

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

Tuesday, December 12, 2017
9:00 a.m.
OPEN SESSION

1. **CALL TO ORDER – 9:02am**
2. **ROLL CALL - Present**, Stephen Noel, Jason Foose, Neal Jones, Eugene Montgomery, Andrew Everroad, Dr. Alejandro Angel, Jason Madison, Edward Marley, Jack Gilmore
Not Present:
Staff: Melissa Cornelius, Patrice Pritzl, Robert Stam, Douglas Parlin, Kurt Winter

3. **CALL TO THE PUBLIC**

Christopher DePrima appeared before the Board.

Mr. DePrima explained that he wanted his registration reinstated and asked to have the matter agendaized for a future meeting. Dr. Angel asked staff to follow up with Mr. DePrima. Ms. Cornelius informed the Board that staff had followed up with Mr. DePrima, that the Board had scheduled a hearing before an ALJ, and, that Mr. DePrima had requested the hearing continued until February 2018, which the ALJ granted.

4. **ADOPTION OF MINUTES**

Review, Consideration, and Possible Action on the following:

- A. Approve, modify and/or reject, October 24, 2017 Board meeting minutes.

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

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, Discuss and Take Possible Action to Deem Respondent Admission to the Complaint and Notice of Hearing:

1. P14-004, Hector Fimbres, Non-registrant

Scott Donald, A.A.G., appeared before the Board representing the State. Seth Hargraves, A.A.G., appeared before the Board as legal counsel. Respondent and Respondent's counsel did not appear before the Board.

Dr. Angel opened the matter.

Mr. Donald stated that the Board had attempted to give notice to Respondent through certified mail, personal service, and publication, but ultimately failed to contact Respondent. Mr. Donald argued that the Board grant the State's Motion to Deem.

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

Mr. Noel moved and Mr. Marley 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 argued that the Board assess the maximum penalty of \$2000 against Respondent and \$2000 against Respondent Firm, as well as the costs of investigation.

Mr. Marley asked for the total number of violations in this case. Mr. Donald answered, "one violation alleged against Respondent and one violation alleged against Respondent Firm." Mr. Madison asked if there had been any contact with Respondent. Ms. Cornelius answered "no". Mr. Marley asked if there was any recourse for the Board through the Secretary of State or another government entity. Mr. Hargraves answered that the Board could request the county attorney's office pursue the case as a criminal matter. Ms. Cornelius further answered that in cases where a respondent was non-compliant, the Board could request the Attorney General's Office take over the matter for collections. Mr. Marley asked what was the minimum amount of time the Board could designate Respondent must comply with the Order. Mr. Hargraves answered 30 days since a respondent had 30 days to appeal a Board Order. Mr. Foose opined that considering the circumstance of the case, the maximum fine was applicable against Respondent Firm.

Mr. Marley moved and Mr. Foose seconded to issue the following Order: Respondent shall pay an administrative penalty in the amount of \$2000 for his violation of the Practice Act and \$2000 for the violation against Respondent Firm; Respondent shall pay the cost of investigation, and if not signed and complied with within 30 days, this matter will be referred to AGs office for collections; motion carried.

B. Formal Administrative Hearing and/or Review: Discuss and Approve, Modify or Reject the Recommended Administrative Law Judge Decision:

1. P14-048, Timothy Spangler, Non-registrant, & Arizona Alta Specialists, Firm No.18700

Scott Donald, AAG, appeared before the Board representing the State. Seth Hargraves, A.A.G., appeared before the Board as legal counsel. Respondent and Respondent's counsel did not appear before the Board.

Dr. Angel opened the matter. Dr. Angel asked the Board members if they had reviewed the materials for this matter. The Board members answered yes.

Mr. Donald argued that the Board adopt the ALJ's Findings of Fact and Conclusions of Law. He further argued that the Board add costs and fees to the Order, pointing out that Respondent's actions warranted their inclusion, and suggested the Board make small typographical changes to the Conclusions of Law.

Mr. Noel moved and Mr. Gilmore seconded to adopt the Finding of Fact as recommended by the Administrative Law Judge; motion carried.

Mr. Marley commented that Respondent's actions were egregious and opined that a civil penalty of \$2000 was not high enough. Mr. Foose agreed. Dr. Angel expressed concern that modifying the ALJ decision might result in another jurisdiction denying or overturning the Board's Order later. Mr. Foose opined that the ALJ was an outside opinion that the Board contracted with and therefore the judge may not have the same scale of severity as the Board. Mr. Everroad opined that the Board should generally refer matters such as this to the ALJ, though he agreed with raising the civil penalty. Mr. Marley asked what Respondent's next course of action would be if he disagreed with a higher penalty amount. Mr. Hargraves answered that Respondent could appeal to the Board to change the Order and appeal the case to Superior Court.

Mr. Foose moved and Mr. Marley seconded to modify the Conclusions of Law with the following changes: strike the word "because" from item number 3 and strike the second sentence of item number 8 since the sentence appeared to be an opinion of the ALJ and not a Conclusion of Law; motion carried.

Mr. Marley moved and Mr. Montgomery seconded to modify the recommended ALJ decision to encompass the following Order: Respondent shall pay an administrative penalty in the amount of \$6000.00, \$2000 per violation, for the following three violations: Respondent practiced a Board registered profession without registration; Respondent provided false evidence to the Board in an attempt to obtain registration; and Respondent fraudulently used a registrant's seal; Respondent shall pay the costs of investigation in the amount of \$479.00 and attorney costs in the amount of \$3674.50; and, if not signed within 30 days move to criminal prosecution; motion carried.

6. ENFORCEMENT MATTERS

Review, Consideration and Possible Vote on the following:

A. Complaints Proposed for Resolution by Dismissal or Closure:

1. HI17-019, Donald Barenz, C.H.I. #53157 (Inactivated on 9/20/16))
Respondent appeared before the Board.

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

2. P18-015, Manisha Dani, Non-Registrant

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

3. HI18-008, Nick Boekenooogen, C.H.I. #42489

Dr. Angel commented that EAC members should be careful not to overstate their opinions when reviewing cases.

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

B. Complaints Proposed for Resolution by Letters of Concern:

1. P18-016, Paul Winslow, R.A. # 06916 and Winslow + Partners, Firm #17459

Kali Mota, representative of Respondent Firm, and Travys Harvey, Respondent Firm's attorney, appeared before the Board.

Mr. Marley opined that the Board should dismiss the case and asked that staff redact any protected health information from the case file prior to staff opening the file to the public.

Mr. Marley moved and Mr. Foose seconded to dismiss the case and direct staff to redact any protected health information from the case file prior to staff opening the file to the public; motion carried.

2. HI18-003, Nick Boekenoogen, C.H.I. #42489

Mr. Marley moved and Mr. Gilmore seconded to issue a Letter of Concern; motion carried.

3. P17-078, James Griffin, P.E. (Civil) #31682

Mr. Everroad recused himself.

Respondent appeared before the Board.

Respondent stated he understood the allegations against him. Dr. Angel expressed his concern that there was a possible technical violation on Respondent's plans and asked Respondent to explain. Respondent stated that the EAC had found no violations. He added that at an earlier Board Meeting, the Board members agreed that there were no violations after Respondent presented evidence, and stated he did not have documentation with him at this time to supplement his explanation. Dr. Angel opined that two EAC members should reevaluate Respondent's work before the Board made a decision on the case. Mr. Montgomery expressed concern over the EAC's explanation as to why there were no violations. Respondent stated that he designed the plans on behalf of the city, with data the city provided. Mr. Foose asked Dr. Angel that if a reevaluation were to take place, would it be ok if the EAC members only focused upon the flood plain issue. Dr. Angel answered yes. Mr. Foose asked Dr. Angel that if Respondent provided correspondence from the city regarding the flood plain, could the Board determine the case concluded without convening another EAC meeting. Dr. Angel explained that it was the professional's responsibility to know the rules governing his profession. Mr. Foose and Mr. Madison opined that it was a city rule and therefore Respondent may not be in violation.

Mr. Marley moved and Mr. Foose seconded to continue the case until next month's meeting so Board members can review the case documents; motion carried.

4. P18-011, Colin Harvey, R.L.S. #42017

Respondent appeared before the Board.

Mr. Foose quoted Board Substantive Policy Statement #12 and he stated that Respondent's actions fell in line with Mr. Foose's local technical standards and recommended dismissing the case. Dr. Angel expressed concern that a permanent record may not occur in a timely manner. Mr. Foose stated that the temporary pins theoretically created a record. Mr. Noel asked if the registrant who set the temporary pins was required to set the permanent pins later. Mr. Foose answered no, stating that Respondent met the minimum requirements using temporary pins.

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

C. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI17-031, Matthew Jenks, C.H.I. #44033

Respondent appeared before the Board.

Respondent stated that he did not quite understand the Board's process regarding how violation costs and penalties were calculated and he was concerned that he will pay a penalty for failing to renew his firm, even though he immediately renewed after staff informed him of the violation.

Mr. Montgomery observed that there were multiple issues with Respondent's report in question. Respondent acknowledged that the issues came about through a lack of conveyance on his part but he was still concerned that he would need to pay the costs after twelve years without a violation. Dr. Angel explained that the costs of investigation are included since they are an expense incurred by the Board, but noted that the Board had traditionally issued a penalty of \$250 for the violation of failing to renew a firm and he would consider lowering the administrative penalty.

Mr. Marley moved and Mr. Gilmore seconded to reject the signed consent agreement and offer a new agreement with a lower administrative penalty of \$250; motion carried.

2. HI17-018, Troy Bashford, C.H.I. #58611

Allegers, Alison Lythe and Rob Lythe, appeared before the Board.

Allegers informed the Board of the Respondent's unprofessionalism and mediocre work product and the consequences befallen them as a result.

Mr. Marley opined that Respondent's deficiencies were egregious and he argued for a higher administrative penalty. The investigator, Mr. Thacker, explained to the Board that the administrative penalty was \$500 because of the high costs and time associated with Respondent's four obligatory peer reviews.

Mrs. Lythe asked the Board what the Respondent's responsibilities were after a homeowner occupies the home, referencing a phone call to Respondent asking for help regarding issues with their home and Respondent being uncooperative. Dr. Angel opined that Respondent's actions were unprofessional, but stated that Respondent was not legally obligated to help. Mr. Madison stated that the Board had purview over Home Inspector standards. Dr. Angel noted that Respondent completed all of his parallel inspections. He asked staff if Respondent was in compliance since the language of the consent agreement stated the Respondent needed to complete the parallel inspections after Respondent signed the consent agreement. Staff answered that they would consider Respondent in compliance.

Mr. Marley moved and Mr. Noel seconded to reject the signed consent agreement and offer a new consent agreement with an increase of the administrative penalty to \$2000; motion carried.

D. Review and Approval of Appointment for EAC Membership:

1. John Elson, C.H.I. #42312

Mr. Elson appeared before the Board.

Mr. Marley moved and Mr. Gilmore seconded to approve appointment; motion carried.

2. Alexander Alvarez, C.H.I. #45674

Mr. Marley moved and Mr. Gilmore seconded to approve appointment; motion carried.

3. Steve Ehrenkrook, C.H.I. #40032

Mr. Marley moved and Mr. Gilmore seconded to approve appointment; motion carried.

4. Joseph Warren, C.H.I. #54896

Mr. Marley moved and Mr. Gilmore seconded to approve appointment; motion carried.

5. Randy Dimit, C.H.I. #60269

Mr. Marley moved and Mr. Gilmore seconded to approve appointment; motion carried.

E. Compliance Monitoring Investigations:

1. P17-088, Gordon Grandy, R.L.S. #17238

Break at 10:25am. Returned to open meeting 10:35am.

Respondent appeared before the Board.

The case investigator, Mr. Hunt, explained that the language in Respondent's consent agreement stated that Respondent needed to correct the survey in question and submit it to the Board. However, Respondent hired another party to jointly correct the survey, with both applying their seals to the corrected survey. Mr. Hunt expressed his concern that Respondent considered the resubmitted survey as a completed parallel inspection. Mr. Marley expressed his concern that Respondent did not act alone to correct the survey.

Respondent stated that, as a sole proprietor land surveyor, he hired another company to work with him to correct the survey. Dr. Angel asked Respondent if he was out in the field with the other surveyor. Respondent answered yes. Dr. Angel asked Respondent if he was responsible for accepting and modifying the monuments and calculations of the survey. Respondent answered yes. Dr. Angel asked why the survey was jointly sealed. Respondent answered that Jeremy Haws (RLS #54400) and his team made most of the calculations and Mr. Haws used his pins on the property corners. Mr. Foose opined that Respondent was not in compliance since it appeared that Mr. Haws and his team completed most of the work and it was therefore impossible to determine who was ultimately responsible for the survey. Mr. Hunt stated that Respondent and Mr. Haws explained to him that the city of Gilbert permitted them to jointly seal the survey; when questioned later, the city official stated to Mr. Hunt that the survey would not be accepted jointly sealed.

Mr. Marley stated that the language of the Order indicated that Respondent was responsible for performing the corrected survey, which did not appear to have happened. Mr. Madison opined that the language of the Order was set forth to correct the survey for the protection of the public. Mr. Montgomery expressed his concern that joint seals blurred responsibility for the survey. The Board members discussed modifying language from the original consent agreement so Respondent could submit a corrected survey and Respondent need not perform the survey. Ms. Cornelius suggested asking Respondent to ok any modification before making a motion. Mr. Donald suggested the Board also modify the period during which Respondent could submit the corrected survey to the Board to remain in compliance if the Board decided to modify the agreement. Dr. Angel asked Respondent if he was ok with the Board modifying the consent agreement. Respondent answered yes.

Mr. Madison moved and Mr. Marley seconded to modify the consent agreement with the following changes: Respondent must submit a corrected survey to the Board for review before the next Board meeting, and, upon Board acceptance, Respondent shall file the survey; motion carried.

After the vote, Ms. Cornelius asked the Board if they felt Respondent orally accepted the Board's recommendation. Board Members answered yes. To verify, Mr. Donald tried to locate Respondent, but Respondent had already left the premises.

7. LICENSING MATTERS

Discussion, Consideration and Vote on the following:

Nothing to consider at this meeting.

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. Marley moved and Mr. Foose 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. State Board Member Per Diem Compensation and Expense Reimbursement Report

Ms. Cornelius reported that the Appropriations Board conducted an audit of state agencies but they did not highlight the Board in the report.

B. IRSC Home Inspection Report Changes

Mr. Madison reported that the committee made small changes to the Home Inspector Standards.

Board Members reviewed the small changes made to the Home Inspector Standards.

Mr. Madison moved and Mr. Foose seconded to approve the changes; motion carried.

10. DIRECTOR'S REPORT

A. Previous Meeting Follow-Up

Ms. Cornelius reported that GL Solutions had promised her that the agency would have functioning on-line renewal and address changes by December 12, 2017, and online applications by December 31, 2017; that the proposed rules should be published December 22, 2017 and will be open to public comment for a 30-day period; that a letter was sent to ABET requesting that the Board be granted access to participate in ABET's accrediting process; and, that a letter was sent to the IRS regarding whether contractors who claim to be doing design work are practicing engineering.

B. Director's Meetings

Ms. Cornelius reported that she lectured about public services at ASU law school.

C. Staff

Alicia Gonzales left State employment. Monique Dominguez joined staff as a receptionist.

11. BOARD CHAIR'S REPORT – Nothing to report

12. STANDING COMMITTEE REPORTS

- A. Legislation and Rules Committee – Next meeting sometime in January 2018.
- B. Home Inspector Rules and Standards Committee – Next meeting date January 11, 2018.

13. BOARD MEMBER REPORTS ON OUTSIDE ACTIVITIES

- A. ASBOG – Erik Weiland, former AZBTR chair, will be retiring from ASBOG in 2018.
- B. CLARB – Nothing new to Report
- C. NCARB – The Strategic Planning Meeting will take place early December. Mr. Marley planned to attend.
- D. NCEES – Meeting planned in January in Tampa, Florida.

14. FUTURE BOARD MEETINGS – January 23, 2018

15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.

L&R report review

16. MEETING ADJOURNMENT – 12:11pm

Dr. Alejandro Angel, Board Chairman



Melissa Cornelius, Executive Director

