

Meeting of the Board of Licensure for
Professional Engineers & Professional
Surveyors held at 9:00 a.m., April 20, 2007
at the Board Office, 4001 Office Court
Drive, Suite 903, Santa Fe, NM 87507-4962

Members Present: Patricio Guerrerortiz, PE, Board Chair arrives 10:40 a.m.
Gilbert Chavez, PS, Board Vice Chair
Severiano Sisneros, PE
Subhas Shah, PE, PEC chair
John Romero, Sr., PE, PEC Vice Chair
Salvador Vigil, PS, PSC Vice Chair excuses himself at 10:15 a.m.
Fred Sanchez, PS
Charles Atwell, Public Member, PSC Chair

Others Present: Elena Garcia, Executive Director, BLPEPS
Candis Bourassa, Licensing Manager, BLPEPS

Members Absent Dr. Rola Idriss, PE
Stevan Schoen, Public Member

Guests None

1. **CONVENE/ROLL CALL/INTRODUCTION OF GUESTS** – Mr. Chavez convened the meeting at 9:00 a.m since Mr. Guerrerortiz has run into road problems driving in from Santa Fe. Roll call was taken, and it was noted that a quorum was present.

2. **APPROVAL OF THE AGENDA** - Motion by Mr. Sanchez, second by Mr. Vigil and unanimously,

VOTED: To approve the agenda as presented.

3. **APPROVAL OF THE MINUTES**

3.1 February 2, 2007 Minutes – Motion for approval by Mr. Shah, second by Mr. Sanchez and unanimously,

VOTED: To approve the February 2, 2007 Minutes

4. **COMMITTEE REPORTS** -

4.1 **Professional Engineering Committee** – S. Shah, PE, Chair reported the PEC reviewed an applicant approved for an engineering discipline, who at the

same time was asked by another Board to sit for the engineering discipline exam and as it turned out, he failed the exam. There were concerns as to his competence in that discipline. It was decided by the PEC that this would not affect his licensure or additional discipline listing in New Mexico as each state has specific requirements. It was reported that Case 04-04-08 was appealed in District Court. On another issue, the committee is considering an oath for engineers and the establishment of a certificate ceremony. MLE, EI, retired, inactive and endorsement applications were acted upon. Meetings for the rules committee and the Land Fill Gas Committee will be scheduled. There was discussion on follow up with the Environmental Department regarding their commitments they made to this Board late last year.

4.2 Professional Surveying Committee – C. Atwell, Chair reported staff had scheduled five show cause hearings and only one person showed up. Seventeen cases were reviewed and acted upon. On case 05-04-01 and 05-04-09 a Decision and Order was enforced and George J. Marquez, Jr. license was revoked. Respondents in four cases were in compliance, one case was given until June 1, 2007 to bring to compliance, another licensee in another case was not in compliance and another show cause hearing was ordered. In four other cases, NCAs were issued. One request to reopen a case was denied, one case was tabled until June 2007, and two other cases were dismissed as unfounded. In Case 06-05-53 a modified stipulated agreement will be issued and one case is continued for additional investigation. An applicant was asked to complete the required eighteen hours of surveying education to augment his engineering degree for eligibility to take the PS examination. Mr. Chavez added that two items were referred to the full board for further discussion: (1) Advisory Opinion No. 16 on supplemental survey is being ignored and there should be more educational efforts on this, and (2) FEMA lists engineers, architects and surveyors as legally qualified to provide flood elevation certificates to determine the need for flood insurance. In New Mexico, only licensed surveyors may certify elevations. However, flood plain managers are not aware of this. The full board will have to act on this, so Mr. Chavez would like it on the June agenda to assign it to the Joint Practices Committee.

4.3 Professional Service Agreement Task Force – F. Sanchez presented to the board the finished professional services model agreement. He reported the task force had members on the committee covering all areas of expertise. Bob Dean provided input as an insurance expert. Charles Cala, PS and Steve Metro, PS in private practice and Ed Rios, PS with the DOT, and Mike Gibson with the Associated Contractors worked on the service agreement. Kevin Sexton, Esq. was given copies for legal input. The Agreement is created in a format that can be used and modified as needed. It is a guideline or template for those needing a professional service agreement. Mr. Sanchez would like to make it available as such on the board's web site. Mr. Chavez and Mr. Vigil stated their support and agree there is a need for a basic service agreement to be made available for

entities that need it. The board members decided they would like time to review it further and the vote is tabled until the next meeting when it will be an action item.

4.4 Licensure Promotion/Professional Development Committee – G. Chavez

4.4.1 Multiple Certifications on Plans or Plats – A discussion ensued with Mr. Chavez’ written submittal. Mrs. Garcia noted engineers have multiple seals on a drawing; however, surveyors do not, only DOT surveyors on certain projects may have multiple stamps. Mr. Chavez explained when one surveyor does all the research and another does the fieldwork the use of multiple seals is needed on the plat. He would like consideration to amend the rules to allow more than one surveyor per plat. Mr. Chavez suggested this be reviewed by the Rules Committee, but it is decided to assign it first to the Surveying Committee.

4.4.2 Update and Distribution of Professional Rules of Conduct – Mr. Chavez would like to make some modifications to the Board rules of conduct mainly by reformatting them into sections: (1) licensees obligation to society, (2) licensees obligation to employer and clients, and (3) licensees obligation to other licensees or other professionals. Mr. Chavez has provided a written proposal using these three sections. Mrs. Garcia added this requires amending the code through the rules hearing process. She explained that the Board would need to approve a proposal that will actually show the changes to the current code of conduct. After the board approves the actual changes, she can schedule a rules hearing that will require a 30-day public notice. It was noted that the Board does not want to wait too long to do this. Mrs. Garcia stated staff will get a proposal prepared for the June meeting. She indicated it probably will take about six months to complete the process. Motion is made by Mr. Romero, second by Mr. Vigil and unanimously,

VOTED: To proceed with a proposal that will include Mr. Chavez request to be considered during the June meeting in order to begin the rule-making process.

5. NEW BUSINESS

5.1 Report from Delegates to WZ Meeting

Board Resolution to Delete Engineering Surveys from Model Law – Mr. Sanchez explained when engineering surveys were eliminated from the Act; it remained in the NCEES Model Law. He wrote a case for removing it from the Model Law. It was also prepared in the required NCEES resolution format for presentation at the WZ meeting. It was a sensitive subject. It was designed to get the unlicensed practice of surveying out of the practice of engineering. Engineering curriculums have dropped the surveying classes they had in the past. Divided into groups of engineers and surveyors the resolution was discussed. Mr. Sanchez did address the engineering group, but the vote failed by 5 ½ to 6 2/3. Surprisingly it did very well, so Mr. Sanchez has asked Mrs. Garcia to distribute it

to the other zones who have not had their meetings yet. It can then be discussed at the August meeting. Mrs. Garcia suggested sending it to all the boards and then they could distribute it to their members along with sending it to the other three zones for an item on their zone agendas. Mr. Sanchez would also like to publish it in the Board's newsletter. Other resolutions pertaining to Council business/meetings were presented by Colorado which also failed due to NCEES' schedule requirements. California had a resolution on not getting information from ELSEES on test results and exam irregularities. ELSEES withheld results on two examinees when only one was found to have copied from the other, and this nearly became a lawsuit.

Report from Chair on NCEES Presidents Assembly Meeting – Mr. Guerrerortiz reported the meeting in Atlanta was well attended. There were updates on issues that were dealt with at the annual meeting. There were concerns by some on what appear to be NCEES efforts for self-promotion, e.g. requesting Governor Proclamations on NCEES 100 anniversary and perceived priorities for financial/economic status. Mr. Guerrerortiz believes the focus of NCEES in many ways is not trying to achieve the same goals as the state boards, i.e. the protection of public welfare and safety. On the other hand, he would not be opposed to recognize NCEES for licensure improvements in the form of a resolution that also promotes NM licensure.

Proclamation from Governor - This is the 100-year anniversary of the first licensure 1907 of engineers in Wyoming. Wyoming did do a proclamation from their governor. Ms. Garcia indicated New Mexico's licensing Board was established in 1935. It is the consensus of the board that a board resolution would be better than a Governor Proclamation for NCEES.

Computer-based testing – This was discussed at the meeting and it did not seem practical at this time due to security and number of examinees.

5.2 Attending Board Meetings (or administrative hearings) as a Possible Professional Development Activity for Licensees and Board Members-Discussion – Mr. Vigil would like to see the participation of Board members and attendance by other licensees at board meetings count for PDHs. The hearings are similar to case studies and may be applied toward the ethics requirement. Mr. Sisneros makes a motion, seconded by Mr. Romero and unanimously, to allow PDHs both in ethics and regular to Board members and guests who attend hearings and board meetings, second by Mr. Romero and unanimously,

VOTED: To allow attendance at board meetings and hearing to count as PDHs in both the ethics and general category for both participating board members and licensees attending.
(other than the respondent in hearings).

6. DIRECTOR'S REPORT

6.1 Staff Activities Report – Mrs. Garcia presented the legislative appropriations for the coming year (FY '08). For the April exams, there were 276 total examinees: 172 FEs, 98 PEs, 4 PSs and 2 SIs. Thirty-six of the PE applicants were testing with less than 4 years experience compared to 8 last October. In February, staff prepared for four meetings and hearings, in March for three meetings and hearings, and in April, for three meetings. Mrs. Garcia stated the activities in the law enforcement area have been quite significant. It has also been challenging to ensure cases are processed since the Litigation Division of the AG's office has been quite understaffed. There were approximately ten cases backlogged. Three hearings have been held and all surveying NCAs requested have been issued. There are about three pending engineering cases still awaiting NCAs at the AG's office. The Minimum Standards for Surveying were successfully filed, printed, and will be mailed out before the effective date and prior to postage rates going up on May 14, 2007. Financial staff is now working on the operating budget with the new SHARE system. She has been working with surveyors who are still reporting problems with realtors giving copies of ILRs to the public. Mr. Atwell added this happens at the closing when the title company gives the new owner their package. The brokers in charge of all the realtors in an office continue to allow this and there is a lack of survey education. Mrs. Garcia indicated she has Board correspondence to distribute that explain the ILRs and the Board's standards. It also includes the potential problems to property owners when they believe they are getting a "survey" as the word is used on some closing documents, when in fact it is not a survey but an Improvement Location Report. The correspondence is provided to surveyors and realtors. Ultimately, however, the Board or licensees can not control what the realtors or title companies do.

6.1.1 Issuance of Duplicate Professional Certificates Display of Certificates – Ms. Garcia indicates that the Board's rules prohibit the issuing of duplicate certificate unless one has been destroyed or if necessary due to a name change, etc. However, at the request of a firm and Mr. Guerrerortiz, staff has provided "for display" certificates without the signatures or Board seal and issued to those who wish to display a certificate, but who are concerned in displaying the original one. An order for 20 at \$25.00 each was filled for one company and more individual orders have been received. Mrs. Garcia provided a sample for the board to see. Mr. Guerrerortiz suggested "do not duplicate" might be added to the original certificate for security purposes.

7. **EXECUTIVE SESSION** – The board may convene in closed or executive session pursuant to NMSA 1978, Section 10-15-1 (H) (7) An executive session was not required.
8. **COMPLAINTS/CASES**

8.1 Case D-202-CV-2006-02223 Armstrong vs. Board of Licensure – 2nd Judicial District Court- The Board was apprised of the Dismissed by the court of the lawsuit against the Board.

Case 04-04-08 Daniel Armstrong, PE [Appealed Board’s D&O] – The Board was apprised of the appeal filed by Mr. Armstrong in District Court.

ADJOURNMENT – Having no further business, Mr. Chavez adjourned the meeting.

Submitted by:

Approved by

Elena Garcia, Executive Director

Patricio Guerrerortiz, PE, Board Chair

Approval Date