

**MINUTES**  
**REGULAR QUARTERLY BOARD MEETING**  
**TEXAS BOARD OF PROFESSIONAL ENGINEERS**  
**SOUTH INTERSTATE 35**  
**AUSTIN, TX 78741**  
**August 18, 2016 – 10:30 AM**

**Call to Order.** Daniel O. Wong, Ph.D., P.E., Presiding Officer called the Texas Board of Professional Engineers meeting to order at 10:00 am on May 26, 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 Summer, Ph.D.	Treasurer
Albert Cheng	Public Member
Sina Nejad, D.Eng. P.E., P.Eng.	Member
Catherine Norwood, P.E.	Member
Elvira Reyna	Public Member
Kyle Womack, P.E.,	Member

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

**Visitors:** Kent O’Brien, P.E., Texas Department of Transportation (TxDOT); Trish Smith, Executive Director, Texas Society of Professional Engineers (TSPE); Terry Bilderbeck, P.E., TSPE; Elvis Dawkaw; Peyton McKnight, American Council for Engineering Companies (ACEC); Rick Guerra, P.E., TSPE; Dave Daigle, Incoming Compliance & Enforcement Director.

**2. Public Comment.** None.

**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)**

- May 25, 2016, Licensing Committee Minutes
- May 26, 2016, Policy Advisory Opinion Committee Minutes
- May 26, 2016, General Issues Committee Minutes
- May 26, 2016, Enforcement Committee Minutes
- May 26, 2016, Strategic Plan Workshop Minutes
- May 26, 2016, 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/Womack) 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 May 26, 2016, Regular Quarterly Board Meeting.

**Discuss and Possibly Accept Committee Minutes:**

5. \*(Consent Agenda) May 25, 2016, Licensing Committee Minutes
6. \*(Consent Agenda) May 26, 2016, Policy Advisory Opinion Committee Minutes
7. \*(Consent Agenda) May 26, 2016, General Issues Committee Minutes
8. \*(Consent Agenda) May 26, 2016, Enforcement Committee Minutes
9. \*(Consent Agenda) May 26, 2016, Strategic Plan Workshop Minutes

Agenda items 4-9 were approved under Consent Agenda.

**Discuss and Possibly Act on the following agenda items (10-27):**

**10. Board Members' Activity Reports.**

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

**11. Emeritus Members' Activity Reports.**

- |            |            |
|------------|------------|
| • Gonzalez | • Nadkarni |
| • Guerra   |            |

Dr. Wong commented that the Board Members' and Emeritus Members activity reports are included as information only. Mr. Gonzalez, Emeritus Board Member, added that he has been asked to serve on an advisory committee for the Texas State Technical College (TSTC).

Dr. Wong took agenda item #24 out of order, see below.

Dr. Wong took agenda item #23 out of order, see below.

**12. Finance and Budget.**

• **FY16 3<sup>rd</sup> Quarter Budget.**

Mr. Mutscher reported on the 3<sup>rd</sup> Quarter budget report as of the end of May. It is an indicator where the Board will be at the end of August. There is a positive variance to the budgeted amount and an increase to the fund balance.

• **FY2017 Budget.**

Mr. Mutscher reported that the aim of the 2017 budget will be to hold the fund balance steady and move in a direction to optimize the fund balance in years following. The number of PEs, EITs, and firms registrations have increased resulting in additional revenue for the agency. The proposal is to keep the fee amounts the same for this fiscal year. On the expense side insurance for employees and retirees will increase in accordance with ERS rate sheet. One significant expenditure for this fiscal year is the replacement of the building roof, which is still in the early stages and working with the Texas Facilities Commission and the timing of completion of the project can affect the ending fund balance. The estimated fund ending balance is a significant positive variance over what was budgeted. Mr. Mutscher reviewed the itemized positive variance with the Board members. He also added that the Board did not spend the amount budgeted and revenue exceeded projections. Mr.

Mutscher commented that the Executive Director salary increase was approved in accordance with his performance evaluation by the Chair. He added that the Emeritus Members' contracts are also included in the proposed budget and are up for review. Dr. Wong commented that he did perform Dr. Kinney's performance evaluation and granted an increase in his pay. Dr. Summers added that he approves and agrees with the proposed FY2017 proposed budget. He added that it is a very stable budget. He applauded Mr. Mutscher for his great job for his oversight of the budget. Mr. Ballí asked if a master plan for building upgrades being considered. Mr. Mutscher shared that several projects are in the works and being considered.

It was MOVED/SECONDED (Summers/Norwood) to approve the Fiscal Year 2017 budget as proposed. A vote was taken and the MOTION PASSED.

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

### 13. Licensing Committee.

- **Personal Appearances from Licensing Applicants:**

It was MOVED/SECONDED (Nejad/Ballí) to approve Mr. Christopher Drake for licensure in Texas; Mr. Jason Pyka and Ms. Lynn Lambert to take the PE exam; and Mr. Phillip Pitzer to take the PE exam after successfully completing the Level I Ethics course. A vote was taken and the MOTION PASSED.

- **Discuss and possibly adopt the following rule proposals as posted in the Texas Register.**

- **Engineers-in-Training.**

- § 133.41, Experience Evaluation
- § 133.43, Supplemental Experience Record

- **International temporary license to include S. Korea applicants in accordance with Mutual Recognition Agreement.**

- § 133.27, Application for Temporary License for Engineers Currently Licensed Outside the United States.

It was MOVED/SECONDED (Nejad/Womack) to approve the adoption of the rules listed above as submitted. A vote was taken and the MOTION PASSED.

- **Discuss and possibly approve the following rule proposals to be posted in the Texas Register for comment.**

- § 133.35 Proof of Education Qualifications—Accredited/Approved Programs
- § 133.67 Examination on the Principles and Practice of Engineer

It was MOVED/SECONDED (Nejad/Ballí) to approve the posting of the rules listed above in the Texas Register for comment as submitted. A vote was taken and the MOTION PASSED.

- **International Licensure.**

- **Memorandum of Understanding (MOU) with Spain.**

It was MOVED/SECONDED (Nejad/Ballí) to accept and approve the signing of the MOU with Spain. A vote was taken and the MOTION PASSED.

### 14. Enforcement Committee Meeting.

- **Staff Attorney Reports.**

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

Staff Attorney Morgen Cuming reviewed the staff attorney reports which were included as an exhibit with Board members.

- **Discuss and possibly approve the Sanction table**

Mr. Clark reviewed the Sanction table with Board members. He commented that staff will review, make recommendations and proposed changes, and will present at the next scheduled Enforcement Committee meeting for consideration.

- **Informal Conference Scheduling.**

Staff Attorney Morgen Cuming discussed the possibility of having informal conferences on a set day of each month excluding Board meeting months and have the scheduled day open by everyone. A Board member would also be assigned on this set date which will assist with their schedule. Ms. Cuming will prepare a proposal and present at the next scheduled Enforcement Committee meeting. Dr. Nejad asked why the informal conference would not be scheduled on the months of the Board meetings; he suggested this would assist with traveling for the Board members. Mr. Clark responded that informal conferences may take 2 days, which would take up possibly the whole week of a Board members' schedule. Dr. Nejad would like staff to consider the possibility of including informal conferences in conjunction with Board meeting week.

- **Discuss and possibly approve the following rule proposals, to be posted in the Texas Register for comment.**

- **Chapter 137 Compliance and Professionalism**

- §137.5 Notification of Name Change, Address Change, Employer Change, and Criminal Convictions
- §137.17 Continuing Education Program
- §137.31 Seal Specifications
- §137.33 Sealing Procedures
- §137.37 Sealing Misconduct
- §137.63 Engineers' Responsibility to the Profession

- **Chapter 139 Enforcement**

- §139.13 Filing a Complaint
- §139.15 Processing a Complaint
- §139.17 Investigating a Complaint
- §139.19 Final Resolution of Complaint
- §139.31 Enforcement Actions for Violations of the Act
- §139.35 Sanctions and Penalties
- §139.43 License Holder with Criminal Convictions
- §139.47 Probation
- §139.51 License Suspension Based on Delinquent Child Support

Mr. Clark reported that two chapters needed corrections made to the set of rules during the 4 year review. Changes to the rules are minor typos, grammatical errors, and clarifications. The Committee agreed with posting the changes for comment.

It was MOVED/SECONDED (Kannappan/Summers) to post Chapters 137 and 139 in the Texas Register for public comment as submitted. A vote was taken and the MOTION PASSED.

## 15. **General Issues Committee Meeting.**

- **Discuss and possibly approve the following rule proposal to be posted in the Texas Register for comment.**

- **Chapter 131**

- §131.1 Purpose and Duties
- §131.3 Headquarters of the Board
- §131.7 Organization of the Board
- §131.67 Self-directed Semi-Independent Agency
- § 131.81 Definitions
- § 131.85 Board Rules and Procedures

Mr. Ballí reported the above rules are to be posted in the Texas Register; changes are grammatical and typos. He commented that §131.67 should read §131.63, the caption is correct.

It was MOVED/SECONDED (Ballí/Summers) to approve the above rules to be posted in the Texas Register for comment. A vote was taken and the MOTION PASSED.

#### 16. **Nominating Committee Meeting.**

- Officers for Fiscal Year 2017.

Dr. Wong reported that the Nominating Committee met this morning and selected new officers for Fiscal Year 2017.

It was MOVED/SECONDED (Wong/Womack) to approve the following officer slate for Fiscal Year 2017:

Sockalingam “Sam” Kannappan, P.E.	Vice-Chair
Dr. Sina Nejad, P.E., P.Eng.	Secretary
Dr. Edward Summers	Treasurer

A vote was taken and the MOTION PASSED.

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

##### 17. **Executive Director’s Report.**

- Activity Report. Dr. Kinney reported that his activity report is included as an exhibit and asked if anyone had any questions.
- Strategic Plan/JTE. Dr. Kinney commented this has been the quality improvement process that will continue for the upcoming years.
- NCEES Upcoming Annual Meeting. Dr. Kinney shared that several Board members will be attending the meeting as well as Emeritus Members. He added that there are several motions that the Board will have to vote on. Dr. Kinney commented that a webinar is scheduled to discuss review the NCEES Motions. Mr. Womack asked if there was anything that the Board should be aware of that is being considered. Dr. Kinney responded that the possibility of discussion of structural engineering licensure.
- Outreach. Dr. Kinney reported that the attendance and interest in the webinars has been amazing and the board has been able to reach out to several thousand professional engineers. Staff still goes out and makes presentations in person. He thanked everyone that travels to make outreach presentations. Kudos are included for the Board members’ review.
- Kudos. Mrs. Norwood commented that her staff took the ethics webinar presentation, and were very pleased and they raved about the presentation.

#### **Discuss and Possibly Act on Enforcement/Disciplinary Matters:**

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

*Report to full Board pursuant to Board rule §139.21*

This agenda item was approved under Consent Agenda.

##### 19. **Agreed Board Order.**

###### Practice Violations

1. Acuity Consulting & Engineering, Inc. – B-35779 & B-35867 (Reyna)
2. Charles W. Schibi – D-36059 (Reyna)

It was MOVED/SECOND (Ballí/Norwood) to approve the Agreed Board Orders as submitted. A vote was taken, and the MOTION PASSED 8 to 1; Elvira Reyna abstained from voting.

## 20. Consent Orders.

### SOAH

1. City of Venus, Texas – G-32743

Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are notlisted)

2. D-36398

3. D-36447

### Practice Violations

4. Neri Alvarez, P.E. – D-36446

5. Edward H. Lyscas, P.E. – D-36372

6. Dana D. Tennill, P.E. – D-36502

### Sanctions Against Non-License Holders

7. Dewayne Braun – E-36436

8. Saeed Kheradmandnia – B-36181

### Firm Registration/Sole Proprietorship

9. Augustus Professional Engineers and Associates, LLC dba The Augustus Group – B-36479

10. JS Held – B-36107

11. Sage Environmental Consulting, LP – B-36570

12. Steven M. Conrad dba Conrad Engineering – B-36553

13. W P & Associates Architects Engineers Planners, Inc. – B-36507

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

## 21. Discuss and possibly act on reconsideration of Consent Orders for:

- Clyde E. Israel, P.E.-D-36307

Staff Attorney Morgen Cuming reported that on May 2016 the Board approved the Consent Order regarding Mr. Clyde Israel and he agreed to all the terms. In attempting to pay the required sanction, Mr. Israel informed that Board that, due to an error in drafting the check, his check dated in June would show as insufficient funds, which it did. Since the payment was late, in August 2016 the probation was lifted and his license was suspended. Mr. Israel was informed by TBPE finance department that he had to issue a cashier's check to include the additional \$40 fee for insufficient funds, and he has paid this amount. Therefore, Mr. Israel is requesting reconsideration of his suspension. Ms. Cuming added that the Board informed Mr. Israel that he did not have to appear before the Board and that Mr. Israel did make an honest effort to comply with the signed Consent Order.

It was MOVED/SECONDED (Norwood/Ballf) to reinstate Mr. Israel's probation. A vote was taken and the MOTION PASSED.

## 22. SOAH Final Orders.

- Curtis Elbert Thiele, P.E. #46938 – Case D-35335 [SOAH Docket No. 460-15-4952]

Staff Attorney Morgen Cuming commented that all the exhibits for Mr. Thiele (Respondent) are included for Board members to review. She reviewed the timeline of Mr. Thiele's case. She commented that the Administrative Law Judge (ALJ) prepared and filed a Proposal for Decision recommending that the Board not sanction the Respondent because the Board failed to show the Respondent violated the Board Act or Rules. Ms. Cuming prepared a final Board order to include the ALJ's decision. Ms. Mohan added that the final Board order is an adoption of the Proposal for Decision that was provided for the Board members as an exhibit.

It was MOVED/SECONDED (Summers/Ballf) to adopt the final Board order. A vote was taken and the MOTION PASSED.

## 23. Discuss and possibly act on *Tire Engineers Cases*.

In accordance with the Texas Government Code §551.071, to obtain advice of legal counsel regarding agenda item #23, the Texas Board of Professional Engineers went into executive session at 10:47 am.

The Board reconvened into open session at 11:32 am. No action was taken during executive session.

Dr. Wong called for a motion on agenda item #23.

It was MOVED/SECONDED (Summers/Norwood) to request assistance from the Texas Attorney General's Legal Counsel for the Board in resolving this issue in District and Federal Courts. A vote was taken and the MOTION PASSED.

**Discuss and Possibly Act on Licensing Applications requiring board ruling:**

**24. Discuss and possibly act on request for appeal of denial of application by Licensing Committee.**

- Mr. Elvis Boateng Dakwa

Mr. Opiela informed the Board Members that Mr. Elvis Dakwa applied for licensure in January 2016. The Licensing Committee denied his application in May 2016, and asked the application to gain an additional year of experience and two additional references with knowledge of his incidents. Mr. Dakwa asked to appear before the Board to request a reconsideration of his denial. He addressed the Board and reviewed his engineering experience with Board members, and his work ethic. After further discussion the Board agreed with the decision at the May 2016 Licensing Committee's decision.

It was MOVED/SECONDED (Ballí/Norwood) to deny Mr. Elvis Dakwa's appeal for licensure in Texas. A vote was taken and the MOTION PASSED.

Agenda item #23 was taken out of order, see above.

**25. \*(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 Exams
- Not Approved for Licensure

This agenda item was approved under Consent Agenda.

**Discuss and Possibly Act on Other Matters**

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

Dr. Nejad suggested that staff look into the possibility of celebrating Professional Engineers that have succeeded in their field and highlighting their career successes. Mr. Ballí added to also consider adding Engineers-in-Training (EITs).

**27. Thank Compliance & Enforcement Director, C.W. Clark, P.E. for his exemplary service to the Board, and congratulate him on his retirement.**

Dr. Kinney thanked Mr. Clark for his service twelve (12) years of service to the Board. He presented him with a retirement clock and several certificates/letters from Government officials. Dr. Kinney also introduced Mr. Jack Stamps and Ms. Julie Hildebrand from the Board of Architects and invited them to speak. Mr. Stamps read and presented Mr. Clark with a Resolution that was approved by the Board of Architects thanking him for working together diligently with them, especially during the disagreements between engineers and architects and for his professional demeanor during this process. Dr. Wong invited everyone to stay and enjoy refreshments and visit with Mr. Clark.

**Adjourn.**

It was MOVED/SECONDED (Norwood/Kannappan) to adjourn the meeting at 12:34 pm.

Date approved by Board as submitted: November 17, 2016