

MINUTES
REGULAR QUARTERLY BOARD MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
1917 S. IH 35
Austin, Texas 78741
May 23, 2019—10:30 AM

Discuss and Possibly Act on the Following Agenda Items:

1. Preliminary Matters:

A. Call to Order.

Daniel Wong, Ph.D., P.E., Presiding Officer, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers to order at 10:30 a.m. at the Texas Board of Professional Engineers at 1917 S. IH 35, Austin, TX. (NOTE: all votes are unanimous unless noted.)

B. Roll Call.

Ms. Bodden called the roll. It was noted for the record that a quorum was present.

The following Board members were present:

Daniel Wong, Ph.D., P.E.	Chair
Elvira Reyna	Vice-Chair
Catherine Norwood, P.E.	Secretary
Albert Cheng	Treasurer
Ademola Adejokun, P.E.	Member
Lamberto Ballí, P.E.	Member
Sina Nejad, D.Eng., P.E.	Member
Rolando Rubiano, P.E.	Member
Kiran Shah	Public Member

Veena Mohan, Assistant Attorney General and Kimberly Fuchs, Assistant Attorney General, were present to provide legal counsel to the Board.

Edmundo Gonzalez, P.E.; 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
Rick Strong, P.E.	Director of Licensing
Jeff Mutscher	Chief Financial Officer
Michael Sims, P.E.	Director of Compliance and Enforcement
Elissa Mazza	Staff Attorney
Cristabel Bodden	Executive Assistant

C. Excuse absent Board members. All Board members were present.

D. Welcome Visitors. Terry Bilderback, P.E., Texas Society of Professional Engineers (TSPE); Manuel Montemayor, P.E.; Marte Guillen; and Trish Smith, P.E., (TSPE) were present.

E. Public Comment. None.

2. Consent Agenda*

- February 13, 2019 Licensing Committee Minutes (**See agenda item #3**)
- February 14, 2019 Legislative Committee Minutes (**See agenda item #4**)
- February 14, 2019 Policy Advisory Opinion Committee Minutes (**See agenda item #5**)
- February 14, 2019 Regular Quarterly Board Minutes (**See agenda item #6**)
- Administrative Reports, Outstanding Administrative Penalties, Dismissed Cases, Violation Terminated Cases, Voluntary Compliance Cases (**See agenda item #16**)
- Licensing Applications (**See agenda item #20**)

It was MOVED/SECONDED (Ballí/Norwood) to approve the items listed in the **Consent Agenda** as presented. A vote was taken and the MOTION PASSED.

Board and Committee Minutes:

3. (**Consent Agenda**) February 13, 2019 Licensing Committee Minutes
4. (**Consent Agenda**) February 14, 2019 Legislative Committee Minutes
5. (**Consent Agenda**) February 14, 2019 Policy Advisory Opinion Committee Minutes
6. (**Consent Agenda**) February 14, 2019 Regular Quarterly Board Minutes

Agenda items 3-6 were approved under **Consent Agenda**, see above.

Note: Agenda Items #18 and #19 were presented out of order but are reported in the order shown on the agenda.

7. Board Members' Quarterly Meeting Reports

- Adejokun
- Ballí
- Cheng
- Nejad
- Norwood
- Reyna
- Rubiano
- Shah
- Wong

8. Advisory Members' Quarterly Meeting Reports.

- Gonzalez
- Guerra
- Nadkarni

Agenda items 7-8 were included for information only, no action was required.

9. Finance and Budget.

- **FY19 2nd Quarter Budget.**

Mr. Mutscher reviewed the 2nd Quarter Budget report with Board members and commented that the report showed revenues and expenditures through the end of February 2019 and that we are right on target at the mid-year point.

No action required on this agenda item.

- **FY20 Proposed Draft Budget.**

Mr. Mutscher relayed that this is the first look at the budget for Fiscal Year 2020 and that the final report would be available at the August Board meeting.

Mr. Mutscher stated that the report does not propose any fee increases or decreases and that there are few adjustments to expenditures.

Dr. Kinney relayed that at the next meeting there would be one budget for the Texas Board of Professional Engineers and a preliminary budget for the Texas Board of Professional Land Surveying. Mr. Mustcher added that he would present the budget information for the Texas Board of Professional Land Surveying as a supplement to our budget since the transfer of funds would not occur until September 1, 2019.

Mr. Mustcher discussed building renovations and relayed that we had received several design options and a rough estimate for the project. Mr. Mutscher added that he had researched funding availability to see what loans could be obtained through state programs to assist with equipment and office furniture.

No action required on this agenda item.

10. Performance Measures Review.

Mr. Howell relayed that the report is available for the Board members to review. Mr. Howell stated that the Performance Measures report is presented twice a year; May and November.

Mr. Howell discussed the 12 key performance measures. The report covers the last 5 years plus 6 months of data. Mr. Howell spoke briefly on each performance measure and answered questions from Board members.

Mr. Rubiano asked if staff could provide a report to the Board with the in-state and out-of-state population change of Licensee holders.

No action required on this agenda item.

Issues Relating to Committee Matters:

11. Licensing Committee Meeting Summary.

- **Personal Appearances from Licensing Applicants:**
 - **Thomas Andrew Earles**
 - **Todd Brian Hanke**
 - **Jimmy Wayne Key**
 - **John Charles Klingel**
 - **Nathan Michael Torres**

- **Edgar Jamel Zephyrine**

Dr. Nejad reported that the Committee had met and discussed and reviewed the personal appearances cases.

It was MOVED/SECONDED (Nejad/Norwood) to allow Mr. Earles licensure in Texas upon successful completion of the 30-hour Basic Level Ethics course from Texas Tech. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Nejad/Norwood) to allow Mr. Hanke licensure in Texas upon successful completion of the 30-hour Basic Level Ethics course from Texas Tech. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Nejad/Norwood) to allow Mr. Key licensure in Texas upon successful completion of the 30-hour Basic Level Ethics course from Texas Tech. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Rubiano/Shah) to allow Mr. Klingel licensure in Texas without any additional requirements to receive licensure. A vote was taken and the MOTION FAILED.

It was MOVED/SECONDED (Ballí/Norwood) to allow Mr. Klingel licensure in Texas upon successful completion of the 30-hour Basic Level Ethics course from Texas Tech. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Nejad/Norwood) to allow Mr. Torres licensure in Texas. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Nejad/Norwood) to allow Mr. Zephyrine licensure in Texas. A vote was taken and the MOTION PASSED.

- **NCEES Exam Appeal – Alex Gitman**

Dr. Nejad reported that the Committee had met and discussed the appeal submitted by Mr. Gitman. Mr. Gitman appeared before the Licensing Committee and the Committee voted to uphold the recommendation made by TBPE staff to void his exam and require Mr. Gitman to retake the NCEES exam.

Mr. Gitman submitted a letter to the Board. Mr. Ballí asked that the Board be given time to read Mr. Gitman's letter.

It was MOVED/SECONDED (Nejad/Norwood) to uphold the NCEES decision. A vote was taken and the MOTION PASSED.

- **Rule Proposal – Fundamentals of Engineering Waiver after Fundamentals of Engineering Failure rule**

- **Chapter 133**

- **§133.69 Waiver of Examinations**

Dr. Nejad reported that the Committee had met on the Fundamentals of Engineering Waiver after Fundamentals of Engineering Failure rule. Dr. Nejad relayed that the Licensing Committee had moved to recommend to the Board to publish the rule in the Texas Register for public comment.

It was MOVED/SECONDED (Nejad/Norwood) to publish the rule proposal – Fundamentals of Engineering Waiver after Fundamentals of Engineering Failure rule to the Texas Register. A vote was taken and the MOTION PASSED.

- **Presentation of Possible Rule Amendments – Character rules**
 - **Chapter 133**
 - **§133.21 Application for Standard License**
 - **§133.23 Applications from Former Standard License Holders**
 - **§133.25 Applications from Engineering Educators**
 - **§133.27 Application for Temporary License for Engineers Currently Licensed Outside the United States**
 - **§133.81 Receipt and Processing of Applications by the Board**
 - **§133.83 Executive Director Review, Evaluation and Processing of Applications**
 - **§133.85 Board Review of and Action on Applications**
 - **§133.93 Personal Interviews of Applicants**

Dr. Nejad reported that the Committee had met and discussed the progress of the possible Rule Amendments – Character rules.

No action was required on this agenda item.

12. Policy Advisory Opinion Committee Meeting Summary

- **Policy Advisory Opinion Regarding the Ability of an Engineer to Retract Signed and Sealed Documents (Request No. 49)**

Mr. Ballí reported that the Committee had met on the Policy Advisory Opinion regarding the Ability of an Engineer to Retract Signed and Sealed Documents.

It was MOVED/SECONDED (Ballí/Rubiano) to present the response letter as presented and voted by the Committee to Mr. Cassidy. A vote was taken and the MOTION PASSED.

- **Policy Advisory Opinion Regarding the Use of and Sealing Procedure for Digital Three-Dimensional Models (Request No. 50)**

Mr. Ballí reported that the Committee had met on the Policy Advisory Opinion Regarding the use of and Sealing Procedure for Digital Three-Dimensional Models.

Mr. Ballí relayed that there was a good discussion and a lot of interest on this request and directed staff to research this topic and include Mr. Adejokun, Dr. Nejad, and Mr. Rubiano due to their experience and expertise in this area.

It was MOVED/SECONDED (Ballí/Rubiano) to direct staff to proceed with the Policy Advisory Opinion with the three Committee members participating as described. A vote was taken and the MOTION PASSED.

- **Update on Sealing Related to Contracting and Procurement as Directed at February 2019 Policy Advisory Opinion Committee Meeting**

Mr. Ballí reported that Mr. Sims provided a status update on the Sealing related to Contracting and Procurement from the February 2019 Policy Advisory Opinion Committee meeting.

Mr. Ballí relayed that staff are not done with the research but would come back in August with an update.

No action was required on this agenda item.

13. Enforcement Committee Meeting Summary

- **Compliance & Enforcement Report**
 - **Update on Compliance & Enforcement department**
 - **Status on Compliance & Enforcement caseload**
 - **Status of Continuing Education audit(s)**
 - **Compliance & Enforcement Performance Measures**

- **Compliance & Enforcement Activities**
 - **Sanction Consistency Review**
 - **Review of Standard Sanction Tables in Chapter 139, Subchapter C of Board Rules**
 - **Consistency Review of Sanctions Between Professional Engineers and Professional Land Surveyors**

Ms. Norwood reported that the Enforcement Committee had met this morning and that Mr. Sims provided a Compliance and Enforcement Report as well as a report on Compliance and Enforcement Activities.

Ms. Norwood stated that Mr. Sims relayed that a new Staff Attorney and Investigator had been hired and presented information on Compliance Performance Measures.

Ms. Norwood relayed that there was discussion on the Standard Sanction Tables in Chapter 139, Subchapter C of Board Rules and that staff would review Sanctions between Professional Engineers and Professional Land Surveyors in anticipation of the Merger and would report back to the Committee in August.

No action was required on this agenda item.

14. Legislative Issues Committee Meeting Summary

Ms. Reyna reported that the Legislative Issues Committee had met this morning and that Mr. Howell had provided a summary update on the Legislative session and proceedings to date.

- **86th Legislative Session Activities**

Ms. Reyna stated that Mr. Howell presented a summary of the important bills affecting the agency from the 86th Texas Legislative Session.

- **Bill Tracking and Other Legislative Issues**

Ms. Reyna stated that Mr. Howell discussed the bill tracking process and that a full report was available for the Board to review.

- **Updated on Texas Board of Professional Land Surveying – Texas Sunset Advisory Commission Actions**

Ms. Reyna relayed that Dr. Kinney provided a summary and an update on the upcoming merger between the Texas Board of Professional Land Surveying and the Texas Board of Professional Engineers.

No action was required on this agenda item.

Reports or Items reported by the Executive Director:

15. Executive Director's Report:

- **Quarterly Meeting Report**
Dr. Kinney stated his report is provided as an exhibit. No action is required.
- **Strategic Plan/Journey Towards Excellence (JTE) Update**
Dr. Kinney stated that there is no Strategic Plan required this year but that there would be a staff retreat this summer to discuss and create a new mission statement for the new combined agency.
- **Surveying Board/TBPELS – Status Update**
Dr. Kinney stated that the Bill had passed both houses and is on its way to the Governor's Office for signature. In the meantime, joint meetings have started between the agencies and we are engaging with staff from the Texas Board of Professional Land Surveying. We have created an action plan, a task list, and have prioritized what needs to happen in the short-term.
- **Regional Advisory Meetings – Rio Grande Valley – April 26, 2019 – Report**
Dr. Kinney stated that Rio Grande Valley Advisory Conference was a great success, very well received, and the biggest one to date. Dr. Kinney provided a summary of the events and relayed that there was strong engagement from the Dean of Engineering, Dr. Qubbaj. Dr. Kinney thanked Mr. Rubiano for his help with this conference.
- **National Council of Examiners for Engineering and Surveying (NCEES)**
 - **Southern Zone Meeting – Boise, ID – May 16-18, 2019**
Dr. Kinney stated that Board and Advisory members as well as agency staff had attended the Southern Zone Meeting in Boise, ID. Dr. Kinney stated that it was a success and there was a lot of engagement and interest on the merger.
 - **Annual Meeting – Washington, D.C. – August 14-17, 2019**
Dr. Kinney invited Board and Advisory Members to attend the annual meeting.
- **Building Plan Update**
Dr. Kinney reported that staff met with the Texas Facilities Commission, architects, and engineers involved in the project and that several design options had been presented for review. Dr. Kinney related that it looks like we will be able to work with the current building configuration and redesign the interior.

Mr. Adejokun and Mr. Shah asked that improvements be made to the current recording system for Board and Committee meeting so that they can be better seen on camera. Dr. Kinney relayed that we are currently working on making modifications to the recording system.
- **Outreach Report**
Dr. Kinney reported that staff make presentations all over the state for Outreach ethics presentations and provide monthly in addition to quarterly webinars. Outreach numbers were presented in an exhibit for Board members to review.
- **TAME and Texas State Science and Engineering Fair**
Dr. Kinney stated that there was a report and pictures available for the Board to the review from the TAME and Science Fair.

- **Kudos Report**

Dr. Kinney reported that staff continue to receive kudos for the Outreach ethics presentations and quarterly webinars. Dr. Kinney thanked the Outreach team for their hard work, commitment, and travel time.

Dr. Kinney added that there would be a reception to honor and acknowledge the retirement and exemplary service to the Board by Mr. David Howell, Deputy Executive Director, after the conclusion of the Board meeting.

Enforcement/Disciplinary Matters:

16. (Consent Agenda) Administrative Reports, Outstanding Administrative Penalties, Case Pending Status Report, Dismissed Cases, Violation Terminated Cases, Voluntary Compliance Cases.

This agenda item was approved under the **Consent Agenda**, see Agenda item #2 above.

17. Consent Orders

Practice Violations

1. Paul E. Serrano, P.E. – B-37874

Sanctions Against Non-License Holders

2. AES Septic, LLC – B-37946

3. Partner Assessment Corporation – B-37795

Firms Registrations/Sole Proprietorship Sanctions

4. Raxis Engineering, LLC – F-16001

It was MOVED/SECONDED (Ballí/Shah) to approve the Consent Orders #1-4 as submitted. A vote was taken and the MOTION PASSED.

Dr. Wong announced that staff would go into Executive Session to discuss agenda item #18 at 11:14 a.m. Non-critical staff and public members were asked to step out of the room for the discussion on this agenda item and would be allowed to return once the session concluded.

The meeting reconvened at 11:39 a.m.

No action was taken during the session.

18. Discuss and Possibly Act on *T. June Melton, P.E. v Texas Board of Professional Engineers, et. al* (Cause No. D-1-GN-10-000912)

It was MOVED/SECONDED (Wong/Norwood) to approve the agreement attached to settle case No. D-1-GN-10-000912 contingent on the Attorney General approval. A vote was taken and the MOTION PASSED.

19. Request of Manuel Montemayor, P.E., to Reconsider Executed Consent Order for Texas Board of Professional Engineers Enforcement Case No. D-30692

Dr. Wong asked Mr. Sims to brief the Board on this case.

Mr. Sims relayed that Mr. Montemayor had entered into a Consent Order accepted by the Board on November 16, 2017, to resolve a pending enforcement case against him. The Consent Order imposed a formal reprimand, an Administrative Penalty of \$2,670.00, agreement to pay court costs, and a requirement to complete the Texas Tech University Engineering Ethics Advance Level III course within 6 months from the date of the Order. Mr. Montemayor did not complete the Texas Tech University Engineering Ethics Advance Level course by the deadline required by the Order.

As a result, Mr. Montemayor was not allowed to renew his license to practice engineering until the condition of the Order was satisfied under Board Rule 137.7(f). On May 21, 2018, Mr. Montemayor's Attorney wrote to the Board to ask for an extension to complete the ethics course and keep Mr. Montemayor's license in good standing until March 2019. The Board staff attorney wrote Mr. Montemayor on May 29, 2018, to notify him that only the Board could modify or grant extensions on an executed Consent Order. The staff attorney also conveyed that Mr. Montemayor could appear before the Board at the August 2018 Board meeting to formally discuss the matter and request the extension and renewal of his license. There was no further communication from Mr. Montemayor or his attorney until March 2019 when Mr. Montemayor called to get the reason why he was not able to renew his license.

Mr. Montemayor wrote to Mr. David Howell, Executive Deputy Director, on April 12, 2019, to request an appearance before the Board and request a 6-month extension to complete the ethics course and grant renewal of his license.

Dr. Wong asked Mr. Montemayor to come before the Board and present his case. Mr. Montemayor came before the Board. The Board and Mr. Montemayor discussed the case.

It was MOVED/SECONDED (Ballí/Adejokun) to reinstate Mr. Montemayor's license for a 3-month probation period beginning on May 23, 2019 and to allow him to complete the Texas Tech University Engineering Ethics Advance Level III course during this time period. If the course is not completed in this time frame, his license would be suspended. A vote was taken and the MOTION PASSED.

Licensing Applications requiring board ruling:

20. (Consent Agenda) Licensing Applications.

- Approved for Exams
- Approved for Licensure
- Firms Approved
- Waivers – Fundamentals of Engineering examination
- Waivers – Professional Engineering examination
- Not Approved for Licensure.

This agenda item was approved under Consent Agenda, see agenda item #2.

21. Issues from the Board member to consider for next scheduled Board Meeting. Mr. Shah requested that the square footage of the Board room be sent to him.

22. Adjourn.

It was MOVED/SECONDED (Norwood/Shah) to adjourn the meeting at 12:53 p.m. A vote was taken and the MOTION PASSED.

Date the Board approved the minutes as submitted:

August 22, 2019.