

DRAFT

Meeting of the Professional Engineering
Committee at 9:00 a.m., February 16, 2007
at Enchantment I Room, Albuquerque
Convention Center, 401 2nd St., NW
Albuquerque, NM

Members Present: Thomas Mann, Jr, PE, Committee Chair
Dr. Kenneth White, PE
David Marble, PE
James Wernicke, PE
Sam Small, PE
Rex Kirksey

Staff Present: Mary H. Smith, Assistant Attorney General, Board Counsel
Candis Bourassa, Licensing Manager, BLPEPS
Ed Ytuarte, Complaint Manager

Others Present Bill Turner, MRGCD, complainant
Hank Rosoff, NMSPE

1. **CONVENE/ROLL CALL/INTRODUCTION OF GUESTS** - Mr. Mann convened the meeting. Roll call was taken, and it was noted that a quorum was present. Guests introduced themselves. Mr. Turner as complainant and Mr. Rosoff for NMSPE.
2. **APPROVAL OF THE AGENDA** - Motion by Mr. Mann to approve the agenda, second by Mr. Smith and unanimously,

VOTED: To approve the agenda as presented.

3. **HEARING – CASE 05-05-38A** – hearing was vacated and board will discuss settlement agreement.
4. **CLOSED SESSION** - Motion by Mr. Marble that the Board will convene in closed or executive session pursuant to NMSA 1978, Section 10-15-1(H)(#1 and amended it to add #3) to discuss case listed in this section of the agenda.

In discussion, Mr. Turner questions the Board's action of going into closed session at a public meeting and Ms. Smith explains the hearing was vacated because a settlement agreement has been presented to the Board and the settlement agreement will be discussed in closed session. This is accordance to the Open Meetings Act. Only members of the Board have access to the un-approved settlement agreement presented. Mr. Turner would like it recorded he has not seen the settlement agreement or been able to comment on it. Ms. Smith states the complainant in an administrative licensing matter is not party to the Board's proceedings. Mr. Turner requests it be noted that since filing the

complaint he has never been given notice with regard to what action has taken place in this matter.

Mr. Kirksey seconds Mr. Marble's motion to go into closed session. Role call vote is unanimous

VOTED: To go into closed session

4.1 Case No. 05-05-38A

5. **OPEN SESSION** - Mr. Mann reconvened the meeting in open session and further stated that the discussions in closed session were limited to case no. 05-05-38A as listed on the agenda.

5.1 Board Action Regarding Case 05-05-38A - Motion by Dr. White to modify Part 5A to note action was taken before Dr. Oad's professional engineering licensure and Part 5B to change to six (6) months and twenty (20) hours of ethics to be taken through the National Institute for Engineering Ethics through Texas Tech University, Lubbock, Texas.

Mr. Turner asks if the settlement is now a public document once the Board has voted on its amended form. Ms. Smith states a settlement agreement is a public document once the parties have accepted it. Then it is a final document.

Dr. White continues and amends his motion to include in Part 1 the statement that Dr. Oad was subject to the Boards jurisdiction as a person who does not have a license and as a licensed engineer and in Part 2 that references 61-1-1 through 61-1-34 be revised to read 61-1-33 through 61-1-34.

Motion second by Mr. Small and unanimously,

VOTED: To amend Parts 1,2,5A and 5B as stated in the motion

Mr. Rosoff asks for clarification on when the settlement document actually becomes available to the public. Ms. Smith answers that during the negotiation process it is not a final document. Once agreed to by the parties and accepted by the Board, then it is a public document.

Mr. Turner explains during his experience with closed session the outline perimeters of the matters discussed are presented to the public. He would appreciate the general subject matter of the settlement agreement to be on record. Ms. Smith disagrees, as this is still a matter in negotiation. The board's statutes protect certain types of record and disclosure of this settlement document. It would not be public at this point and time. In discussion, the board decides they accept the modifications they made today, but they have not addressed accepting the whole agreement. That would be in a later meeting.

The Board questions the status of the NCA the Attorney Generals office has been requested to issue in the second case. Mr. Ytuarte indicated there have been changes at the AG's office and the NCA has not been prepared/issued. Mr. Mann has personally inquired on the delay and suggests a letter asking for action from the Office of the Attorney General be sent.

Dr. White makes a motion for Mrs. Garcia to draft a letter to the Office of the Attorney General addressing concerns about the case taking so long for them to complete. Second by Mr. Small and unanimously,

VOTED: Mrs. Garcia to draft a letter on concerns about delays in issuing the NCA in the second case.

Mr. Turner asks if the investigator in this case actually subpoenaed invoices, and engineering work products, that Dr. Oad had prepared. He is trying to determine if the board had all the facts and the full record in front of them when they were in executive session. He wants to know the investigator presented it all including testimony and reports. Mr. Mann believes they did a thorough job with what was presented to the Board

7. **ADJOURNMENT** - Having no further business, Mr. Mann adjourned the meeting.

Submitted by:

Approved by

Elena Garcia, Executive Director

Mr. Tom Mann, Committee Chair

Approval Date