

MINUTES
TEXAS BOARD OF PROFESSIONAL ENGINEERS
REGULAR QUARTERLY BOARD MEETING
1917 SOUTH INTERSTATE 35
AUSTIN, TX 78741
MAY 21, 2014 – 10:30 AM

Call to Order. Daniel O. Wong, Ph.D., P.E., Presiding Officer, called the Texas Board of Professional Engineers Regular Quarterly Meeting to order at 10:30 am on May 21, 2014, at the Texas Board of Professional Engineers, 1917 South Interstate 35, Austin, TX. (NOTE: all votes are unanimous unless noted.)

1. Roll Call and Welcome Visitors.

Daniel O. Wong, Ph.D., P.E.	Chair
James “Jim” Greer, P.E.	Vice Chair
Elvira Reyna	Secretary - Public Member (Excused Absence)
Edward Summers, Ph.D.	Treasurer - Public Member
Carry Ann Baker	Public Member
Lamberto “Bobby” Ballí, P.E.	Member
Sina Nejad, P.E., PEng.	Member
R. Kyle Womack, P.E.	Member
Sockalingam “Sam” Kannappan, P.E.	Member

A quorum was present. Ms. Veena Mohan, Assistant Attorney General, was present to provide legal counsel to the Board. Mr. Edmundo Gonzalez, P.E., Mr. Jose I. Guerra, P.E., and Govind Nadkarni, P.E., Emeritus Board Members, were present.

The following staff members were present:

Lance Kinney, P.E.	Executive Director
David Howell, P.E.	Deputy Executive Director
C.W. Clark, P.E.	Director of Compliance & Enforcement
Jeff Mutscher	Director of Finance
Robert Opiela, P.E.	Director of Licensing
Dewey Helmcamp, III JD	Staff Attorney
Charles Pennington, P.E.	Staff Engineer
Dorothy Gonzales	Executive Assistant

Visitors. Jennifer McEwan, Ph.D., Texas Society of Professional Engineers (TSPE); M. Zahid Hossain; Amy Hilton, Office of the Attorney General (OAG); Bill Fendley, P.E., Cobb Fendley; Stephanie Stanford, P.E., TSPE; Terry Bilderback, P.E., TSPE; Peyton McKnight, American Council of Engineering Companies (ACEC); Phil Moncada; Blake Whittlesey

2. Public Comment. Mr. Kinney reported to the Board that a written public comment from Mr. Raghunath Dass concerning Construction Materials Engineering was included as an exhibit for the Board’s consideration. Dr. Wong acknowledged the written public comment. No action required.

3. Consent Agenda.

(The following items may be acted upon under Consent Agenda and are marked with an asterisk* on the Regular Quarterly Board Meeting Agenda)

- February 12, 2014, Licensing Committee Minutes
- February 13, 2014, Policy Advisory Opinion Committee Minutes
- February 13, 2014, Regular Quarterly Board Meeting Minutes
- Administrative Reports and Outstanding Administrative Penalties and Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments
- Licensing Applications.

It was MOVED/SECONDED (Summers/Baker) to approve the Consent Agenda as presented. A vote was taken and the MOTION PASSED.

Discuss and Possibly Approve Board Minutes:

4. ***(Consent Agenda)** Discuss and possibly approve minutes of the February 13, 2014, Regular Quarterly Board Meeting Minutes
Approved under Consent Agenda.

Discuss and Possibly Accept Committee Minutes:

5. ***(Consent Agenda)** February 12, 2014, Licensing Committee Minutes
Approved under Consent Agenda.
6. ***(Consent Agenda)** February 13, 2014, Policy Advisory Opinion Committee Minutes
Approved under Consent Agenda.

Agenda item #19 was taken out of order, see below.

Discuss and Possibly Act on the following agenda items (7-21):

7. Board Members' Activity Reports.

- Baker
- Ballí
- Greer
- Kannappan
- Nejad
- Reyna
- Summers
- Womack
- Wong

Dr. Wong reported that the activity reports were included for Board members to review. No action required.

8. Emeritus Members.

- Gonzalez
- Guerra
- Nadkarni

Dr. Wong reported that the emeritus members' activity reports were included for Board members to review. No action required. Mr. Guerra added that Mr. Gonzalez, Emeritus Board member, was recognized at the Southern Zone Meeting with the for his participation with NCEES.

9. Budget.

•FY14 2nd Quarter Budget Report.

Mr. Mutscher reviewed the quarterly budget report with Board members.

• FY 15 Draft Budget.

Mr. Mutscher reviewed the draft FY15 budget with Board members. He added that the budget will be presented for adoption at the August Board meeting.

10. Performance Measure Update.

Mr. Howell reviewed the performance measures report (included as an exhibit) with Board members.

Mr. Howell introduced Mr. Robert Opiela, P.E., as the new director of Licensing.

Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:

11. Licensing Committee.

• Personal Appearances from Licensing Applicants.

Mr. Ballí reported that the Licensing Committee had six personal appearances, and recommends the Board accept the Licensing Committee's decisions as follows:

It was MOVED/SECONDED (Ballí/Summers) to approve James Howard, Craig Bailey, Jonathan Brim, to take the PE exam; Michael Romeo to take the PE exam pending completion of the probation terms and submission of official court documentation of completion to staff; and Eric Wolf to be licensed in Texas. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Ballí/Baker) to approve Luben Walcheff to be licensed in Texas pending the completion and successfully passing the Level II Ethics exam. A vote was taken and the MOTION PASSED 7-1; Mr. Greer voted against the motion.

International Agreement.

Mr. Ballí reported that the Licensing Committee agreed with staff recommendation on the following international agreements.

- **South Korea.** Korea Professional Engineer's Association (KPEA) approached the Board requesting an agreement in accordance with the NAFTA agreement. Both parties have met and discussed a draft Mutual Recognition Agreement (MRA). Staff presented the DRAFT MRA for consideration. The Licensing Committee reviewed and accepted the agreement. The committee directed staff to share any changes to the DRAFT MRA, and information regarding the signing event.

It was MOVED/SECONDED (Ballí/Greer) to approve the KPEA MRA as presented with continued communication with KPEA delegates as needed. A vote was taken and the MOTION PASSED.

- **Engineers Australia.** Mr. Ballí reported that the agreement with Engineers Australia is being reviewed for reconsideration. Mr. Kinney added that agreements with Canada and Mexico are also being reviewed for reconsideration.

12. Policy Advisory Opinion Committee.

- **Discussion of stakeholder meeting and possible draft of EAOR #34 – Industry Exemption**
- **Discussion of stakeholder meeting and possible draft of EAOR #36 – Construction Management**

Ms. Baker reported that the Policy Advisory Opinion Committee approved and recommends approval of the responses to EAOR #34 and #36 as submitted by staff.

It was MOVED/SECONDED (Baker/Womack) to approve the response to EAOR #34 and #36 as submitted by staff. A vote was taken and the MOTION PASSED.

Agenda item #18 taken out of order, see below.

Discuss and Possibly Act on Reports or Items reported by the Executive Director:

13. Executive Director's Report.

- **Activity Report.** Mr. Kinney commented that his activity report is included as an exhibit.
- **Introduction of new TBPE employees.**
 - Robert Opiela, P.E., Director of Licensing
 - Jeff Rodriguez, Application Developer

Mr. Kinney mentioned that Mr. Opiela was introduced earlier. He would like to introduce Mr. Jeff Rodriguez, Application Developer in the IT department. The Board welcomed the new employees.

- **Report on response regarding §137.63 (c) (5), Engineers Responsibility to the Profession.**

Mr. Kinney commented that staff reviewed and tried different permutations of rule language to address the requested issue. There was much discussion with Compliance & Enforcement on how this rule was currently enforced. However, it was ultimately determined that no rule change would be needed. A response to the requestor was included informing him that no changes will be made to the rule, and thanking him for bringing his concern to our attention.

- **NCEES.**
 - **2014 SZ Meeting-Charleston, SC.**

All the slides from the meeting were included as an exhibit. Mr. Kinney encouraged anyone who has not attended an NCEES meeting to attend in the future. He briefly commented on a few of the items in the exhibit. He reviewed other motions that were discussed at the NCEES Southern Zone meeting.
 - **NCEES Annual Meeting-August 19-23, 2014-Seattle, Washington.**

Mr. Kinney reported that registration information is included as an exhibit for Board members

that are interested in attending.

- **Journey Toward Excellence.**

- **Texas Quality Foundation-Progress Level Recognition.**

- Mr. Kinney reported that the agency was recognized and received Progress Level recognition by Texas Quality Foundation. We are the only state agency going through the process. Mr. Kinney and Mr. Howell will be traveling to attend the Texas Quality Foundation Conference in June and accepting the award on the agency's behalf.

- **Criminal History Record Check (CHRC) Update.**

- Mr. Kinney reviewed the statistics that were included as an exhibit. He thanked Mr. Howell for coordinating this effort and answering all the emails and phone calls received. He added that Board staff is doing everything we can on our end to address the process and concerns. We have had several calls with Morpho Trust and DPS to solve problems and provide workarounds to their systems to get this process completed.

- **Outreach.**

- **Upcoming Webinar June 5, 2014.**

- **Kudos.**

- Mr. Kinney reported that kudos from outreach are included as an exhibit. He added that the ethics and licensure webinars have been very successful. He commented that staff reached out to students for a licensure webinar with 159 attending.

- **Staff Attorney Report.**

- SOAH Cases
 - Suits Against the Board
 - Status of Court Cases (Injunctions)

- Mr. Helmcamp reviewed the reports which are included as an exhibit.

14. **Discuss and possibly act on the Memorandum of Agreement (MOA) between the Texas Board of Professional Engineers and the Texas Board of Professional Geoscientist.**

Mr. Kinney reported that this MOA was a directive from the last Legislative Session for the Geoscientist to complete. He added that there he sees no problem or question with the MOA because both state agencies are already working together regarding any enforcement cases or other issues based on an agreement that was already in place.

It was MOVED/SECONDED (Baker/Nejad) to approve the MOA with the Texas Board of Professional Geoscientist as presented. A vote was taken and the MOTION PASSED.

Discuss and Possibly Act on Enforcement/Disciplinary Matters:

15. ***(Consent Agenda)** Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments
Approved under consent agenda, see above.

16. **Agreed Board Order.**

(Motion Required)

1. Raul P. Flores, P.E. – D-33569

It was MOVED/SECONDED (Summers/Womack) to accept the Agreed Board Order as presented by staff. A vote was taken and the MOTION PASSED. Mrs. Reyna was the Board member in the informal conference, she was not present.

17. **Consent Orders.**

Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are not listed)

1. D-34582
2. D-34622
3. D-34636

Non-Practice Violations

4. Mark E. Berg, P.E. – D-34817
5. Everett A. Horton – D-34632 (Order of the Board)
6. Norman A. Ofstad, P.E. – D-34692 (Order of the Board)

Practice Violations

7. Marcus C. Gibson, P.E. – D-34539
8. John J. Hoffman, P.E. – D-34763

Sanctions Against Non-License Holders

9. William L. Campbell – B-34566
10. Karl Koppany – E-33738
11. Pinnacle Environmental aka Strat Core Services, Inc. – E-34762
12. Gary L. Ragsdale – E-33839
13. Clay Schlinke – B-34352

Firm Registrations/Sole Proprietorship Sanctions

14. 2W3 Consulting Engineers – B-34705

It was MOVED/SECONDED (Summers/Baker) to approve the Consent Orders as submitted by staff. A vote was taken and the MOTION PASSED.

18. SOAH Final Order.

- Thomas P. McDill, P.E. – D-34318

Mr. Helmcamp reported that Mr. McDill is before the Board requesting an appeal of the judge's final order dated January 23, 2013, regarding work completed during the time his license was delinquent and for failing to include his firm number on the plans. The Final Board Order in accordance with the administrative judge's findings and included in the board materials for their approval.

Dr. Wong asked Mr. McDill to provide evidence that would show the Board why they should approve his appeal.

Mr. McDill addressed the Board and shared information regarding his case. The Board members discussed the appeal with Mr. McDill and the evidence he provided.

It was MOVED/SECONDED (Ballí/Womack) to adopt the SOAH Final Order as presented by staff. A vote was taken and the MOTION PASSED 7-1; Dr. Summers abstained from voting.

Discuss and Possibly Act on Licensing Applications requiring board ruling:

19. Discuss and possibly act on request of denial of Licensing Committee Decision.

- M. Zahid Hossain

Mr. Howell reported that Mr. Hossain is appealing a Licensing Committee decision regarding a waiver of the PE exam. Mr. Hossain had a temporary license in Texas in 2009. During this period he took the structural exam and did not pass. His temporary license expired. He is licensed in Canada and Arizona. Technically he can apply for license requesting the waiver; however he has failed the exam within the last 4 years of his application which by rule 133.69(e), he cannot be granted the waiver at this time.

The Board discussed with Mr. Hossain his licensure process in Arizona and test experience, and explained that due to the failure of 2 exams within a 4 year period, the Texas Board cannot grant licensure. Mr. Howell did mention that after 4 years have passed, Mr. Hossain may apply for licensure with the Texas Board and request a waiver.

It was MOVED/SECONDED (Greer/Summers) to uphold the Licensing Committees decision and deny the waiver of the PE exam. A vote was taken and the MOTION PASSED.

Return to Agenda item #7.

20. *(Consent Agenda) Licensing Applications.

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

- Approved for Exams
- Approved for Licensure
- Firms Approved
- Not Approved for Licensure
- Exams Not Approved
- Waivers – Both
- Waivers – FE

Approved under Consent Agenda, see above.

Discuss and Possibly Act on Other Matters

21. Issues to consider for future meeting.

Board members asked to be given an update on International Agreements, and an IT Security update. General Counsel was asked to research regarding the discussion of IT Security measures under Executive Session.

Adjourn.

It was MOVED/SECONDED (Kannappan/Baker) to adjourn the meeting at 1:03 pm. A vote was taken and the MOTION PASSED.

Date minutes were approved by Board as submitted:

August 28, 2014