

MINUTES
REGULAR QUARTERLY BOARD MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
SOUTH INTERSTATE 35
AUSTIN, TX 78741
May 25, 2017 – 10:30 AM

Call to Order. Daniel O. Wong, Ph.D., P.E., Presiding Officer, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers to order at 10:31am at the Texas Board of Professional Engineers, 1917 S. IH35, Austin, TX. (NOTE: all votes are unanimous unless noted).

1. Roll Call and Welcome Visitors.

Daniel O. Wong, Ph.D., P.E.	Chair
Sam Kannappan, P.E.	Vice Chair
Dr. Sina Nejad, P.E.	Secretary
Edward Summers, Ph.D.	Treasurer
Lamberto “Bobby” Ballí, P.E.	Member
Albert Cheng	Public Member
Catherine Norwood, P.E.	Member
Elvira Reyna	Public Member <small>(absent)</small>
R. Kyle Womack, 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., Advisory Members, were present.

The following staff members were present:

Lance Kinney, Ph.D., P.E.	Executive Director
David Howell, P.E.	Deputy Executive Director
Dave Daigle, P.E.	Director of Compliance & Enforcement
Rick Strong, P.E.	Director of Licensing
Jeff Mutscher	Chief Financial Officer
Morgen Cuming, JD	Staff Attorney
Clif Bond	Supervising Investigator
Dorothy Gonzales	Executive Assistant

Visitors: Terry Bilderback, P.E., Texas Society of Professional Engineers (TSPE); Matt Ryan, Attorney, Allesworth & Porter, LLP; Steve Lucy, JQ Engineering; Mark Farris, Attorney, Farris & Hulton, P.C.; Trish Smith, Executive Director, TSPE; Bill Reagan, Bruce Davenport, P.E.

2. Public Comment.

Mark Farris, J.D., 1515 Capitol of Texas, Austin, TX, attorney for Jordan Prowdy. He commented that he filed a complaint against 4 engineers, 3 former, 1 current with Jaster Quintanilla Engineering, on behalf of his client, Mr. Prowdy.

At this time, Mr. Matt Ryan, Austin Attorney, Allensworth & Porter, LLP objected to Mr. Farris’s comment, and requested that the Board not entertain any further comments from Mr. Farris since the case he mentioned is still an open case, under investigation, and not on the agenda. Dr. Wong, responded that the Board is accepting Mr. Farris’s statement under public comment, which the Board cannot take action nor discuss.

Mr. Farris continued to state that his client was working under Jaster Quintanilla, and was injured during his employment with Jaster Quintanilla. He elaborated on Mr. Farris's client's injuries. Mr. Farris commented on the design and calculations of the project. Mr. Farris requested additional time from the Board to conclude his statement.

It was MOVED/SECONDED (Nejad/Ballí) to allow additional time for Mr. Farris to conclude his public comment. A vote was taken and the MOTION PASSED. Dr. Wong allotted Mr. Farris an additional three minutes to complete his statement.

Mr. Farris commented that he had additional information including a video for the Board to consider. He thanked the Board for listening to his concerns, and added that he is readily available to assist the Board with this case.

Mr. Matt Ryan, Allensworth & Porter LLP representing JQ Engineering. He commented that Mr. Farris has filed a lawsuit that is pending at this time. He added that he wrote a letter to the Board requesting a stay in the proceeding which he has done the past and was granted. On Monday, he received a letter from the Board informing him that his request was reconsidered and he was given three weeks to respond to the Board's investigation request. He opined that this was an inappropriate use of the Board as a "stalking horse", an investigatory tool, and as a device to extract more information than Mr. Farris and his client are entitled too in a litigation process. This is why he believes it is inappropriate for the investigation to continue. His comments were always going to be conditional. He would have said nothing has Mr. Farris said anything. He is not here to try this process on its merit, he believes it's inappropriate to do that. There is a process which he received no notice of this. He cannot be expected to put on a substantiate defense with no notice. There is nothing on the agenda. He commented that he is before the Board to say that Mr. Farris and his client are entitled to due process which exists through the judicial system. They took advantage of that. They have their case file. Literally he has never once had a case denied when he has asked for a stay of an investigation. Sometimes it has 3 to 4 years, literally that long. The Board is never going to lose its jurisdiction over the four individuals against whom these complaints have been filed. The Board will always have an opportunity to investigate the full circumstances through usual of the enforcement panel. He imagines it will go through the usual channels, that he usually travels handling cases before the Board. A full substance response, followed by a proposal by the Board followed by informal conference followed by presentation to the Board. The Enforcement Committee headed by Mr. Ballí, will deal with this and then report to the Board. He objects to the subversion of the Board's process and due process of law through the courts where this ought to be allowed to have its orderly process handled. He thinks that only at this time should this be moved forward with the Board's consideration. He requested a meeting with Board staff. Dr. Wong mentioned that his time was up. Mr. Ryan requested additional time.

It was MOVED/SECONDED (Ballí/Norwood) to allow additional public comment time to Mr. Ryan. A vote was taken and the MOTION PASSED.

Dr. Wong allotted Mr. Ryan an additional three minutes.

Mr. Ryan commented that he has been in touch with Board staff regarding his client's case. Two of the four registrants have not obtained council. The notion of having three weeks or whatever extended period seems unjust given that there have been no expert deposition, no expert designations, no reports. He added that this case is currently hung up on a procedural issue. He wanted to assure that Board that they would not lose jurisdiction over this case. He believes it needs to be handled in the proper course of things and encourages the Board to refuse the invitation to serve as an investigative tool ahead of the normal process of the judicial system. He thanked the Board for their attention.

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 15, 2017, Licensing Committee Minutes.
- February 16, 2017, Enforcement Committee Minutes.
- February 16, 2017, Policy Advisory Opinion Committee Minutes.
- February 16, 2017, Legislative Committee Minutes.
- February 16, 2017, Regular Quarterly Board Meeting Minutes.
- Administrative Reports, Outstanding Administrative Penalties Dismissed Cases.
- Licensing Applications.

It was MOVED/SECONDED (Norwood/Ballí) to approve the Consent Agenda as submitted. 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 16, 2017, Regular Quarterly Board Meeting
5. ***(Consent Agenda)** February 16, 2017, Policy Advisory Opinion Committee Minutes

Discuss and Possibly Accept Committee Minutes:

6. ***(Consent Agenda)** February 15, 2017, Licensing Committee Minutes
7. ***(Consent Agenda)** February 16, 2017 Enforcement Committee Minutes
8. ***(Consent Agenda)** February 16, 2017, Legislative Committee Minutes

Agenda items 4-8 were approved under Consent Agenda, see Agenda item #3.

Discuss and Possibly Act on the following agenda items (9-23):

9. Board Members' Activity Reports.

- Ballí
- Cheng
- Kannappan
- Nejad
- Norwood
- Reyna
- Summers
- Womack
- Wong

10. Advisory Members' Activity Reports.

- Gonzalez
- Guerra
- Nadkarni

Agenda items #9 and #10 are included for information only, no action taken.

11. Finance and Budget.

• FY17 2nd Quarter Budget.

Mr. Mutscher reviewed the 2nd quarter budget report included as an exhibit as of the end of February 2017. He commented that the Board is on target with the budget.

• FY18 Proposed Draft Budget.

Mr. Mutscher commented that a draft of the Fiscal Year (FY) 2018 budget is included for Board members to review. He added that two columns showing FY18 and FY17 are on the draft budget for comparison. He commented that there is a slight increase in revenues which is due to new licensees and renewals. Expenditures shows a slight increase due to the roof replacement project. FY18 does include a new position in the Licensing department as well as funds for facility improvements. The ending fund balance estimate is projected to be higher than previously projected. The budget report also reflects the proceeds of the transfer of TBPE land to TXDOT for I-35 transportation projects which will raise the ending fund balance. Proceeds from this land

transfer will be utilized for facility improvements which will bring the fund balance down in coming years. The report also shows the year-to-date expenditures and revenues. Mr. Mutscher entertained questions from the Board Members. Dr. Summers added that he did a line by line analysis of the budget with Mr. Mutscher. He commended him for doing a great job and he does not have any recommended changes. Mr. Mutscher added that the proposed budget will be presented at the August Regular Board meeting for the Board members to adopt.

Mr. Mutscher added that the agency and Board member oversight are working together to keep the budget consistent.

12. Discuss and possibly act on Performance Measure Review.

Mr. Howell reviewed the list of performance measures which were included as an exhibit. He also added that the Board is audited on these performance measures. He pointed out the total numbers of cases being opened are flat; the difference between internal and external cases is a matter of staff time and resources. He also discussed the time taken to close a case. Mr. Howell shared the Compliance & Enforcement sanctions.

He shared the total number of licensees' steady growth. The number of new licensees will change based on the exam cycle due to decoupling. Mr. Howell also shared that we do track customer service. He commented that TBPE is one of the top 10 outreach providers in the United States according to NCEES. He added that employees track training via their time sheets. He mentioned that the finance performance measures included HUB numbers and budget versus actual numbers.

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

13. Licensing Committee meeting summary (May 24, 2017).

- Personal Appearances from Licensing Applicants:
 - Gregersen, Casey
 - Iton, Kyle
 - Kane, Kyle
 - Ogban, Oghenetega
 - Belzer, Brett
 - Gastineau, Clarence
 - Williams, Patrick
 - Jones, Christopher
 - Grabowski, Michael
 - Potts, Shane
 - Sauers, Brett
 - Hooper, Russell

Dr. Nejad reported that the Committee visited with 11 of the 12 applicants scheduled; one (Mr. Potts), was unable to attend.

It was MOVED/SECONDED (Ballí/Norwood) to recommend to the Board that Mr. Brett Belzer and Mr. Clarence Gastineau be allowed licensure in Texas after proof of successful completion of the Level II (60 hr) Ethics course be provided to staff; Mr. Michael Grabowski and Mr. Casey Gregersen be approved for licensure (subject to passing the PE exam for Mr. Gregersen) pending proof of successful completion of the Level I (30 hr) Ethics course be provided to staff; Mr. Russell Hooper to be approved for licensure; Mr. Kyle Iton take and successfully complete the Level I (30 hr) Ethics course, obtain 1 additional year of experience and return to the Licensing Committee; Mr. Christopher Jones be approved for licensure in Texas; Mr. Kyle Kane be approved for licensure after successful completion of the Level I (30 hr) Ethics course; Mr. Oghenetega Ogban and Mr. Brett Sauers be approved for licensure in Texas; and Mr. Patrick Williams be approved for licensure in

Texas upon successful completion of the level I (30 hr) Ethics course. A vote was taken and the MOTION PASSED.

Mr. Shane Potts was not able to attend the Licensing Committee meeting.

Dr. Nejad also added that the Committee members heard the Licensing Director's report.

14. Enforcement Committee Meeting summary (May 25, 2017).

- **Discuss and possibly adopt the following rules.**
 - 137.19, Engineers to be qualified Windstorm Inspectors-Repeal
 - 139.35(b), Sanctions and Penalties

Mr. Ballí asked Mr. Howell to inform the Board on the recommended adoption and purpose of repeal of §§ 137.19 and 139.35. Mr. Howell shared that during the last Legislative Session there was a repeal of the windstorm section of the TBPE Act which required the Board to keep a windstorm roster. It was held to be effective until the end of 2016. Staff made rule proposals to repeal §137.19 and removing windstorm references in Sanctions Table in §139.35 during the February 2017 meeting. Rules were published and no comments received.

It was MOVED/SECONDED (Ballí/Womack) to approve the repeal of §137.19, Engineers to be qualified Windstorm Inspectors, and removing all reference to Windstorm in the Sanction Table in §139.35 (b), Sanctions and Penalties. A vote was taken and the MOTION PASSED.

15. Legislative Committee Meeting summary (May 25, 2017).

- Update of Legislative activities.
Dr. Nejad commented that he accepted to sit as substitute Chair the Committee for Ms. Reyna. Mr. Howell briefed all the Committee members on the bills passed during the 85th Legislative Session.

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

16. Executive Director's Report.

- **Daily Activity Report.** Dr. Kinney shared with Board members that his activity report was included as an exhibit and is prepared to answer questions as needed.
- **IH 35 Expansion.** Dr. Kinney gave an update on the status of the purchase of portion of the TBPE lot by the Texas Department of Department (TxDOT) for the I-35 expansion / improvement project. He added that the Board is working with a representative from the Attorney General's Office on this purchase and all transactions.

It was MOVED/SECONDED (Norwood/Womack) Move to approve and authorize the Executive Director, Lance Kinney, Ph.D., P.E., to sign all documents on behalf of the Texas Board of Professional Engineers required to consummate the sale and conveyance to TxDOT title to the 0.226-acre tract as more fully described and authorized in the letter from the Executive Director dated March 9, 2017. This motion also includes authorization to accept the proceeds of such sale on behalf of TBPE. A vote was taken and the MOTION PASSED.

- **Strategic Plan/Journey Towards Excellence (JTE).** Dr. Kinney reported that agency teams are still working hard and still working on the JTE. He added that a TBPE University regarding training has been initiated. Other departments are conducting trainings and we are also offering internal training regarding agency process, etc. He added that staff has reached out to Universities and Schools as directed by the Board. He encouraged Board members to get the word out regarding our Outreach Program. Exempt industry discussions have initiated again. He mentioned that the Board will be working with NCEES on a booth at

the Society of Petroleum Engineers Annual Conference.

- **Update on Murdough Center for Engineering Ethics.** Dr. Kinney shared that he contacted Mr. Rich Burgess at the Murdough Center on the ethics program and possible changes to their processes. Mr. Burgess shared updates to the correspondence with people taking the Ethics course. The agreement specifically states due dates clearly. Board staff will continue to work with the Center to add specifically request for Texas.
- **National Council of Examiners for Engineering and Surveying (NCEES).**
- **Southern Zone (SZ) Meeting.** Dr. Kinney commented that the SZ meeting are used to preview the motions to be voted on at the annual meetings. One of the motions is to change the election of the NCEES President from a Zone rotation to At Large. Other motions will be discussed in August.
- **Nomination for Southern Zone Secretary/Treasurer Position.**
 - **Lamberto “Bobby” Ballí, P.E.** Dr. Kinney asked the Board members for their support and nomination of Mr. Ballí as a candidate for the SZ Secretary/Treasurer position. Voting will take place at the NCEES August annual meeting.

It was MOVED/SECONDED (Kannappan/Norwood) to support and nominate Mr. Lamberto “Bobby” Ballí, P.E. as a candidate for the SZ Secretary/Treasurer position. A vote was taken and the MOTION PASSED.

- **NCEES Leadership Program-Visit to State Boards.**
 - **Gary Thompson, P.L.S., NCEES Treasurer-Visit with Texas Board.**

Dr. Kinney thanked the Board members for their participation in the training provided by Mr. Gary Thompson. He mentioned that the trainings are a part of the NCEES Leadership Program to reach out to state boards and not only share with boards what NCEES role is but also take suggestions and recommendations to be considered.
- **NCEES Annual Meeting-August 23-26, 2017.**

Dr. Kinney reminded everyone of the upcoming NCEES Annual meeting. NCEES funds three (3) delegates to attend the meeting. He extended an invitation to the Board members and asked to let him or Ms. Gonzales know if they would like to attend so that proper arrangements can be made.
- **Outreach.**
 - **80th Anniversary Booklet.**

Dr. Kinney provided each Board member with the 80th Anniversary booklet. He added that it was mailed to all professional engineers and is shared at outreach presentations.
 - **Visit to New London, Texas.**

Dr. Kinney reported that he visited the New London museum during their 80th anniversary celebration. He presented a flag flown over the Capitol on March 18, 2017, commemorating their 80th anniversary. He invited the Board members to visit the museum if they had the opportunity.
 - **Texas State Science Fair.** Dr. Kinney commented that Board staff and Mr. Balli attended the Texas State Science Fair in San Antonio. They judged some of the projects and presented awards on behalf of the Board.
 - **Texas Alliance for Minorities in Engineering (TAME).** Dr. Kinney reported that he

participated in the TAME conference in San Antonio. He shared that each team was give specific materials and asked to build a wind fan with the least amount of materials. The project focused on the structure, production, and financial aspect of the project. He added that there were some interesting outcomes. TBPE presented an innovation award. He recommended continuing participation with the TAME program.

- **Draft Plan for Regional Advisory Meetings.** Dr. Kinney shared the history of having meetings outside of the Austin area. He added that the last time the Board travelled to conduct a meeting outside of Austin, there were zero attendees that were not Board members or staff. He added that the advisory committees have been dormant recently. He commented that after discussion with some Board members, he proposed the following on how to get around the State as a Board: have two (2) regional workshops annually that combine the idea of an advisory committee with presentations and access to Board members. They would not be regular Board or Committee meetings. Locations would be selected by the Board members with an initial focus on less frequently travelled areas. One or two Board members would attend to provide a panel discussion or town hall meeting atmosphere. There would be two to three staff members. We could also provide an Ethics training. The Board would also invite local engineering societies, municipalities, school districts, counties, and advisory committee members. We would also couple with a city or university to host the event or we could find a location ourselves. We would provide a feedback report to the Board. He provided a map to show where Texas PEs are. Dr. Nejad believes that a Licensing Committee meeting could be educational to young engineers. He would like Dr. Kinney to take this into consideration. Dr. Kinney added that a Board meeting would be restrictive due to the format, and the proposal would be more open to engage the attendees. Mr. Nadkarni commented that he believes Dr. Kinney's proposal would be beneficial. Mrs. Norwood added that a free Ethics and a panel discussion may draw attention. Mr. Ballí recommends a meeting with an agenda. Dr. Nejad believes exposure to live issues would be a learning experience. Mr. Womack agreed with a panel discussion format, where the Board gets to listen to the engineers. Dr. Kinney shared that the goal would be to get engineers involved. Mr. Nadkarni added that it would be a great idea to go out and involve the engineers. Dr. Wong directed Dr. Kinney to focus on two to three areas and involve Board members from the suggested areas and engage local engineering community. Mr. Ballí suggested to involve student engineering councils to get on their agendas. Dr. Kinney commented that the Board does work with the universities regarding student involvement. Dr. Kinney added that the goal would be to have two meetings the upcoming fiscal year. Dr. Wong agreed.
- **Kudos.** Dr. Kinney commented that the TBPE team travels and receives lots of kudos for a job well done. He thanked the outreach team for their hard work and travel and Mr. Howell for coordinating the new presentation.

Discuss and Possibly Act on Enforcement/Disciplinary Matters:

17. *(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties, Dismissed Cases.

Report to full Board pursuant to Board rule §139.21

Agenda item #17 was approved under Consent Agenda, see Agenda Item #3.

18. Agreed Board Order.

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

1. D-36850 (Cheng recused)
2. D-36224 (Cheng recused)

Practice Violations

3. Jay Victor Hamm, P.E. – D-36864 (Cheng recused)

Mr. Daigle shared that Mr. Cheng sat in the informal reprimands listed above. He added that all three Respondents have agreed to the sanctions listed in their Agreed Board Order.

Mr. Daigle gave a brief review to the Board members of each reprimand.

It was MOVED/SECONDED (Norwood/Womack) to approved the Agreed Board Orders as presented. A vote was taken and the MOTION PASSED; Mr. Cheng recused himself from voting.

19. Consent Orders.

Filed at SOAH

1. David Franco – B-36649

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

2. D-36880
3. D-36966

Non-Practice Violations

4. Lonny E. Phelps – D-36900

Practice Violations

5. Phillip Barnett, P.E. – D-36881
6. Daniel Liston Heischman, P.E. – D-36861
7. Manuel Fernando Lizcano, P.E. – D-36889

Sanctions Against Non-License

Holders

8. John W. Holm – B-36753

Firm Registration/Sole Proprietorship

9. Mark Bird, P.E. d/b/a Wesley Engineering Group, Inc. – B-36859
10. Texas Development Services, L.L.C. – B-36975

Mr. Daigle reported that the consent orders were offered as sanctions to the individuals listed above who accepted the sanctions from the Board.

It was MOVED/SECONDED (Nejad/Norwood) to approve the Consent Orders as presented. A vote was taken and the MOTION PASSED.

20. SOAH Final Board Order.

- Contain Water Systems, Inc. (case #B-36331)

Ms. Cuming gave the Board members a history regarding Contain Water Systems, Inc. The Board members were provided with the Final Board Order. Dr. Wong allowed the Board members time to review the document provided for a final decision.

It was MOVED/SECONDED (Nejad/Cheng) to approve the SOAH Final Board Order as presented. A vote was taken and the MOTION PASSED.

Discuss and Possibly Act on Licensing Applications requiring board ruling:

21. *(Consent Agenda) Licensing Applications.

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

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

Agenda item #21 was approved under Consent Agenda item #3, see above.

Discuss and Possibly Act on Other Matters

22. Issues from the Board member to consider for next scheduled Board Meeting.

Dr. Wong reminded Board members that they could always email him and/or Dr. Kinney to add agenda items for discussion.

23. Adjourn.

It was MOVED/SECONDED (Kannappan/Norwood) to adjourn the meeting at 12:55pm. A vote was taken and the MOTION PASSED.

Date Board approved minutes as submitted:

August 17, 2017