement:

1. P17-043, Wendell Sommers, Non-Registrant, and CRESurveys LTD, Non-Registrant Firm

Mr. Everroad asked why the penalty was so high in this matter. Staff informed the Board that the penalty reflects the number of surveys Respondent, a non-registrant, completed over five years. Dr. Angel asked if there was an issue communicating with Respondent; Staff indicated there was an issue. Dr. Angel wondered if it was better to send the matter to hearing. Staff indicated they wished for a shorter time period in which Respondent can sign the proposed consent agreement.

Mr. Foose moved and Mr. Noel seconded to offer the proposed consent agreement and move to formal hearing if not signed within 14 days; motion carried.

2. AL17-002, John F. Affeld, Alarm Controlling Person #63093, and Security Signal Devices, Inc., Alarm Business #19895

Respondent, John F. Affeld, appeared telephonically. Respondent stated that he was unaware of the new laws that placed alarm agents under the jurisdiction of the Board and asked that the case be dismissed.

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

After the vote, Respondent asked how was he in violation if he did not know the law had been changed. Ms. Cornelius informed the Respondent that the law changed in 2013, was publicly noticed and it is the responsibility of alarm agents to know that licensure is a requirement to practice in Arizona. Respondent indicated he was never noticed. Dr. Angel reiterated Ms. Cornelius's points.

3. P16-070, Dennis Fox, P.E. (Electrical) #23794, and RMI Engineering LLC, Firm #18803

Dr. Angel moved and Mr. Everroad seconded to offer the proposed consent agreement but increase the penalty to \$1000 and add aiding and abetting under the Findings of Facts and Conclusions of Law; motion carried.

4. P17-008, Lawrence Foppe, P.E. (Civil) #51317

Respondent, Lawrence Foppe, appeared before the Board with counsel, Roger Spencer. Alleger, Steve Sheldon, appeared before the Board.

Mr. Spencer informed the Board that Respondent wished to reject the proposed consent agreement. Respondent informed the Board that while he is a licensed engineer

registered in Arizona, he has not practiced in over seven years and is now a restaurant owner. Mr. Spencer argued that Respondent did not violate A.R.S. § 32-128(C)(5) since many of the elements of that violation were not present and thus the allegations brought forth against Respondent were without merit. Mr. Spencer also argued that the emails between Respondent and Mr. Sheldon did not weaken his previous argument.

Mr. Jones asked Respondent why he didn't pay Mr. Sheldon. Respondent replied that Mr. Sheldon did not complete the job within the scope of work required. Mr. Marley opined that the relationship between Respondent and Mr. Sheldon was between a customer and vendor and outside of the Board's jurisdiction. Dr. Angel agreed. Dr. Angel asked Respondent who had prepared his civil drawings. Respondent stated no civil drawings were drafted since the restaurant was being renovated. Mr. Jones inquired about the work of the architect hired after Mr. Spencer. Respondent indicated the hired architect drafted the drawing of the hood to meet city fire codes. Dr. Angel expressed his concern that Respondent communicated to Mr. Spencer to proceed with the job but did not give him a chance to fulfill the job, resulting in non-payment. Dr. Angel questioned if these actions were ethical. Mr. Jones questioned Respondent's choice to initially hire a fire engineer and not an architect. Mr. Spencer indicated that Mr. Sheldon was initially hired because of the fire code requirements of the city of Cave Creek.

Mr. Sheldon stated that he brought the claim to the Board because of what he believed to be a lack of ethics on Respondent's part in this matter.

Mr. Foose asked Board members if Respondent, as a civil engineer, could have done the work himself. The other Board members indicated no. Mr. Jones and Dr. Angel opined that the complaint centers on a possible ethics violation and not failure to pay a collaborating professional. Dr. Angel suggested dismissing the case. Mr. Everroad stated that the Board was not limited to discussing this matter with regard to the possible violation of A.R.S. § 32-128(C)(5) and that the original complaint refers to R4-30-301. Dr. Angel expressed his belief that the Respondent's actions were not in violation of R4-30-301. Mr. Noel asked if this was a contractual issue and Dr. Angel stated it was.

Dr. Angel moved and Mr. Marley seconded to dismiss the case; motion carried. Mr. Jones and Mr. Everroad voted nay.

5. P17-023, Craig Smith, Non-Registrant

Respondent, Craig Smith, appeared before the Board with counsel, Chase Hallsey.

Mr. Hallsey asked if the contents of the consent agreement could be negotiated. Mr. Madison asked if Respondent and counsel communicated with staff; Mr. Hallsey stated they had. Dr. Angel commented that he agreed with staff rejecting Respondent's proposed changes to the consent agreement stating that such changes would infer that Respondent committed no wrongdoing.

Dr. Angel opined that the Alleger was careless, allowing others the use of his seal and proposed sending a Letter of Concern to the Alleger; Mr. Foose agreed.

Mr. Foose was concerned about the validity of the Respondent's surveys now recorded with the State. Other Board members informed Mr. Foose that the recorder's office noted that the surveys were not to be used.

Dr. Angel moved and Mr. Foose seconded to send Alleger a Letter of Concern and offer the proposed consent agreement as drafted to Respondent and if not signed in 30 days move case to hearing; motion carried.

6. AL17-006, Smart Family Protection, LLC, Alarm Business #19635

Controlling person, Keith Holland appeared before the Board. Mr. Holland argued to have the penalty fees reduced to the initial amount offered in the first consent agreement. Mr. Foose indicated the current fine was lower than an earlier fine. Ms. Pritzl clarified that the original amount was \$400 but was increased to \$1000. Mr. Holland had proposed an alternate fine of \$500. Mr. Foose asked Mr. Holland if the penalty fee amounts were manageable. Mr. Holland indicated that he was unaware of the cost of investigation. Dr. Angel informed Mr. Holland costs of investigation were usually included in a consent agreement. Dr. Angel reminded the Board that the increase of the previous penalty was because of the possibility of name forgery on an application. Mr. Holland stated it was a misunderstanding and that no forgery took place. However, Mr. Holland then acknowledged that a person other than the applicant had signed the applicant's name.

Mr. Marley moved and Mr. Foose seconded to offer Respondent a consent agreement to pay a civil penalty in the amount of \$500 to be paid within 8 months and pay the cost of investigation in the amount of \$575 to be paid within 8 months, and move to formal hearing if not signed within 30 days; motion carried.

After the vote, Mr. Holland asked how this matter will affect Smart Family Protection's reputation. Ms. Cornelius informed Mr. Holland that the consent agreement is a disciplinary action that the public will be able to find, view, and could use to determine whether to seek services from Smart Family Protection. Dr. Angel opined adding language that Smart Family Protection was now in compliance.

D. Complaints Requiring Board Guidance:

1. P17-055, Christopher Deaton, P.E. (Electrical) #56763

The Board attempted to contact Respondent's counsel telephonically but there was no answer.

Mr. Marley stated that the Missouri Board acted harsher than the Arizona Board would

have acted in the same matter.

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

2. P16-062, Nathan E. Layton, P.E. (Environmental) #45690

Mr. Noel recused himself. Respondent, Nathan Layton, appeared before Board with counsel, Joel Sannes. Alleger, Jeff Bouer, appeared before the Board without counsel. Kevin McDougall (witness) appeared before the Board.

Mr. Foose inquired if the civil lawsuit between the parties had any bearing on the matter before them. Board members indicated it did not.

Mr. Sannes contested the allegation that Respondent removed Mr. Bouer's stamped seal from documents and replaced it with his own. Respondent indicated that the report in question was sealed by him because it was acquired along with Alleger's business and there were difficulties getting Mr. Bouer to seal the project in a timely manner.

Mr. McDougall indicated that Mr. Bouer did the work on the project in question. Mr. Marley asked if design drawings were drafted for this project; Mr. McDougall indicated they had been.

Mr. Bouer opined that Respondent was not as involved in the project as he had indicated in his testimony. Dr. Angel asked Mr. Bouer if he had completed the work on the project prior to the date of acquisition of his business; Mr. Bouer indicated he had. Dr. Angel asked Mr. Bouer why he had not submitted the project until a month after the acquisition. Mr. Bouer indicated that there were many reasons that delayed the submission. Mr. Bouer expressed to the Board that he believed Respondent acted unethically and maliciously towards him after the acquisition of his business and that Respondent failed to pay employees and subcontractors for their October work as per the acquisition contract.

Dr. Angel asked Mr. Bouer if he was an employee of Respondent after the business acquisition; Mr. Bouer indicated he had been. Mr. Bouer produced additional examples of invoices for projects he or his business completed for which Respondent received payment. Mr. Foose inquired about the timeline of the invoices produced. Mr. Bouer indicated when they were produced. Mr. Bouer emphasized to the Board that the issues he brought to the Board were not contractual in nature, but ethical.

Mr. Sannes indicated that the documents before the Board contradicted some of Mr. Bouer's testimony and that an employee's work can be sealed by a supervisor per state rules and statutes.

Dr. Angel indicated that as an employee, Mr. Bouer's work can be signed by a

supervisor and that there was not enough proof to indicate Respondent acted unethically though the results of the civil case between the parties will be a better determinate of any ethical violations. Mr. Foose questioned whether the consent agreement was merited since the conclusions of law were now in question. Mr. Marley indicated that Mr. Bouer completed the work on the project in question before he became an employee of Respondent and thus the project was not directly supervised by Respondent. Mr. Montgomery opined that the project in question could be reviewed independently due to the non-specificity of the project. Mr. Madison stated that it's not uncommon for registrants to seal the projects of others in situations where registrants are new hires or leave a firm. Mr. Everroad suggested dismissing the complaint without prejudice in order to wait for the verdict of the impending civil case. Mr. Marley inquired if registrants can seal the works of other registrants of a different discipline and other Board members indicated they could, but not for public works. Mr. Marley expressed concern that a more diverse disciplinary group of registrants did not work on the project.

Dr. Angel moved and Mr. Everroad seconded to reject the proposed consent agreement and dismiss the current complaint; motion carried. Mr. Marley voted nay.

E. Complaints Proposed for Formal Hearing:

1. P17-012, Carlos Padilla, R.L.S. #46474

Mr. Foose recused himself. Alleger, Marcia Welch, appeared telephonically.

Board members asked Mr. Donald whether it was prudent to send this matter to formal hearing considering Respondent already had cases being heard at the Office of Administrative Hearings. Mr. Donald stated that any cases from this agenda sent to OAH may be withdrawn at a later time, thus the only consequence of sending cases P17-012 and P16-074 to OAH is the administrative costs and time.

Mr. Marley expressed his concern that the cases before OAH have been continued and new complaints against the Registrant are being made and asked if summary suspension for the period up to the verdict of the hearings should be voted on at a later meeting. Ms. Cornelius stated that an emergency meeting for summary suspension could be calendared the following week. Mr. Donald explained that such a meeting could be seen as antagonistic since it laid outside of the enforcement procedure.

The Board connected to Alleger telephonically. Ms. Welch explained that the Respondent was suing her for fees owed for a survey, didn't stamp the survey or submit it to the State, and used questionable business practices; all of this being strenuous and burdensome to Ms. Welch and her family.

Dr. Angel moved and Mr. Montgomery seconded to move the case to formal hearing in front of an Administrative Law Judge and directed staff to set up a Board Meeting for the possible summary suspension of Respondent's registration; motion carried.

2. P16-074, Carlos Padilla, R.L.S. #46474

Mr. Foose recused himself.

Dr. Angel moved and Mr. Montgomery seconded to move the case to formal hearing in front of an Administrative Law Judge and directed staff to set up a Board Meeting for possible summary suspension; motion carried.

3. P17-050, Craig L. Parkinson, R.G. #30843

Mr. Foose moved and Mr. Noel seconded to move the case to formal hearing for revocation in front of an Administrative Law Judge; motion carried.

F. Compliance Monitoring Investigations:

1. P14-035, Ahmad Zarifi, P.E. (Structural) #32008, P.E. (Civil) #41872

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

2. P15-001, William Gilbert, P.E. (Civil) #41931

Respondent, William Gilbert, appeared before the Board. Staff informed the Board that Respondent had complied with all of the terms of the consent agreement. Dr. Angel asked when all the terms had been complied; staff stated January 17, 2017.

Board decided to take no action.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Request for Extension of Licensing Timeframes:

- A. Camp, John Civil Engineer Application #162165

Mr. Foose moved and Mr. Noel seconded to grant applicant's request for extension of licensing timeframes by 30 days; motion carried.

- B. Gamba Gomez, Nancy Civil Engineer Application #162205

Mr. Everroad moved and Dr. Angel seconded to grant applicant's request for extension of licensing timeframes by 60 days; motion carried.

C. Wiggins, Antonie Architect Application #162330

Mr. Marley moved and Mr. Jones seconded to grant applicant's request for extension of licensing timeframes by 60 days; motion

Whether to Grant or Deny Certification after Full Board Review:

D. Henry, Christopher Mechanical Engineer Application #162501

Dr. Angel moved and Mr. Noel seconded to grant application to sit for the PE exam; motion carried.

E. Kravitz, Christopher Geologist Application #162344

Mr. Noel indicated that while the applicant hadn't taken the ASBOG examine his experience qualified him for certification.

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

F. Mohammed, Qays Civil Engineer Application #160661

Mr. Marley moved and Mr. Brady seconded to grant waiver of the FE exam; motion carried.

Criminal History

G. Pendleton, Matthew Alarm Agent Application #161715

Applicant, Matthew Pendleton, appeared before the Board. Applicant explained the circumstances of his conviction and compared them to his current circumstances.

Mr. Jones 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;

Nothing to consider

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.

Nothing to Consider

9. **POLICY MATTERS 3:25**

Review, Consideration, and Possible Action on the following:

A. Proposed Legislation

Ms. Cornelius reported John Glenn, spokesperson of AIA, spoke highly of the Board in an interview with the Capital Times. Ms. Cornelius reported that the legislature has been slow to drop bills but four do stand out, which are:

1. SB 1186 – Proposed to revise Alarm regulations, temporary licenses, and finger print clearance cards. Would expedite certification and renewals of alarm agents.
2. SB 2050 – Proposed to allow courts the ability to subvert regulatory Board judgements
3. SB 2075 – Proposed to consolidate ARRA with DHS
4. SB 1188 – Proposed to grant the DOA the ability to negotiate prices for contracting professionals.

10. **DIRECTOR'S REPORT**

- A. Budget Update – Ms. Cornelius reported that the Governor's office did not alter the Board's proposed budget.
- B. Previous Meeting Follow-Up – Ms. Cornelius reported that the Governor's office has put up a website for the public to submit complaints against agency rules. The Board is currently revising its rules.
- C. Director's Meetings – Ms. Cornelius met with AIA and other stakeholders. Tina Litteral met with the Goldwater Institute and learned that it does not have any plans for deregulation legislation this session. Ms. Cornelius and Ms. Pritzl met with the Governor's new regulatory affairs policy advisor and argued for moving alarm agents to DPS.
- D. Statistics Review

11. **BOARD CHAIR'S REPORT** – Nothing to consider

12. **STANDING COMMITTEE REPORTS**

- A. Legislation and Rules Committee – Next meeting February 21, 2017
- B. Home Inspector Rules and Standards Committee – Meeting postponed

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG – There will be a test writer symposium in Flagstaff in February.
- B. CLARB – Ms. Cornelius will attend the member board executive’s committee next week in New York.
- C. NCARB – Regional summit in March.
- D. NCEES – Atlanta Board President’s Meeting in February.

14. FUTURE BOARD MEETINGS – February 28, 2017

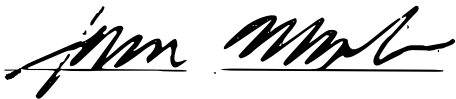
15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

Discussed Plumbing (ME) Section of Exam

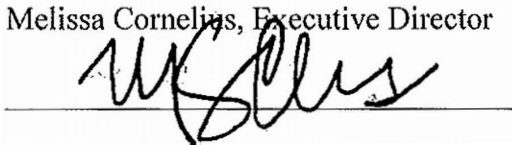
Possible meeting for February 2, 2017 regarding Padilla cases.

16. MEETING ADJOURNMENT – 1:31pm

Jason Madison Chairman

Handwritten signature of Jason Madison in black ink, written over a horizontal line.

Melissa Cornelius, Executive Director

Handwritten signature of Melissa Cornelius in black ink, written over a horizontal line.