

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

Tuesday, August 23, 2016
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER** – 9:04am

2. **ROLL CALL**

Board Members Present: Dr. Alejandro Angel, LeRoy Brady, Neal Jones, Jason Foose, Edward Marley, Stephen Noel. **Board Members Absent:** Jason Madison. **Staff:** Melissa Cornelius, Douglas Parlin, Dolly Lucero, 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 July 26, 2016 Board meeting minutes.

Dr. Angel moved and Mr. Marley seconded to approve minutes. However, Dr. Angel wanted to verify that agenda item 6c4 correctly stated Respondent would be required to complete five peer reviews per the consent agreement; motion carried.

After reviewing the July 23, 2016 audio minutes and the new Consent Agreement, staff verified that 6c4 stated Respondent would be required to complete five peer reviews.

B. Approve, modify and/or reject June 28, 2016 Executive Session meeting minutes.

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

C. Approve, modify and/or reject July 26, 2016 Executive Session meeting minutes.

Dr. Angel moved and Mr. Marley 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 Administrative Law Judge Decision.

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

Mr. Brady opened the hearing. Roll call was taken and a quorum established. Michael Raine, A.A.G., appeared on behalf of the State. Seth Hargraves, A.A.G, was present to advise the Board. Respondent, Mr. Nau, appeared before the Board on his own behalf.

Mr. Raine argued that the evidence presented at the formal hearing demonstrated that Respondent practiced land surveying without registration and asked the Board to accept the Administrative Law Judge's recommended decision and order and impose a fine on Respondent in the amount of \$25,000. In rebuttal, Mr. Nau tried to argue additional information not presented at the formal hearing. However, Mr. Brady commented that new information couldn't be introduced at that time. In rebuttal, Mr. Raine stated that it may be possible for Mr. Nau to request another hearing to present new information but could not present new information at that time and reiterated to the Board his request to accept the A.L.J.'s decision. No further discussion.

In order to protect the public from unqualified and unlicensed practitioners, Dr. Angel motioned and Mr. Marley seconded to adopt the Administrative Law Judge's Findings of Fact, adopt the proposed Conclusions of Law, and accept the recommended order of the A.L.J., but reduce the civil penalty amount from \$25,000 to \$10,000 and specify that the penalty be paid over an eighteen-month period; motion carried with Mr. Foose opposed.

2. Case No. HI14-049, Dwayne Franklin, Home Inspector, #39204

Mr. Brady opened the hearing. Roll call was taken and a quorum established. Michael Raine, A.A.G., appeared on behalf of the State. Mr. Hargraves, A.A.G., was present to advise Board. Respondent, Mr. Franklin, appeared before the Board on his own behalf.

Mr. Raine asked the Board to accept the A.L.J.'s recommended decision and order with some minor modifications to the Conclusions of Law, which included:

1. Editing a typo in paragraph two.
2. Modifying the third paragraph to include language about Respondent's untimeliness of payments.
3. Adding language to allow Respondent to be peer reviewed while suspended.

In rebuttal, Mr. Franklin explained to the Board that he had found a peer reviewer and asked the Board to allow him the ability to practice under peer review if placed under

suspension. Mr. Raine did not offer rebuttal. No further discussion.

Mr. Marley moved and Mr. Foose seconded to adopt the proposed Findings of Fact; motion carried.

Mr. Marely moved and Mr. Noel seconded to adopt the proposed Conclusions of Law as drafted with the typo corrected in paragraph two; motion carried.

Dr. Angel moved and Mr. Marley seconded to accept the recommended order of the A.L.J. but modify the decision to allow Respondent to complete required peer reviews under the current peer review process while suspended; motion carried.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI16-022, Dennis Demke, Non-Registrant

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

2. HI16-025, Edward Fifer, C.H.I. #38566

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

3. P16-002, Chad R. Erickson, R.L.S. #40590

Mr. Foose recused himself. Dr. Angel asked the A.A.G.s and Staff why additional information was required of Respondent to pursue this case when it appeared enough evidence existed. Mr. Raine opined that enough evidence existed but in a minimum sense and argued for obtaining additional documents from Respondent. Mr. Raine also suggested pursuing contempt of court if Mr. Erickson failed to reply to a subpoena. Mr. Kraemer explained to the Board that the evidence Dr. Angel was referring to was part of a matter settled via a letter of concern and could not be used to pursue this matter. Furthermore, Mr. Kraemer explained that staff could not locate evidence for its investigation and asked that the case be closed, not dismissed. Mr. Parlin informed the Board that Idaho had revoked Mr. Erickson's registration.

Dr. Angel moved and Mr. Marely seconded to direct staff to conduct further investigation and consider that Respondent's advertisement for Discovery Report services in a newspaper while Respondent's firm was not registered as evidence of practice through a Non-Registrant firm; motion carried.

B. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI16-024, Kenneth Austin, C.H.I. #50444

Dr. Angel moved and Mr. Marley seconded to consolidate items B1 and B2, and accept the signed Consent Agreements; motion carried.

2. P16-057, Constantine Sakellar, R.A. #12826, and Sakellar PLLC, Firm #11763

Mr. Marley informed the Board that Mr. Sakellar is a competitor of his but he felt that he can be fair and impartial in this manner.

Dr. Angel moved and Mr. Marley seconded to consolidate items B1 and B2, and accept the signed Consent Agreements; motion carried.

C. Complaints Proposed to Offer Consent Agreement:

1. P16-073, David Keith, Non-Registrant and DSK Design, LLC, Non-Registrant Firm

Mr. Keith appeared before the Board. Mr. Keith explained to the Board that it was not his or DSK Design's intention to deceive the public. Mr. Keith asked the Board if he could modify the Consent Agreement to allow him to use "architecture/architectural services" for advertising and have the \$250 civil penalty dismissed. The Board indicated that the use of "architecture/architectural services" may mislead the public and that the civil penalty should not be dismissed.

Mr. Marley moved and Mr. Jones seconded to adopt the Consent Agreement as drafted; motion carried.

D. Complaints Requiring Board Guidance:

1. P17-002, Boyd Schneiderwent, R.L.S. #17594

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

2. P17-003, Alan Lankford, P.E. (Mechanical) #41137

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

3. P15-049, Timothy Evans, R.L.S. #50988

Mr. Evans appeared before the Board. The Board had requested an independent assessment be made regarding the complaint. Dr. Angel believed this assessment indicated that the Consent Agreement was insufficient. Mr. Foose disagreed and indicated that minimum standards were met and the Consent Agreement was therefore

sufficient. Mr. Evans expressed to the Board that he believed he met the minimum standards and wanted the Board to accept the Consent Agreement. Mr. Foose moved and Mr. Marley seconded to accept the Consent Agreement; motion carried with Dr. Angel opposed.

E. Complaints Proposed for Summary Suspension of Registration:

1. A13-015, A13-018, P14-082, M13-002, M13-033, P15-045 and P15-090, Carlos A. Padilla, R.L.S. #46474

Mr. Foose recused himself. Mr. Marley moved and Mr. Noel seconded to enter Executive Session to obtain legal advice; motion carried. Board entered executive session at 10:48 am. After receiving legal advice, the Board returned to open session at 11:21am.

Respondent, Carlos A. Padilla, was not present. Mr. Padilla's counsel, Stephen Gonzalez, attended on his behalf telephonically. Mr. Gonzalez asked the Board for a continuation of the case based upon his argument that there was a lack of notice given to Mr. Padilla and a lack of basis and authority for a summary suspension. Mr. Raine informed Mr. Gonzalez that the Board Meeting and previous investigative meetings were not formal hearings and that the Board had authority to suspend Mr. Padilla's registration without formal hearing per A.R.S § 41-1092.11. Mr. Raine further explained that the Board was only discussing summary suspension as an option to a formal hearing.

Dr. Angel expressed his concern that the Respondent mislead and harmed the public, lacked technical knowledge and skill to perform surveys appropriately, and had been uncooperative with the Board. He therefore felt it was prudent to have a hearing as soon as possible. Mr. Raine stated a hearing could take place as early as in six weeks but other factors could affect the hearing date. Dr. Angel asked Mr. Raine if it was possible to add language to a motion to allow a special meeting to take place if a date could not be settled upon in a timely manner. Mr. Raine indicated that it was possible.

Dr. Angel moved and Mr. Noel seconded that the parties schedule a formal hearing before the end of October and if Board staff has not received a confirmation of a decided date within two weeks, the Board would convene under special circumstances to discuss further action; motion carried.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Grant or Deny Registration:

Criminal History

A. Powers, Talon

Home Inspector Application #160794

Mr. Powers appeared before the Board and answered questions regarding his criminal history. Background investigator Garvy Biggers appeared before the Board to help answer any questions regarding Mr. Powers background investigation.

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

B. Ramirez, Gabriel

Alarm Agent Application #161051

Dr. Angel moved and Mr. Foose seconded to grant 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;

No information to review. No further discussion.

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.

List available for public review upon request.

9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

A. Integrating the initial two-year renewal fee into the application fee for alarm agents.

Board's suggested resolution was as follows: Alarm agent applicants will send in their application fee with their application. If the application is approved, Staff will mail applicant a notice of approval with a request for the \$130 registration fee. Staff will mail applicant's photo ID upon receipt of registration fee.

10. DIRECTOR'S REPORT

A. Budget Update – Ms. Cornelius reported that the Board's budget was submitted timely to ADOA and a special appropriation was requested to pay for ongoing maintenance on the new computer system.

B. Previous Meeting Follow- Ms. Cornelius reported the following:

The AG's office has not yet sent the requested formal opinion interpreting HB2613; the new computer system completion date is scheduled for May 12, 2017; pending background checks, the governor has appointed Andrew Everroad and Eugene Montgomery to fill two of three Board vacancies; Psychometrician Jack Warner was invited to lead a Subject Matter Expert meeting on October 22, 2016 at the Board's office to revise the Arizona State Specific Land Surveyor Examination; as of August 6, 2016 the Board no longer regulates the practice of assaying, remediation specialists or the Clandestine Drug Laboratory Remediation; and, approximately \$255,000 was transferred from the BTR Enforcement Fund to the ADEQ Hazardous Waste Fund for use in cleaning up contaminated properties in Arizona.

C. Director's Meetings – Ms. Cornelius reported the following:

Patrice Pritzl and she met with the company ADOA hired to conduct the Cost/Benefit analysis on Thursday, August 4, 2016, to answer basic questions about Board functions; Two Staff members, Liliana Ruiz and Andrew Puccino, were promoted within the office and a new front desk staff member will be hired; Michael Raine, the Board's assigned A.A.G., has been reassigned and will no longer be representing the Board. He will still prosecute the formal hearings scheduled at OAH; and, the Board will utilize an ASU Law Student, Casey Ball, at the office.

11. BOARD CHAIR'S REPORT

Mr. Brady will remain Chairman of the Board.

12. STANDING COMMITTEE REPORTS

A. Legislation and Rules Committee

Mr. Brady opined that the August 18, 2016 L&R Committee Meeting was successful. Stakeholders were well represented. A follow up meeting is scheduled for October 4, 2016.

B. Home Inspector Rules and Standards Committee

No meeting scheduled at this time. Board asked Staff to have a follow up made.

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

A. ASBOG – Annual meeting in Kansas, in November, 2016.

B. CLARB – Annual meeting Philadelphia, Pennsylvania in September, 2016.

C. NCARB – Melissa will attend the Ethics Committee meeting in Denver, August 25-27, 2016. Annual meeting in Columbus, Ohio in October.

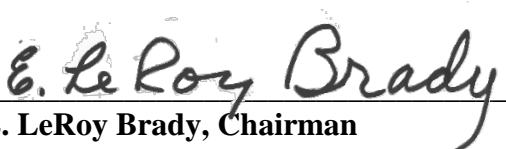
D. NCEES – Annual meeting in Indianapolis, Indiana this week.

14. **FUTURE BOARD MEETINGS** – Tuesday, September 27, 2016

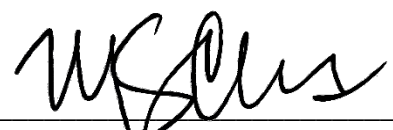
15. **SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS**

Ms. Cornelius suggested voting for officers.

16. **MEETING ADJOURNMENT – 12:15 pm**



E. LeRoy Brady, Chairman



Melissa Cornelius, Executive Director