

MINUTES

Arizona State Board of Technical Registration
LEGISLATION AND RULES COMMITTEE
1110 W. Washington Street, Suite 240
Phoenix, Arizona 85007
Tuesday, March 12, 2019 –8:30 A.M.

1. CALL TO ORDER – 9:05am

2. **ROLL CALL – Present:** LeRoy Brady, Jason Foose (appeared telephonically), William Greenslade, Edward Marley, Peter Leeds and Eugene Montgomery

Not Present: Robert Stanley

Staff: Melissa Cornelius, Patrice Pritzl, Robert Stam, Douglas Parlin, Kurt Winter

AAG: Scott Donald

3. CALL TO THE PUBLIC

No one appeared before the Board.

4. ADOPTION OF MINUTES

Review, Consideration and Possible Action of the following:

A. Approve, modify and/or reject October 16, 2018 L&R Committee minutes.

Mr. Brady moved and Mr. Leeds seconded to approve the minutes; motion carried. Mr. Montgomery abstained.

5. REVIEW, DISCUSSION AND POSSIBLE ACTION ON THE FOLLOWING:

A. Creating a new statute allowing the Board to retain jurisdiction over licenses that expire

Ms. Cornelius explained that because the Board lost jurisdiction over registrants after the Board cancelled them, the Board could not pursue already initiated hearings against cancelled respondents.

Mr. Leeds asked what the benefits of the Board retaining jurisdiction were over cancelled registrants. Ms. Cornelius answered that the Board would be able to pursue any pending hearings, which was a better outcome for public safety, health and welfare. Committee members expressed their support for the drafting of a statute. Mr. Leeds asked if there would be, hypothetically, a statute of limitations for these cases. Mr. Donald answered that there was not a statute of limitations in the same sense as a criminal case for Board cases. Mr. Marley stated that, hypothetically, the Board would hold jurisdiction over the registrant until they adjudicated their case. Mr. Foose asked if the Board should waive a respondent's fee for renewal in order to help prevent their registration from lapsing. Mr.

Donald stated that registrants could take advantage of the waiver with little or no benefit to the Board.

Mr. Brady moved and Mr. Greenslade seconded to direct staff to draft language to review at the next meeting; motion carried unanimously.

B. Creating a new statute allowing the Board to issue Interim Orders for chemical dependency and psychological/competency to practice evaluations

Ms. Cornelius explained that issues regarding chemical dependency and psychological competency of applicants and registrants have been coming up recently, that the Board does not have the tools to adequately deal with them and so she asked the Committee for their opinions.

Mr. Marley asked how the Board would deal with HIPAA. Ms. Pritzl answered that management would train staff to handle medical records, staff would need to create a record series to guarantee confidentiality of medical records and the Board would need to enter executive session when any such record was discussed in the course of an open meeting. Mr. Marley expressed his concern that Board Members, who were non-medical professionals, could determine that an individual was required to take a psychological test. Ms. Cornelius explained that the Board would not be making medical evaluations, they would order an individual to obtain a medical evaluation from a medical professional and later the Board could review the evaluation to help them draft a consent agreement. Mr. Foose opined that the Board would be overextending itself if it were to order individuals to undergo a medical evaluation.

Agendized for next meeting.

C. Amending our statute to require a specific number of years to pass after a license revocation before accepting new applications?

Ms. Cornelius explained that currently a revoked registrant could re-apply as a new applicant immediately after revocation and asked the Committee to consider updating Board statutes to mandate that revoked registrants must wait a specified period before reapplying.

Mr. Leeds asked if the Board could deny an application because a Board revoked the applicant. Mr. Donald answered 'no,' but the Board could consider the revocation when making a decision whether to grant registration. Mr. Greenslade opined that there were few benefits to passing legislation in this regard and there were possible consequences since it could appear as if the Board was preventing people from being registered. Staff asked if the Board could add language to a Board Order specifying respondent could not reapply for a specific period. Mr. Donald answered 'yes,' but suggested the period before reapplying be short. Mr. Marley opined not pursuing this legislation because the passage of time after revocation was not important, what was important was whether the respondent had shown some form of remediation to the Board.

No action taken.

Mr. Brady left the meeting at 11:11am.

- D. Should the Board require professionals to write their registration expiration date when applying their seal? The Board changed this rule in August 2018 to its current form.

Ms. Cornelius explained that the Board's rule change prompted questions from registrants since towns and cities in Arizona could still require them to write their registration expiration date when applying their seal even though the state does not.

Mr. Marley explained that the registration expiration date was confusing municipalities who thought sealed documents were expired and he opined keeping the rule in its current form. Mr. Foose opined that the cities and towns requiring registrants to write their registration expiration date were overreaching with their authority because the Board had jurisdiction over seals, not the cities and town.

No action taken.

- E. Should the Board pursue moving Alarm Agents, Controlling Persons and Alarm Businesses to DPS?

Ms. Cornelius explained that the alarm industry in other states was under the jurisdiction of their DPS equivalent and argued that it made sense to move the alarm industry to DPS. Committee members agreed that the alarm industry should be under the jurisdiction of DPS.

Mr. Leeds moved and Mr. Montgomery seconded to recommend to the Board moving Alarm Agents, Controlling Persons and Alarm Businesses to DPS; motion carried unanimously.

- F. Should a firm designate a principal for each discipline?

Mr. Marley stated that not every registrant in a firm would necessarily be a principal. Mr. Montgomery suggested that the registrant of record and principal should be separate, but known, entities of a firm. Mr. Marley suggested adding language to the Board rules and statutes differentiating the registrant of record, who was responsible for the work of a specific professional service the firm provided, from principal, who was responsible for the professional services the firm provided overall. Ms. Cornelius stated she would consider language revisions in her review of firm rules and statutes.

No action taken.

- G. Question from the Public: Do roofing designs on non new construction (reroofing) fall under the jurisdiction of AZBTR as outlined in ARS 32-143?

Ron Gibbons, Jerry Brown and Duanu Yourko appeared before the Committee.

Mr. Brown asked the Committee to clarify whether they considered roof maintenance and updating design work required a registrant to seal.

Mr. Leeds asked if this was a SFB (Schools Facility Board) issue. Mr. Brown answered 'yes.' Mr. Leeds asked if there were any structural changes to the roofs. Mr. Brown answered 'no.' Mr. Montgomery asked if there were a like-kind change to the roofs. Mr. Brown answered 'no.' Mr. Leeds asked if the changes to the roofs increased the weight of the roofs. Mr. Brown answered 'no.' Mr. Marley stated that the SFB could require that a registrant be in control of a project and that he was hesitant to define what was design and maintenance. Mr. Leeds opined that Mr. Brown and company should be discussing this issue with SFB over their definition of 'design,' and not with the BTR. Mr. Brown indicated that they had, but the SFB fell back to the BTR's definition of 'design.' Mr. Donald stated that the Committee and the Board could not make a legal opinion regarding the definition of 'design' and 'maintenance;' they could only make a determination of which occurred when reviewing a case. Mr. Winter asked if the Board could issue a substantive policy statement. Mr. Donald answered that yes the Board could issue a substantive policy statement but future Boards were not bound to the current Board's interpretation of the Rules and Statutes. Mr. Leeds asked if a substantive policy statement could work in the intermediary if the Board chose to update the rules or statutes. Mr. Donald answered that substantive policy statements were only guidelines and the Board may at any time act upon a matter differently than highlighted in a policy statement. Mr. Marley cautioned against creating policies, rules and statutes to 'fix' a single issue and that Mr. Brown and company should address this question to the SFB. Mr. Leeds suggested inviting SFB to a future L&R meeting to discuss this issue.

Committee asked staff to communicate with SFB to attend the next L&R meeting to further discuss this issue.

- H. Question from the Public: How can a firm have a principal that is not an employee of the firm? -or- Does the principal of a firm as defined under ARS 32-141(A) need to be an owner of that firm in order to directly supervise bona fide employees as defined under R4-30-101(3)? -or- Can a contracted employee/registrant be a principal of a firm?

Jerry Plank appeared before the Board.

Mr. Plank explained that the Board's rules and statutes regarding firms and firm registration do not require that the owner of a firm be a registrant nor do they require that the principal of the firm be an employee of that firm. He further stated that this lack of oversight in the Board's rules and statutes resulted in litigation against himself and his firm, that it was unfair to the Board's stakeholders when a non-registrant could be the principal of a firm, and that it could harm the health and welfare of the public. In conclusion, he asked that the Board consider changing the firm registration rules and statutes.

Ms. Cornelius explained that the Board's firm registration was an old 'registry' system dating back to 1936 and that many other State Boards have changed to newer registration systems that offer more oversight. Mr. Montgomery opined that mandating the owner of a firm be a registrant was impractical, giving the example of a large shareholder owned corporation. Mr. Marley expressed his belief that the Board should update the definition of 'principal.' Mr. Brady indicated that private firms work on a majority of public projects in the State and that the relationship between the firm and the registrants working on the project was not always apparent. Mr. Marley pointed out that the issue gets even

more complex when you include international firms. Mr. Plank stated that his concern was non-registrants being able to own firms.

The Committee directed staff to research rules regarding firm registration in other state agencies for further discussion at a later meeting.

The Committee lost Mr. Foose telephonically at 9:57am but reconnected him at 10:01am.

- I. Question from the Public: Do drone/UAV companies that are generating topo/mapping have to be registered with the BTR?

Kent Groh appeared before the Committee.

Mr. Groh opined that the use of drones/UAVs to create 3d models of the earth was land surveying and that a registered land surveyor should therefore be on staff of any firm conducting said use of drones/UAVs.

Mr. Marley stated that the rules and standards do not focus on the tools used to conduct a land survey, just the professional practice and service of conducting a land survey. Mr. Foose agreed. Ms. Cornelius suggested that the Committee review and possibly update the Land Surveyors' Minimum Standards. Mr. Leeds opined that the Board deal with this issue through the complaint process. Mr. Montgomery questioned whether drone/UAV acquired data was standardized or demonstrable as consistent and accurate. Mr. Foose shared Mr. Montgomery's concern.

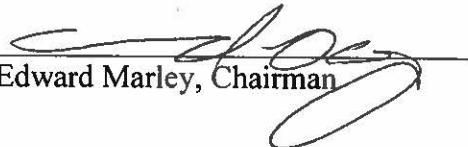
No action taken.

Break at 10:30am and came back at 10:47am

6. **FUTURE AGENDA ITEMS** – 5a,b,h, review of LS minimum standards

7. **FUTURE MEETINGS** - to be determined later

8. **ADJOURNMENT** – 11:38am


Edward Marley, Chairman