

MINUTES OF

Meeting of the Professional Engineers Committee of the Board of Licensure for Professional Engineers held 2:00 p.m. April 8, 2010 at Middle Rio Grande Conservancy District Office, 1931 Second Street SW, Albuquerque, NM

Members Present John T. Romero, PE, PEC Chair
 Subhas Shah, PE
 Severiano Sisneros, PE
 Stevan Schoen, Public Member
 Rola Idriss, PE

Members Absent Julie Samora, PE

Others Present Edward Ytuarte, Executive Director, BLPEPS
 Perry Valdez, Licensing Manager, BLPEPS
 Roman Garcia, Investigator, BLPEPS
 Mary Smith, Board Attorney
 Joe Barela, PE, Case Manager
 Ray Gomez
 Raymond Hensley, NMSPE
 Russell Koger, NMSPE

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

Mr. Romero convened the meeting at 2:00 p.m. Roll call was taken and it was noted that a quorum of the committee was present. Mr. Ray Gomez, Mr. Raymond Hensley and Mr. Russell Koger were introduced as guests.

2. **APPROVAL OF THE AGENDA**

MOTION by Mr. Shah, **SECOND** by Mr. Sisneros, and unanimously

VOTED: To approve the agenda as presented

3. **APPROVAL OF THE MINUTES**

3.1 **October 29, 2009 –**

MOTION by Mr. Sisneros, **SECOND** by Mr. Shah, and unanimously

VOTED: To approve the minutes contingent on Mr. Sisneros reviewing the tapes and if he would like to include anything else that he finds in the tapes he can do so at the next meeting.

3.2 January 21, 2010-

Mr. Shah noted that he recused himself before item 7.1 which was prior to the closed session. It was also noted that Dr. Idriss joined in by teleconference at the same time. It was requested that these items be reflected in the minutes.

MOTION by Mr. Sisneros, **SECOND** by Mr. Schoen, and unanimously

VOTED: To approve the minutes pending the additions of the above items.

Dr. Idriss joined the meeting at this time.

4. CORRESPONDENCE/ COMMUNICATIONS

4.1 Marchand Letter- Mr. Ytuarte stated that a letter came in from Mr. Marchand and a copy was provided for them in the meeting booklets. Mr. Marchand submitted a renewal that was received by the staff on March 31, 2010 along with the letter. Mr. Ytuarte began to explain that Mr. Marchand submitted a check for \$180 along with his renewal and a letter stating that he had recently been informed by the Albuquerque Police Department that the original check he had mailed and his renewal had recently been found in a home during an investigation. Mr. Ytuarte stated that he had instructed Mr. Valdez to go ahead and follow up with the Albuquerque police department to verify that the information being provided was true. Mr. Valdez reported that he had verified with the officer and that what Mr. Marchand had reported was true.

Mr. Ytuarte stated that he then instructed Mr. Valdez to go ahead and accept the payment without penalty since he was not to blame for his renewal being sent in late. He stated that he just wanted to inform the committee that he administratively had made this decision and that if any other request for a waiver would be made of the board he would have brought it to the board for consideration but since this was a pretty straight forward he situation he went ahead and allowed the renewal be accepted without the penalty fee.

4.2 GSD Letter Requesting PE for Selection Committee- Mr. Ytuarte explained to the committee that he has received a letter from the General Services Department requesting help from the office to have a couple of volunteers to sit on a selection committee for two ongoing projects. He stated that in the letter they state that the process may take up to eight hours. Mr. Ytuarte asked if any of the engineers would like to volunteer their services to help.

Mr. Hensley stated that NMSPE has a group of people that usually will go out and help or volunteer when necessary.

Mr. Ytuarte explained that he has gone to them in the past and that the two people they provided both were unable to help when the time came.

Mr. Hensley stated that he will personally help Mr. Ytuarte find somebody who will be able to attend both of the selection meetings.

4.3 Raul Parra- Letter of March 9, 2010- Mr. Ytuarte explained that a letter has been sent to the board by Mr. Raul Parra. He gave a short explanation that Mr. Parra has been in the media a lot with the Metro Court scandal in Albuquerque. Mr. Ytuarte stated that at the time that this was all going on Mr. Parra's license was not up for renewal yet.

Ms. Smith stated that she remembers that Mr. Parra had been indicted and perhaps had plead guilty but had not been sentenced.

Mr. Valdez stated that he recalled the same thing.

Mr. Ytuarte then stated that at that time Mr. Parra sent in an application for inactive status which the board refused and then wanted to suspend or revoke his license. Ms. Smith had suggested that this would have to be done through a formal complaint or somehow involve Mr. Parra so that he would have due process.

Mr. Ytuarte goes on to state that Mr. Parra's license is still currently active and it will come due this December and he is realize that he is going to have to address this issue when he renews regarding this issue and so he is asking ahead of time for the board to be lenient and not to do anything before his license needs to be renewed in December.

Mr. Romero asked if the statute requires that the board revoke a license when you become a convicted felon.

Ms. Smith stated that it is not required but it does give the board grounds upon which they can issue an NCA and have a hearing as to whether or not his license should be revoked because of his felony convictions. Ms. Smith explained that in order for the committee to revoke or refuse to renew his license they will have to issue an NCA, based on his felony convictions.

Mr. Valdez explained that Mr. Parra did send in a renewal form at the time of his last renewal and he did mark yes to answer the conviction question. Staff sent the form back to Mr. Parra requesting additional information on the conviction because it was not provided as necessary with the application. Instead of sending in information regarding his conviction, Mr. Parra sent back a request for his license to be placed in inactive status. Mr. Valdez states that Mr. Parra's license was never renewed.

Ms. Smith asked if the board's renewal form specifically asks for documentation when a licensee answers yes to the conviction question.

Mr. Valdez responds, yes it specifically states that if the answer to the conviction question that documentation is required.

Ms. Smith then stated that if Mr. Parra did not comply by providing the required documentation then his application for renewal was not properly made. She stated that in order for the board to act on a renewal the application has to be properly made to agree or not to agree to issue an NCA.

Mr. Sisneros questioned why Mr. Parra's expiration date is December 31, 2010.

Mr. Ytuarte stated that in the meeting booklet is a copy of what currently shows in the board's database. Mr. Ytuarte expressed some confusion and tells Mr. Valdez that he stated that Mr. Parra's license is in expired status but he did send in a renewal form and the renewal fee. Mr. Ytuarte stated that he thinks that Mr. Valdez is telling them that he never renewed.

Mr. Valdez stated that Mr. Parra never renewed. He sent in a renewal form along with a payment. He checked off the box that said yes, affirming that he had a felony or disciplinary action but did not provide the documentation that was required. Mr. Valdez explained that the renewal was sent back along with this check. At that point Mr. Parra responded by sending in an inactive status application. The board denied that request and Mr. Parra never renewed after that. Mr. Valdez stated that if you look at the print out of the financial section of the database there never was a fee submitted.

Ms. Smith asked if the check that was received from Mr. Parra was deposited.

Mr. Valdez stated no we did not. He states that the check was sent back to him.

Mr. Romero questioned the copy of the database that was given to them who marked Mr. Parra's license as active.

Mr. Valdez stated that he did have to take back what he just said because he noticed that Mr. Parra's check was deposited on December 22, 2008.

Ms. Smith asked when it was sent back to ask for the documentation.

Mr. Valdez responded by saying that it was sent back a day or two later from when the renewal was received in the office.

Ms. Smith asked if there is something on file that reflects that the form was mailed back to Mr. Parra requesting the documentation regarding the conviction question.

Mr. Valdez stated that yes there is a copy of the request.

Ms. Smith questioned if there is something on file that shows the request but they do not have a copy with them today. Ms. Smith stated that this is going to be problematic if all of the proper documentation is not available. She states that before the committee can make any kind of decision they need to see the entire file.

MOTION by Mr. Shah, **SECONDED** by Mr. Sisneros and unanimously

VOTED: To table this item until all of the information is received by the board and can be reviewed. Along with this the board requests that Mr. Parra's license status is verified along with all corresponding paperwork to be brought o them for review, court records to show what was the actual conviction and all meeting minutes where Mr. Parra was discussed.

4.4 Julian Paco Letter of January 19, 2010- Mr. Ytuarte stated that there is a copy of the letter sent in by Mr. Paco.

Mr. Sisneros stated that he felt the committee needed to have a meeting prior to the June meeting, possibly in May so that they can work on some of the pending cases.

Mr. Romero stated that it would be fine; they would just need to coordinate with staff and set a date to have the meeting in Santa Fe at the board office.

Mr. Garcia stated that Mr. Paco contact the office in January of this year, informing the staff that he was in prison. Mr. Garcia stated that Mr. Paco was convicted in May 2008, and was calling in to inform the board of his conviction even though he by statute was supposed to notify the board within ninety days of a conviction. He has never renewed and his license is currently lapsed. Mr. Garcia stated that Mr. Paco did go to prison on May 28, 2008 and will be released in June of this year. Mr. Paco is requesting that the board consider his licensing. Mr. Garcia stated that he has talked to Mr. Paco's classification officers and told them that the board will want to know how he was behaving and about his rehabilitation and that's when they sent in the second letter that was in the meeting books. Mr. Garcia suggested that a letter be sent to him explaining that the board just needs to send him some kind of reply and let him know that if he would like to reply for licensure when he gets out then he is welcome to do so.

Mr. Romero stated that he feels that the response can be handled administratively.

Ms. Smith questioned when Mr. Paco's license expired.

Mr. Garcia responded in December of 2008. He stated that Mr. Paco has had quite a few years to contact the board and he just chose to do it now.

Mr. Ytuarte stated that a letter will be written to Mr. Paco stating that when he gets out he can follow the process.

4.5 Letter from Donna Dietz, PE- Mr. Ytuarte explained that this item was a letter sent into the board by Ms. Donna Dietz.

Mr. Valdez stated that he has spoken to Ms. Dietz. He stated that she had called him and informed him that she had not renewed her license and during that time she had signed some documents which she has provided a copy of. Mr. Valdez stated that Ms. Dietz has since renewed her license and also paid the penalty fee. It is now being brought to

the board, because Ms. Dietz herself came to the board and reported this. Mr. Valdez stated that he is not sure what the board wishes to do with Ms. Dietz' admission.

Mr. Romero asked if any complaint has come in against her. He stated that he feels that personally he feels that the board should not file a complaint against her unless one comes in.

Ms. Smith stated that Ms. Dietz' license was expired as of December 31, 2009 and the board has knowledge that she has practiced on an expired license by her own admissions. Ms. Smith stated that her advice to them is that they cannot make decisions on a case by case basis. They need to be consistent. She also suggested that they send this matter to the rules committee to have in writing what the board will do when they have knowledge that someone has practiced with an expired license.

Mr. Romero then stated that this should come back to the committee at the May meeting in the form of a complaint for consideration at that time.

Mr. Schoen questioned whether there was any type of question or statement on the renewal form that a licensee would have to answer to or state that they have not practiced since their license was expired.

Mr. Ytuarte stated that the staff has taken a couple of considerations to both committees and the full board for consideration concerning this matter and have had no luck with getting an answer or direction to go ahead and do so.

Mr. Valdez stated that he is aware of Mr. Ytuarte bringing an affidavit that he had put together that they were proposing to be a part of the penalty renewal statement.

After a short discussion it was stated by Mr. Ytuarte that staff would create the different versions of what was just mentioned and would be brought back to the board for their consideration.

MOTION by Mr. Sisneros, **SECONDED** by Mr. Romero and unanimously

VOTED: Beginning with this year's renewals that a notice go out on the renewal cards that are being mailed out that licensees cannot practice after December 31st and the same notice to be placed on the Board website homepage. Also a statement or affidavit should be included with the penalty renewal forms that the licensees certify that they have not practiced during the time that their license has been expired.

5. NEW BUSINESS

5.1 Raymond Hensley- Licensing Fee Increase- Mr. Hensley stated that a few years ago the board had \$600,000 dollars in reserve and was asking if those funds were still in reserve.

Mr. Ytuarte explained that the board is required to have a certain amount of money in reserve to cover at least one year of administrative expenses.

Mr. Hensley stated that he was told that the money was in reserve for a building fund.

Mr. Ytuarte explained to Mr. Hensley that the board was not currently looking to get a new building. He states that General Services Department discourages agencies from doing that. It is all done through their agency and even when an agency leases it is all done through their department. Mr. Ytuarte stated that if that was the thought back then, he was not aware of that.

Mr. Ytuarte explained that with the current budget situation he is currently unable to say if the funds are still in reserve because the governor has already taken money away from the nursing board and the medical board. He also explained to Mr. Hensley that the board staff is very overwhelmed. He stated that the agency had succeeded in getting approval to hire two new staff members and then they were taken away from the agency this legislative session.

Mr. Hensley stated that he had one more question to ask. He then asked if the engineers were carrying the surveyors because he knew that the ratio was about ten to one.

Mr. Hensley stated that NMSPE would like to be a part of the committee when the board begins to work on the Sunset Act.

Mr. Romero informed Mr. Hensley that the reason for the increase in fees was to cover position upgrades that were long overdue for staff and to accommodate two more staff personnel because the current staff was overwhelmed.

Mr. Schoen also advised Mr. Hensley that he could also request the financial records from the state under the inspection of public records so that he could see what the financial end looks like.

Mr. Hensley then asked what the status is on the rules that were created by the fire protection committee.

Mr. Ytuarte explained because the board office is short staffed, it is a work in process. Staff is continuing to work on putting together the rules as is required by the records and archives center.

5.2 License Expiration- Rule Clarification- Was previously discussed with item number 4.5.

6. COMPLAINTS & VIOLATIONS- CLOSED SESSION-

MOTION by Mr. Shah, **SECONDED** by Mr. Romero and unanimously,

VOTED: To convene in closed session pursuant to NMSA 1978, Section 10-15-1 (H) (1) to discuss only the cases listed as 6.1 to 6.4 on the agenda. A roll call vote was taken.

Voting Yes: Shah, Idriss, Sisneros, Romero and Schoen

Mr. Romero declared that the committee was in closed session.

6A. COMPLAINTS & VIOLATIONS- OPEN SESSION-

6.1 10-10-21-

MOTION by Mr. Romero, **SECONDED** by Dr. Idriss and unanimously,

VOTED: To dismiss as unfounded

6.2 10-10-37 A-

MOTION by Mr. Sisneros, **SECONDED** by Mr. Romero and unanimously,

VOTED: To dismiss as unfounded

6.3 10-10-37 B-

MOTION by Mr. Schoen, **SECONDED** by Mr. Romero and unanimously,

VOTED: To dismiss due to lack of jurisdiction and will refer letter to CID.

6.4 Ralph Montoya- PE #15306- No action was taken on this item.

6A.1 Appointment of Hearing Officers (if required) for New Cases- None were required at this time.

7. **OLD BUSINESS-**

7.1 **Turner Update-** Ms. Smith stated that Mr. Turner has filed an appeal on March 26, 2010. The board staff must prepare the record of appeal and file it in district court by April 26th. Ms. Smith asked that copies of the decision and order from the Turner case be made and sent out to all members of the PEC.

Mr. Sisneros asked if the board needs to address the issue of the stay that is being requested by Mr. Turner and his attorney.

Ms. Smith stated that if they are being asked to consider a stay then the board would need to act on it.

MOTION by Dr. Idriss, **SECONDED** by Mr. Sisneros,

VOTED: To deny the request for the stay and to instruct legal counsel to request a bond from the court.

VOTING YES: Romero, Idriss, Sisneros

ABSTAINING from the vote: Mr. Shah and Mr. Schoen

7.2 **Complaint Log-** Mr. Ytuarte stated that a copy of the complaint log is in the meeting books for them to review.

Mr. Garcia stated that he is prepared to take any questions.

Ms. Smith stated that the complaint log contains just open cases and not closed cases so as not to confuse the board members.

7.3 **Western Zone State Report-** Mr. Ytuarte stated that he will prepare the Western Zone State report and would like to have any input or suggestions that he could incorporate into the report from the board members.

8. **REVIEW OF APPLICATIONS**

8.1 **Retired & Inactive Requests-**

MOTION by Mr. Shah, **SECONDED** by Mr. Sisneros and unanimously,
VOTED: To accept the request for Retired licensees.

Mr. Valdez reported that based on the clarification that was discussed earlier on the grace period, the inactive list for approvals will be rescinded so there are no inactive status applications to be considered at this time..

8.2 New EI & PE Licensees- Listing was placed in meeting books for informational purposes.

8.3 Review of Applications- Applications were reviewed on an individual basis.

9. ADJOURNMENT

Mr. Romero adjourned the meeting at 5:21 p.m.

Submitted by:

s/ Edward Ytuarte

Mr. Edward Ytuarte, Executive Director

Approved by:

s/ John T. Romero, PE

Mr. John T. Romero, PE, Chair

August 12, 2010 Approved Date