

Meeting of the Professional Engineering Committee of the Board of Licensure for Professional Engineers & Surveyors held June 9, 2005 at Best Western Pine Springs Inn, 1420 Highway 70, Ruidoso Downs, NM 88346.

Members Present        Severiano Sisneros, PE, Board Chair  
                                 Dr. Clifford E. Anderson, PE/PS  
                                 Patricio Guerrerortiz, PE  
                                 Dr. Rola Idriss, PE

Members Absent:        Subhas Shah, PE Chair  
                                 Stevan Schoen, Public Member

Others Present         Elena Garcia, Executive Director  
                                 Candis Bourassa, Licensing Manager  
                                 Mary Smith, Assistant Attorney General, Board Counsel  
                                 Edward Ytuarte, PE/PS, Complaint Manager  
                                 Mike Pearson, PE Applicant from Arizona  
                                 Bill McFarland, PE, NMSPE

**1.        CONVENE/ROLL CALL/INTRODUCTION OF GUESTS**

Mr. Guerrerortiz convened the meeting at approximately 9:15 a.m. Roll call was taken, and it was noted that a quorum of the Board was present. Guests introduced themselves.

**2.        APPROVAL OF THE AGENDA**

Mrs. Garcia suggested the addition of a Rules Committee Organization discussion under New Business. A motion was made by Mr. Sisneros to add a 4.4 to New Business, second by Dr Idriss and unanimously,

**VOTED:** To approve the agenda as presented with 4.4 Rules Committee Organization added for discussion.

**3.        APPROVAL OF THE MINUTES**

**3.1       Minutes of the April 21, 2005 Meeting** - It was moved by Dr. Anderson, seconded by Dr. Idriss and unanimously,

**VOTED:** To approve the minutes of the April 21, 2005 meeting.

**4.        NEW BUSINESS**

**4.1       Michael J. Pearson** – Reconsideration of Application by Comity – Appointment: 9:15 a.m. – Mr. Pearson addressed the Committee indicating he has owned his own engineering company since 1969, is licensed in four states, holds patents and is a published engineering author. He has completed the FE and PE examinations, but lacks the engineering degree qualification required by New Mexico law. The Committee reviewed Mr. Pearson’s academic background noting it was very close to an engineering degree. The law at the time Mr. Pearson was first licensed included related science degrees. The Committee recommended Mr. Pearson investigate the educational requirements necessary to get a related science degree from the credits he has already acquired. Mr. Pearson agrees to get an evaluation of this degree possibility. Mr. Guerrerortiz believes reconsideration and interpretation of the law is possible by the Board if Mr. Pearson provides additional information. His file will remain active awaiting new information to be addressed to Mrs. Garcia.

**4.2 Election of Officers** – Chair, Vice Chair – Mr. Sisneros nominated Mr. Guerrerortiz for Chair, second by Dr. Idriss. Nominations closed and Mr. Sisneros moved for election of Mr. Guerrerortiz by acclamation. Motion passed unanimously. For Vice Chair, Dr. Anderson nominated Mr. Schoen, seconded by Dr. Idriss. Nominations closed and Mr. Sisneros moved for election by acclamation. Motion passed unanimously.

**4.3 Approval of PE and FE Scores** – The New Mexico scores were presented. Guerrerortiz asked how these compared with the October test. A total of 76 exams were administered. Passing percentages normally range from the high 30s into the high 40s. The passing rates continue to be of concern. Mr. Guerrerortiz stated only 15% of graduates go on to register. Mr. Guerrerortiz commented that after attending the Western Zone meeting, he believes NCEES spends too much time on test security. Mr. Sisneros believes there should more emphasis on the promotion of the tests. Dr. Idriss stated she has worked on the test review committee. She indicated NCEES's new proposal will include handouts with all necessary equations and would disallow books in the exam room. Dr. Idriss indicated she has had the opportunity to take the PE test in order to evaluate it. She found no need for some questions and thought the test was overall rather tedious. Mr. Guerrerortiz announced he was asked to serve on the NCEES Council Activities Committee. He is not fully knowledgeable on its responsibilities. Motion is made by Dr. Idriss to approve the scores, second by Mr. Sisneros and unanimously,

**VOTED:** To ratify the FE and PE scores with the cut-off as recommended by NCEES.

**4.4 Rules Committee Organization, separation of rules** – After some discussion, it was recommended that a joint rules committee meet and decide/recommend what rules will be sent to the engineering or survey committee and those that will stay within the joint Board. All rules would come first through this committee and then transfer. This committee is made up of both the surveying and engineering committees' chairperson and the 2 public members. As for rules, a starting point would be inconsistency of rules or what needs to be clarified with current new legislation. Mrs. Garcia pointed out there is much public interest in promulgating a rule to allow the taking of the PE exam before the four years of experience as authorized under Section 61-23-14B. Dr. Anderson notes the PE exam is a test on knowledge of course work and applicants have better recall near graduation. Changes in the exam could reflect more work experience knowledge testing in the future. Mr. Guerrerortiz pointed out that a disadvantage of early testing would be the work staff would have to do in evaluating the four years experience for its engineering qualifications prior to licensure where now the test does this. This discussion will continue in the joint meeting.

## 5. OLD BUSINESS

**5.1 Complaint Procedures** – Mrs. Garcia explains that currently names are not shown on the first review of a complaint. Adding them back at the second review on a case-by-case basis would be difficult for the staff. She points out, Mrs. Smith has indicated in her memo reviewed by the Board, that using no names is recommended. Dr. Anderson also sees a need for the option to use names from his own case experience. He suggested the first review have no names, the second with names and that the committee decide to use them or remove the names if the investigation continues. Other members would also like to have that option. No one wants to prejudge a case and the cases could be reviewed in closed session. Mrs. Garcia explained if there are names there is potential for the names to be leaked to the public. Mrs. Smith addresses the Board stating that if names are used in the cases, it would have the appearance of influence over the due process of an individual. Names make it easy for someone to say the outcome is due to knowing who they are. In due process, the licensee has the right to know what action is being taken against him or her by the complainant and the opportunity to address the allegations. When the licensee's name is used even in closed session, he is not getting due process. Only the complainant is being heard. At the same time the upset complainant has to realize the Board has authority only over the license of the licensee. This very basic judgment can be done on the facts without names. Mrs. Smith stated that all the licensing boards block the names. Mrs. Garcia interjected that there have been questions on why the Board will review a complaint not only based on the complainant's statements but also as a total package. If other violations are discovered by the investigator on the case, they are pursued and brought to the Board's

attention. Mr. Sisneros believes the Board should be looking only at the actual complaint. Any investigation into other matters should not be included. It is like searching without a warrant. Mr. Guerrerortiz recalls situations when everybody already knew who was involved. He personally has seen others shy away from a complaint and question whether they should or should not file the complaint? Mrs. Smith indicated that if impartiality is gone it would be advisable to withdraw from the decision. Mr. Guerrerortiz inquired as to what happens if the Attorney General does not want to represent the Board's actions. Mrs. Smith says private counsel is available, but the Attorney General's Office has the option to commission that person. Dr. Anderson indicated the Attorney General's office is retained to defend the Board. It is decided to move on and continue this discussion with the full Board.

6. **COMMUNICATIONS**

**6.1 Randal D. Mitchel, Applicant** - Mrs. Garcia presented his letter where he has received a BS in Mechanized Agriculture and Masters in Agriculture during 1983-1989. While working on a PhD, he was required to go back and complete a Bachelor of Science degree in agricultural engineering May, 2005. With 16 years of experience, he wants to have the FE waived under the 12 years of experience option prior to the new statutory change. He has made an application as such. He would not have the 12 years of experience after graduation as the new law will require. Board's decision was to review the date the masters was acquired because it could be considered a related science degree. This could also be a basis for the Board to waive the FE However, the FE can be waived under current law due to the years of experience Mrs. Garcia will advise him of this decision.

**6.2 John Caranta, PE Examinee** – Mrs. Garcia explained the examinee had communicated that there had been errors in the October PE exam since one of the questions, in his opinion, did not have a correct answer in the choices provided. He had been advised to send a letter to the Board. He had filed a report with NCEES. The examinee had retaken the exam in April and since his letter had received notification that he passed the April exam. Mrs. Garcia indicated she had called the engineer with NCEES in charge of the exam to determine if the examinee had a valid concern. She was told that due to security issues, he would not be able to give her any details.

7. **CLOSED SESSION (Complaints and Violations)** – It was moved by Mr. Sisneros, seconded by Dr. Idriss and

**VOTED:** To go into closed session pursuant to NMSA 1978, Section 10-15-1 (H) (1) & (7) to discuss only those cases listed in this section of the agenda, cases 7.1 to 7.3. A roll call vote was taken. **VOTING YES:** Mr. Guerrerortiz, Dr. Idriss, Dr. Anderson, and Mr. Sisneros. Motion carried unanimously.

7. A. **OPEN SESSION** – Action on the Above Cases – Mr. Guerrerortiz convened the meeting in open session. He indicated only those cases listed as items 7.1 through 7.3 as listed on the agenda were discussed pursuant to the closing of the meeting.

*[...All charges, unless dismissed as unfounded, trivial, resolved by reprimand, or settled informally shall be heard in accordance with the provisions of the ULA, 61-23-24(E), NMSA 197]*

**7.1 Case 05-04-16** – The Board finds there is no evidence the respondent has offered services to the public therefore the complaint should be dismissed on that basis. However, the Board wants to convey to the respondent(s) that in the future if the respondent does offer services to the public the use of the term cognizant engineer may imply to the public an inappropriate use of the term engineer and therefore would be subject to action from the Board. In addition, the Board wants to convey to the respondent that their individual employees who may use the term engineer on private correspondence as business card etc. to the public could also be subject to action from the Board if the employees use that term intentionally or inadvertently as an offer to provide services to the public. Therefore, the Board would encourage them to consider alternate terms that would not lead to future problems and clarify the positions the employees may have. Motion by Dr. Anderson, second by Mr. Guerrerortiz and unanimously,

**VOTED:** To send a letter as noted (above) in Case 05-04-16.

**7.2 Case 04-04-16** – It was moved by Dr. Anderson, seconded by Dr. Idriss and unanimously,

**VOTED:** To hold this case over for the first Board meeting after September 30, 2005 and at that time consider the action of the respondent.

**7.3 Case 05-04-07** – It was moved by Dr. Anderson, seconded by Dr. Idriss and unanimously,

**VOTED:** To dismiss Case 05-04-07 as unfounded since there is no evidence the respondent moved the FEMA flood plane. There is no evidence the respondent committed any improper action in regards to the analysis in locating the official flood plane.

**8. REVIEW OF APPLICATIONS**

**8.1 Application for Inactive Status**– Veerabhadraiah Gunda, PE 9125; Leslie Ray Hill, PE 8337

**8.2 Application for Licensure from “Model Law Engineers” and “Substantial Equivalency” – 56**

It was moved by Dr. Anderson, seconded by Mr. Sisneros and unanimously,

**VOTED:** To approve inactive status for Mr. Gunda and Mr. Hill and the fifty-six (56) Model Law Engineers and those with substantial equivalency.

**8.3 Review of New Comity and Examination Applications – Approximately 43** – The Board considered the applications for licensure by comity and by examination. A copy of the Board’s action are noted in the individual applicant files.

**9. ADJOURNMENT** – Dr. Anderson addressed the Board and reported he would be resigning from the Board as of the end of July. He indicated leaving his position with the board was difficult since he has enjoyed greatly working with this group. After 28 years in New Mexico, he has been given an opportunity to join in April the faculty of Central Connecticut State University. The Board expressed their gratitude and appreciation for his dedication and stated he would be greatly missed. His work with the Board is a credit to his profession and to the Board.

Having no further business, it was moved by Mr. Guerrerortiz, second by Dr. Anderson and unanimously,

**VOTED:** To adjourn the meeting

Submitted by:

Approved by:

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Elena Garcia, Executive Director

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Subhas Shah, PE, PEC Chair

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Approval Date