

AGENDA
REGULAR QUARTERLY BOARD MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
SOUTH INTERSTATE 35
AUSTIN, TX 78741
February 11, 2016 - 10:00 AM

Call to Order. Daniel O. Wong, Ph.D., P.E., Presiding Officer called the Regular Quarterly Board meeting of Texas Board of Professional Engineers meeting to order at 10:00 am on February 11, 2016, at Texas Board of Professional Engineers, 1917 S. Interstate 35 in Austin, Texas. A quorum was present. (Note: all votes are unanimous unless noted)

1. Roll Call and Welcome Visitors.

Daniel O. Wong, Ph.D., P.E.	Chair
Lamberto "Bobby" Ballí, P.E.	Vice-Chair
Sam Kannappan, P.E.	Secretary
Edward Summers, Ph.D.	Treasurer
Sina Nejad, D.Eng. P.E.,	Member
Elvira Reyna	Public Member
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., Emeritus Board Member, was present.

The following staff members were present:

Lance Kinney, Ph.D., 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
Morgen Cuming, JD	Staff Attorney
Virginia Alayón	Investigator
Dorothy Gonzales	Executive Assistant

Visitors: Terry Bilderback, P.E., Texas Society of Professional Engineers (TSPE); Yailin Ramirez, Texas Department of Transportation (TxDOT); Marc Young, P.E.; Trish Smith, Executive Director, TSPE; Jennifer Riggs, JD, Representing Mr. Tomkins; Randy Rutherford, P.E.

2. Public Comment.

Mr. Marc Young, P.E. addressed the Board requesting an appeal of a complaint he filed that was rejected by the Board because TBPE does not have jurisdiction over work completed in another state even though all the engineering was done by an engineer located in the state of Texas. He is also requesting a Policy Advisory Opinion. Dr. Wong thanked Mr. Young for his comment and informed him that since his appeal was not on the agenda the Board members cannot comment nor take action. He added that he was sure that Board staff will be willing to work with him on his concern.

Mr. Randy Rutherford addressed the Board regarding his 1 year probated suspension related to an enforcement case. Since then there was a misunderstanding regarding the completion of the Ethics course he was required to complete, and the deadline was closely approaching. He is requesting an extension or anything the Board may offer to allow him to complete the required course and not have his license suspended. Dr. Wong thanked Mr. Rutherford and added that he was sure that staff will continue to work with him concerning this matter.

3. **Consent Agenda.**

- November 18, 2015, Licensing Committee Minutes
- November 19, 2015, Policy Advisory Opinion Committee Minutes
- November 19, 2015, Enforcement Committee Minutes
- November 19, 2015, General Issues Committee Minutes
- November 19, 2015, Nominating Committee Minutes
- November 19, 2015, Regular Quarterly Board Meeting Minutes
- Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments
- Licensing Applications.

It was MOVED/SECONDED (Ballí/Summers) 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 November 19, 2015, Regular Quarterly Board Meeting.

Discuss and Possibly Accept Committee Minutes:

5. ***(Consent Agenda)** November 18, 2015, Licensing Committee Minutes
6. ***(Consent Agenda)** November 19, 2015, Policy Advisory Opinion Committee Minutes
7. ***(Consent Agenda)** November 19, 2015, Enforcement Committee Minutes
8. ***(Consent Agenda)** November 19, 2015, General Issues Committee Minutes
9. ***(Consent Agenda)** November 19, 2015, Nominating Committee Minutes

Agenda items 4-9 were approved under Consent Agenda, see above.

Discuss and Possibly Act on the following agenda items (8-22):

10. Board Members' Activity Reports.

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

11. Emeritus Members' Activity Reports.

- Gonzalez
- Guerra
- Nadkarni

Board and Emeritus Members' activity reports are included for information purposes only.

12. Finance and Budget.

• FY16 1st Quarter Budget.

Mr. Mutscher reported that the report will show an increase in revenue in September. This is due to the timing of the \$200 renewal fee that was repealed by the Legislature. All Professional Engineers who were usually able to renew their license in August, actually paid their new renewal fee on or after September 1, so they were not charged the \$200 renewal fee.

Dr. Summers added that this is the most stable financial situation since he has been on the Board. He thanked staff for all their hard work.

13. 4 Year Rule Review.

Mr. Howell reported that the quadrennial rule review is a statutory requirement for each state agency. The Rule Review pre-amble for all five (5) Chapters of the Board's rules will be published in the Texas Register informing the public that all the rules will be up for review. Board staff is also conducting an internal review of all rules. If Board staff makes any suggestions, the proposed rule changes will be presented at the next scheduled Regular Quarterly Board meeting. Mr. Womack reminded staff to ensure any changes are incorporated into the Policy Advisory Opinions already posted on an as needed basis.

It was MOVED/SECONDED (Nejad/Summers) to publish the Rule Review notices in the Texas Register. A vote was taken and the MOTION PASSED.

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

14. Licensing Committee.

- **Personal Appearances from Licensing Applicants.**

It was MOVED/SECONDED (Ballí/Womack) to approve the Licensing Committee's recommendation that Mr. John Kluber be licensed in Texas. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Ballí/Nejad) to approve the Licensing Committee's recommendation that Mr. Alan Moon, Mr. Vishesh Singh, and Mr. Joshua Gilbreath be approved to take the PE exam. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Ballí/Womack) to approve the Licensing Committee's recommendation that Mr. William Lane be waived the FE exam, and approved to take the PE exam. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Ballí/Nejad) to approve the Licensing Committee's recommendation that Mr. Mitesh Patel be approved to take the PE exam upon successful completion of the Level I Ethics Exam from Texas Tech and proof of completion submitted to staff. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Ballí/Nejad) to approve the Licensing Committee's recommendation that Mr. Tamfu Fobi be granted a waiver of the FE exam, be allowed to take the PE exam upon successful completion of the Level I Ethics Exam from Texas Tech and proof of completion provided to staff. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Ballí/Summers) to approve the Licensing Committee's recommendation to approve Mr. David White and Mr. Steven Baker be licensed in Texas after successful completion of the Level II Ethics Exam from Texas Tech and proof of completion provided to staff. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Ballí/Nejad) to approve the Licensing Committee's recommendation that Mr. Gwilym Griffith be allowed to take the PE exam, hold his application one (1) year, gain one (1) additional year of experience, provide two (2) additional PE references with the PEs knowledge of his offense, and successfully complete the Level I Ethics Exam from Texas Tech and provide proof of completion to staff. After considerable discussion of the nature of the offense, the Board members agreed that the applicant should appear before the Licensing Committee as well as meet all the other requirements recommended by the Committee.

Mr. Ballí rescinded his MOTION and Dr. Nejad rescinded his 'second' to the MOTION.

It was MOVED/SECONDED (Ballí/Womack) that Mr. Gwilym Griffith's application be placed on hold for one (1) year; he must gain one (1) additional year of experience, provide two (2) PE references, with the PEs knowledge of his offense, successfully complete the Level I Ethics Exam from Texas Tech and provide proof of completion to staff, and he must appear at the next scheduled Licensing Committee meeting after completion of these conditions. A vote was taken and the MOTION PASSED. (Summers abstained).

Ms. Mohan commented that two candidates were not considered during the February 10, 2016, Licensing Committee. One applicant had an expungement order, an order of non-disclosure who was not required to disclose his/her offense; the second applicant had an out-of-state disclosure order similar to the Texas disclosure order who was not required to disclose his/her offense.

Discuss and possibly adopt the following rule proposals regarding PE Exam Decoupling as posted in Texas Register for comment.

- PE Decoupling
 - §133.3 Engineer-in-Training Application and Certification
 - §133.61 Engineering Examinations Required for a License to Practice as a Professional Engineer
 - §133.65 Examination on the Fundamentals of Engineering
 - §133.67 Examination on the Principles and Practice of Engineering
 - §133.71 Examination for Record Purposes
 - §133.87 Final Action on Applications

Mr. Ballí asked Mr. Howell to summarize the PE Exam Decoupling rules. Mr. Howell reported that this proposal would allow an applicant to take the PE exam prior to obtaining the required engineering experience for licensure. Decoupling does not change the required experience to become a PE or any other required experience. The rules were posted in the Texas Register for comment. Comments were received from 185 individuals as well as from TSPE, American Council for Engineering Companies-Texas (ACEC-TX), and the American Society of Civil Engineers (ASCE). Comments from individuals were split and the three organizations are in favor of decoupling. Mr. Howell summarized the comments received. Dr. Wong added that the Future Engineer Advisory Committee members commented that the Board would still be a gatekeeper to ensure that only qualified engineers will be licensed in Texas. Dr. Kinney added that the staff requested that the rule be implemented May 1, 2016, to ensure appropriate outreach and allow staff to complete the online system. Dr. Wong mentioned that the requirements to be licensed in Texas will not change. Mr. Womack added that the decoupling was not a requirement, but rather it was an option to applicants that believe they are ready to take the PE exam.

It was MOVED/SECONDED (Ballí/Summers) to approve the recommendation of the Licensing Committee to adopt §§133.3, 133.61, 133.65, 133.67, 133.71, 133.87 as submitted and be implemented May 1, 2016. A vote was taken and the MOTION PASSED 6 to1. (Nejad opposed)

• **International Licensure.**

- S. Korea
- Spain
- México

Dr. Kinney reported that a meeting is scheduled on March 10, 2016, to meet with the delegation from South Korea to sign the Mutual Recognition Agreement (MRA). He invited the Board members to attend the signing ceremony. He added that on February 3, staff and some Board and Emeritus members met with a delegation from the organization for civil engineers from Spain (CICCP). The meeting was very successful; they are willing to learn more about our licensing requirements and process. He concluded with reporting that an updated DRAFT MRA has been sent to México.

Criminal History Record Check policy regarding re-applications.

Mr. Howell reported that TBPE was informed recently of a DPS requirement to “unsubscribe” people in the DPS system who are no longer associated with the agency, i.e. – are no longer license holders. Staff developed a policy to implement that requirement. Because some of those individuals reapply for a license, staff must also develop a policy regarding re-subscribing. The policy addresses the options and cost of re-subscribing applicants who are re-applying. Mr. Howell added that the Licensing Committee recommended that the applicant pay the fee for the CHRC background.

It was MOVED/SECONDED (Ballí/Nejad) to approve the Licensing Committee’s recommendation to approve the CHRC Policy and add that the applicant pay the additional \$13 for the CHRC resubscription. A vote was taken and the MOTION PASSED.

15. Policy Advisory Opinion Committee.

- Discuss and possibly approve the opinion regarding EAOR#39 – On-Farm Energy Audits

Mr. Womack reported that the Policy Advisory Opinion Committee reviewed and approved the previously posted draft opinion for EAOR#39. He added that Dr. Summers was the Board Liaison and worked with staff on the response.

It was MOVED/SECONDED (Womack/Summers) to approve the Policy Advisory Opinion Committee's recommendation to approve the opinion, as submitted regarding EAOR#39 – On-Farm Energy Audits. A vote was taken and the MOTION PASSED.

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

16. Executive Director's Report.

- **Activity Report.** Dr. Kinney commented that his activity report was included as an exhibit, and if anyone has any questions, he is available to discuss.
- **Strategic Plan/JTE.** Dr. Kinney reported that all the Board's Staff are working on team projects. He added that staff is looking at scheduling this year's strategic planning meeting with Board members in conjunction with the May Board meeting.
- **Future Engineer Advisory Committee.** Dr. Kinney mentioned that the Board added the Future Engineer Advisory Committee to hear from young engineers and to get their input on Board activities and future direction. He reviewed the process in selecting committee members: 5 new EITs (1-2 yrs. out of school); 5 EITs (3 to 4 yrs.; pre-applicants); and 5 recently licensed PEs (1 to 2 yrs. of being licensed PEs). The meeting went very well and we anticipate having another meeting of this group.
- **Survey of Employee Engagement.** Dr. Kinney shared with the Board members the responses to the Survey of Employee Engagement from the staff. This survey is required by state agencies and results are submitted to the Legislature. The agency uses the responses to work on areas of concern.
- **NCEES Southern Zone & Annual Meeting.** Dr. Kinney reminded Board members of the upcoming NCEES Southern Zone meeting and of the registration deadlines and dates for future meetings. If anyone is interested in attending any NCEES meeting, please let the staff know.
- **Staff Attorney Report.** Ms. Cuming reviewed the reports that were included as exhibits. No action taken.
- **SOAH Cases.**
- **Suits Against the Board.**
- **Status of Court Cases.**
- **Outreach.** Dr. Kinney mentioned that the kudos for outreach done by Board staff were included for the Board members' review. He thanked all the presenters for all their hard work and travelling throughout the state of Texas to provide this service to the profession.
- **Kudos.**

Discuss and Possibly Act on Enforcement/Disciplinary Matters:

**17. *(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments
Injunctions/Default Judgments**

Report to full Board pursuant to Board rule §139.21

- Gary Garza

Agenda item #17 was approved under Consent Agenda, see above.

18. Agreed Board Order.

Practice Violations

1. Rodney A. Ekern, P.E. – D-35672 (Womack)

It was MOVED/SECONDED (Summers/Kannappan) to approve the Agreed Board Orders as submitted. A vote was taken and the MOTION PASSED.. (Womack abstained from voting)

19. Consent Orders.

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

1. D-36127
2. D-33737
3. D-35440

Non-Practice Violations

4. Roy Alexander Hunt, P.E. – D-36208
5. Tracy Alan Martin, P.E. – D-36092
6. Jason Robert Milligan, P.E. – D-36132
7. Harish Navinchandra Shah, P.E. – D-36069

Sanctions Against Non-License Holders

8. Devcol Engineering, L.L.C. – B-36213
9. Juan Guzman – B-35949

Firm Registration/Sole Proprietorship

10. AGS Consultants, LLC – B-36126
11. Anchor Equipment Sales, Inc. dba Anchor Autoclave Systems – B-35904
12. Ardoin Engineering – B-36167
13. Continental Production Services, Inc. – B-36166
14. E W McAllister PE – B-36201
15. Floresca Associates, Inc. – B-36251
16. Jett Engineering, Inc. – B-36189
17. James H Suchma PE Inc. – B-36190

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

20. Discuss and possibly act on Compliance with Approved Board Order.

- Mr. Kent Tompkins, P.E. – D-35103

Ms. Cuming informed that Board that Mr. Tompkins entered into a Consent Order to finish the Ethics Level II Exam within six months of date he signed the Consent Order. He did not complete the Ethics Level II Exam until seven days after the deadline. Ms. Riggs, Mr. Tompkin’s attorney appeared, before the Board in November 2015 on his behalf requesting a reconsideration of suspending Mr. Tompkin’s license. The Board agreed to work with Ms. Riggs and Mr. Tompkins and agreed to change the initial Consent Order. Ms. Cumings issued an Agreed Board order as directed by the Board to extend the probated suspension by one year, personally appearing before the Board, completion of the Ethics Level II Exam and provide documentation to staff (which has been completed), and pay a \$1,000 administrative penalty (which has been submitted).

Mr. Tompkins thanked the Board for their professional consideration and grace for assisting with his request. He explained his reason for being late, and regrets that he was short of the deadline.

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
- Not Approved for Licensure
- Not approved for Exams
- Waivers – FE
- Waivers—Both

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

Discuss and Possibly Act on Other Matters

22. Issues to consider for future meeting.

Adjourn.

It was MOVED/SECONDED (Ballí/Kannappan) to adjourn the meeting at 12:02 pm. A vote was taken and MOTION PASSED.

Date Board approved the minutes as submitted: May 26, 2016