

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

Tuesday, September 27, 2016
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER – 9:06**

2. **ROLL CALL**

Board members Present: Dr. Alejandro Angel, LeRoy Brady, Neal Jones, Jason Foose, Edward Marley, Stephen Noel, Andrew Everroad, Eugene Montgomery, Jason Madison.

Staff Present: Melissa Cornelius, Patrice Pritzl, Douglas Parlin, Michelle Fleming, and Kurt Winter

3. **CALL TO THE PUBLIC**

John Owens appeared before the Board. Mr. Owens communicated to the Board that he has waited 17 weeks for his application to be processed and would like it expedited. Board members requested that Staff discuss the matter further with Mr. Owens. Ms. Fleming and Ms. Pritzl left the room with Mr. Owens, identified the problem, corrected it and issued his license.

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

A. Approve, modify and/or reject August 23, 2016 Board meeting minutes.

Mr. Marley moved and Mr. Foose seconded to approve minutes but asked staff for clarification on items 6B1 and 6B2; motion carried. Mr. Madison abstained.

Staff verified that 6B1 and 6B2 were correctly consolidated and corrected the minutes to reflect Mr. Marley had stated for the record that the respondent of 6B2 was a competitor of his but he felt he could be fair and impartial in the matter.

B. Approve, modify and/or reject August 23, 2016 Executive Session meeting minutes.

Angel moved and Mr. Madison seconded to approve minutes; motion carried. Mr. Foose and Mr. Madison abstained.

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. 16F-M001-BTR; P15-001 William Gilbert, P.E. (Structural) #41931

Mr. Brady opened the matter. 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. Gilbert, appeared before the Board on his own behalf.

Mr. Raine argued that the evidence presented at the formal hearing demonstrated that Respondent received payment for services but failed to perform said services or refund complainant's payment. Mr. Raine asked the Board to accept the Administrative Law Judge's recommended decision and order, impose an order of restitution in the amount of \$5207.00 and revoke Respondent's license. In rebuttal, Mr. Gilbert communicated to the Board that he wished to remain registered and was willing to do what he could to settle the matter.

Mr. Noel moved and Mr. Foose seconded to adopt the Administrative Law Judge's Findings of Fact; motion carried.

Dr. Angel asked Respondent if he had received emails from the Complainant and the Respondent stated not to his knowledge but acknowledged that he did receive voice messages to which he did not respond. Dr. Angel asked Respondent if he was aware that he had taken the payment, not done the work, and did not take the complainant's calls. Respondent admitted that he was aware.

Dr. Angel moved and Mr. Marley seconded to adopt the proposed Conclusions of Law but modify numeral 1 to read "The Board is the duly constituted authority for the regulation and control of the practices of Engineering." Motion passed.

Dr. Angel moved and Mr. Foose seconded to modify the ALJ' recommendation and entered to include the following order: revoke Respondent's license; stay the revocation to allow Respondent to pay restitution to the complainant in the amount of \$5207.00 and provide confirmation of payment to the Board within 30 days; pay a civil penalty in the amount of \$2000.00 within six months; pay the cost of investigation in the amount of \$1454.00 within six months; eight hours of staff approved ethics training within 60 days; and serve a 60-day suspension; motion carried.

Respondent informed Board and Staff of a typo in his address. Letter sent to respondent read "42B" for his box number. It should read "428".

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. P17-007, Josh Oehler, R.A. #16899

Respondent appeared before the Board. Dr. Angel asked Mr. Hunt if Respondent's missing emails were available from Respondent's Internet Provider; Mr. Hunt indicated they were not. Respondent also stated the emails were not available to him.

Mr. Marley moved and Mr. Jones seconded to send a Letter of Concern to Respondent.

B. Complaints Proposed for Resolution with Signed Consent Agreements:

1. P16-053, Jerry Wier, R.L.S. #32237

Mr. Madison moved and Mr. Marley seconded to accept the signed Consent Agreement; motion carried.

2. P16-058, Michael Frank, Non-Registrant and Frank Civil Consulting, Non-Registrant Firm

Mr. Madison moved and Mr. Marley seconded to accept the signed Consent Agreement; motion carried.

3. P17-015, Darrin Skonieczny, P.E. (Civil) #50899

Board members discussed their concerns regarding Respondent's truthfulness and possible history of alcohol abuse.

Mr. Marley moved and Mr. Montgomery seconded to table the matter for next month and invite Respondent to appear before the Board, physically or telephonically, to explain his past and what has changed since his conviction; motion passed.

4. H116-008, Lynn Reber, C.H.I. #40415

Mr. Madison moved and Mr. Marley seconded to accept the signed Consent Agreement; motion carried.

5. P17-014, William Carnell, R.A. #26986

Respondent, William Carnell, appeared before the Board. Mr. Marley stated that he and Mr. Carnell are competitors but Mr. Marley believed he could be fair and impartial in this matter.

Mr. Noel moved and Mr. Neal seconded to accept the signed Consent Agreement; motion carried.

C. Complaints Proposed to Offer Consent Agreement:

1. P16-069, Michael Jorgensen, R.A. #50668 and MDJ Studios, Firm Registration #19900

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

2. P16-040, Adaptive Architecture and Planning, L.L.C., Non-Registrant Firm

Respondent, Rob Burkhart, appeared before the Board. Respondent communicated to Board that he provided support to professionals. He argued that he had never presented himself as a registered professional.

Staff indicated that all three reviewing EAC members agreed that Respondent violated the Board's statutes. Dr. Angel stated that the Respondent's submitted plans were not part of the Board Packet and inquired if they were available; Staff indicated they were and that all EAC members had reviewed them prior to making their decisions.

Dr. Angel asked Respondent to clarify how he worked with his clients. Respondent stated he worked under contract; mostly with a registered professional, occasionally with private individuals and small firms, rarely, if ever, with large firms.

Dr. Angel stated he had three concerns, which included: Respondent's firm name was deceptive, the list of services Respondent provided to staff included services that a registered architect provides as defined by statute, and use of the word architect, and similar nomenclature, to describe his firm and the services provided were deceptive.

Mr. Foose and Mr. Noel asked staff to clarify how this case came to their attention. Mr. Parlin stated that it came about as a derivative of other cases that have come to Staffs attention.

Mr. Foose moved and Mr. Marley seconded to adopt the Consent Agreement as drafted and move to hearing if not signed within 30 days; motion carried.

3. P17-009, Najib Monsif, P.E. (Civil) #47525 and Summit Structural Engineering, Inc., Firm Registration #19894

Dr. Angel moved and Mr. Madison seconded to approve the Consent Agreement but send Respondent a Letter of Concern instead of a Letter of Reprimand reminding the Respondent that he needs to know and follow Board law and ordered that Respondent pay a civil penalty and investigation costs for his failure to register his firm and move to hearing if not signed within 30 days; motion carried.

Board directed staff to communicate with registrants the need to register their professional firms.

4. P17-010, Andrew Boubel, R.A. # 35853 and Desert Ridge Design, L.L.C. Firm Registration #19893

Mr. Everroad stated that he had worked with the Registrant before, but could remain fair and impartial.

Respondent appeared before the Board. Respondent stated he registered as a professional but was unaware that his firm required registration. Upon becoming aware, Respondent immediately registered his firm with the Board. Registrant stated the BTR is in place to prevent false professionals from performing professional services and penalize them, not penalize true professionals. Respondent wished to pay the \$250 administrative penalty, not to pay the \$270 investigative cost and receive a written statement indicating closure of the matter.

Dr. Angel moved and Mr. Marley seconded to approve the Consent Agreement but issue Respondent a Letter of Concern reminding him to follow the Board's statutes and rules instead of a Letter of Reprimand; motion carried.

After motion carried, Respondent made it known that he wished to have the Consent Agreement language slightly modified. Dr. Angel stated the Board wished to emphasize the Consent Agreement fees. Respondent stated he had no issue with the fees, only the language. Mr. Raine commented that small changes wouldn't require Board involvement. Mr. Marley opined that the Board should review the Consent Agreement if changes were made.

D. Complaints Requiring Board Guidance:

1. P17-001, David Mwewa, P.E. (Civil) #44715

Dr. Angel recused himself.

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

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Whether to Authorize Examination Upon Board Review:

- A. Mohammed, Qays Civil Engineer Application #160661

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 review. No 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.

Nothing to Review. No discussion.

9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

- A. ADOA's September 1, 2016 "study relating to the transfer of all nonhealth regulatory Boards and Occupational licenses issued by state agencies to a new licensing and regulatory division."

Ms. Cornelius notified the Board of the Capital Times's request for the Board's opinion regarding the ADOA's study. She informed the Board of the following: the ADOA plans to raise capital mall rents to renovate other mall buildings with the possible intent, among others, of moving Board and Staff to a renovated facility; the space currently occupied by Board and Staff is rent to own and therefore it benefits the State to continue paying the rent; there is no current appropriation of funds to renovate a possible future site for Board and Staff; there is no benefit for Board and Staff to pay for and work within the study recommended impaired practitioner program.

Dr. Angel proposed sending a letter communicating the Board's opinion of the study and its contents to the legislature and to include the importance of EAC volunteers and the possibility of losing them if the Board were under the ADOA, the importance of continuing education of Board members, and the Board's self-sufficiency. Mr. Montgomery stated that the report did not present any potential risks to the proposed changes and opined that any study of this nature required both benefits and risks to be presented. Ms. Cornelius agreed and added that the report failed to state the benefits of the current system. Mr. Foose stated that the BTR is fulfilling a function to the state by occupying and paying rent in its current location as well as paying 10% of its revenue to the State. Mr. Jones stated that ADOA needed to present the costs of moving the Board and Staff, which is not included in the report and questioned if the costs were considered. Dr. Angel raised the point of losing the computer contract and costs associated with it if the Board were moved. Mr. Foose opined that the proposed triage system would not be

beneficial since the Board has a similar system already in place and would therefore only create an extra administrative layer and added expense if implemented. Mr. Brady and Mr. Foose showed concern that the study compared the Arizona Board to other state Boards in a subjective manner.

Ms. Cornelius volunteered to compose the letter to ADOA in response to the study and communicated that she would include the Board's observations. Board suggested Ms. Cornelius state 'a statement is forthcoming' if the Capital Times requested information regarding the Board's opinion. Mr. Noel suggested the inclusion of Board contributions in the letter. Ms. Cornelius agreed. Dr. Angel promoted distributing the letter to stakeholders, legislators, media outlets and others.

- B. The consistent criteria for crediting education and work experience when evaluating applications for exam and registration; specifically, for:
 - i) Humanities classes or other subjects not related to the profession;
 - ii) Foreign applicants with an ABET Master's Degree
 - iii) Foreign credentials evaluations
 - iv) And, whether to pursue a rulemaking to clarify A.A.C. R4-30-208 regarding "school or curriculum approved by the Board," meaning ABET, NAAB or LAAB accreditation.

Dr. Angel and Mr. Madison informed the Board that there is no formalized evaluation method concerning the above four points and discussed the matter. Board suggested creating a substantive policy statement for the present and pursue rule changes later to formalize methods.

- C. Establishing the Calendar for the Board's Meetings in 2017.

Board members suggested changing the proposed calendar to include meetings on the fourth Tuesday of every month with the exception of November, no Board meeting that month, and December, meeting will take place on December 12.

10. DIRECTOR'S REPORT

- A. Budget Update

Ms. Cornelius reported that ADOA recommended that the Board purchase new laptops. The Board decided to upgrade laptops but keep the size the same (15.4" screen).

- B. Previous Meeting Follow-Up

Ms. Cornelius reported the following: the AG opinion regarding the conflict between the new statutes defining a trained geologist and the Board's responsibility to prevent non-registrants from performing registrant services is forthcoming and staff had successfully used Facebook to post highlights of the October CLARB meeting and acknowledged the passing of State Geologist Lee Allison.

C. Director's Meetings

Ms. Cornelius reported her and Staff's positive experiences at the September CLEAR meeting in Portland and her impressions of the images of Board members and Staff at September's CLARB meeting in Philadelphia.

D. Statistics Review

Nothing discussed.

11. BOARD CHAIR'S REPORT

Mr. Brady discussed his attendance of the September, 2016 CLARB meeting. Topics at the meeting included: "Defend Adapt Innovate", Strategic Planning, trans-regulation, model law updates, Arizona successes stories, and presenting the Arizona Board's relevancy program.

12. STANDING COMMITTEE REPORTS

A. Legislation and Rules Committee

The next meeting will take place on October 4, 2016.

B. Home Inspector Rules and Standards Committee

The next meeting will take place on October 18, 2016.

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

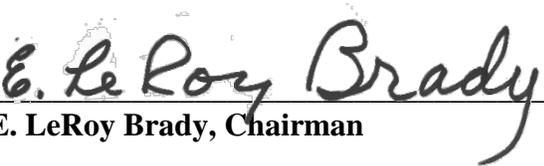
- A. ASBOG – Annual meeting in Lawrence, Kansas November, 2016.
- B. CLARB – Meeting took place in September in Philadelphia. Ms. Cornelius reported she made three presentations at the meeting.
- C. NCARB – Board Presidents Meeting in Columbus, Ohio in October. Ms. Cornelius reported NCARB is changing its exam from 4.0 to 5.0, but will allow exam takers to either version for an 18-month period to ease into the new version.
- D. NCEES – Meeting took place in September in Indianapolis. Dr. Angel reported that NCEES did not keep records after migrating to a new computer system, creating a situation where registrants are having difficulties verifying their records. Dr. Angel reported the NCEES decision to change the costs of the FE and PE exams and switching the exams to a computer based system.

14. **FUTURE BOARD MEETINGS** – Tuesday, October 25, 2016

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

Review Ms. Cornelius's letter to ADOA 9(a) and the substantive policy changes 9(b).

16. **MEETING ADJOURNMENT – 12:18pm**



E. LeRoy Brady, Chairman



Melissa Cornelius, Executive Director