

MINUTES

MEETING OF THE PROFESSIONAL ENGINEERING
COMMITTEE of the Board Licensure of Professional
Engineers and Professional Surveyors held 1:00 p.m.,
Thursday, May 30, 2019,
Rio Grande Room, Toney Anaya Building,
2550 Cerrillos Rd., Santa Fe, NM 87504

Members Present- Paul Brasher, PE, Committee Chair
Dr. Walter Gerstle, PE
Julie Samora, PE
Karl Tonander, PE

Members Absent- Ron Bohannon, PE

Others Present- Perry Valdez, BLPEPS, Executive Director
Miranda Baca, BLPEPS, Financial Assistant
Stephanie Trujillo, BLPEPS, Licensing Administrator
Gabrielle Schultz, BLPEPS, Executive Assistant
Miguel Lozano, Legal Counsel
Sally Malavé, Assistant Attorney General

1. **Convene, Roll Call and Introduction of Audience**

Mr. Brasher convened the meeting at 1:02 p.m., roll call was taken and a quorum noted. Sally Malavé, Assistant Attorney General, was the only individual in the audience.

2. **Meeting Notification**

Mr. Valdez informed the Board the meeting was noticed in the Albuquerque Journal as well as the Board's website.

3. **Approval of Agenda**

MOTION by Mr. Tonander to approve the agenda as written, **SECOND** by Mrs. Samora, **PASSED** unanimously.

Mr. Valdez informed the Board that there was an individual who was not included on the Public Comment and Correspondence section of the Agenda who was going to be calling in to discuss his application.

4. **Approval of Minutes**

a. **Minutes of April 4, 2019**

MOTION by Mr. Tonander to approve the Minutes of April 4, 2019 as presented, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

b. **Minutes of May 3, 2019**

MOTION by Mr. Tonander to approve the Minutes of May 3, 2019 as presented, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

5. Public Comment/Correspondence

Mr. Valdez introduced Mr. Elaksher via telephone and informed the Committee that Mr. Elaksher would speak to his own work and exam experience since his last communication with the Board. Mr. Valdez informed the Committee that Mr. Elaksher had come before the Committee before and had been told his application would be reconsidered upon the completion and passage of the FE and PE examinations. Mr. Valdez stated Mr. Elaksher had passed both exams and was asking the Committee to reconsider his application.

Mr. Brasher introduced himself as the Chair of the Committee and asked Mr. Elaksher if he had passed the FE exam. Mr. Elaksher responded that he passed the FE in October 2018 and the PE in April 2019. Mr. Brasher asked how many years of experience Mr. Elaksher had in engineering. Mr. Elaksher stated he had been practicing engineering in Egypt off and on since 1996. Mr. Brasher asked how many years Mr. Elaksher had been practicing engineering in the United States. Mr. Elaksher responded that he had studied engineering in the United States from 1998 onward and had served in various engineering projects in the United States. He further responded that he has also been teaching Engineering classes. Mr. Brasher asked where he currently works. Mr. Elaksher responded that he currently teaches engineering at New Mexico State University and had been working there for about 2 years.

Mr. Brasher asked Mr. Valdez if the Committee had access to Mr. Elaksher's application and what decision the Committee had made before. Mr. Valdez informed Mr. Brasher that the Committee did have Mr. Elaksher's application and updated work experience available in the meeting packets on the tablets. He also informed Mr. Brasher that the Board had previously asked Mr. Elaksher to complete the FE and PE exams.

Mr. Brasher asked Mr. Elaksher if he had anything else he wanted to say for his reconsideration and Mr. Elaksher responded with an extensive list of points from his education, work experience, and professional affiliations.

Mr. Brasher asked the Committee if they had any further questions. There were none. Mr. Brasher informed Mr. Elaksher that they would consider his application during executive session and would take an action on his application upon entering open session again.

6. Old Business

a. **SPCC Plan Requirements and the Practice of Engineering**

Mr. Valdez informed the Committee that Ms. Thompson-Martinez received an email question regarding whether SPCC plans need to be sealed by a licensed engineer within the state of New Mexico. Ms. Thompson-Martinez sent an email to Mr. Bohannan asking for his response on the matter. At the April 2019 meeting this item was on the Agenda. The Committee tabled it and decided that Mrs. Samora would do some research on it. Mr. Valdez stated the Committee an

advisory policy had been issued which Mr. Tonander had helped formulate. Mr. Valdez directed the Committee to view the original email concerning the question along with other documents regarding SPCC plans. Mr. Brasher clarified that SPCC stands for Spill Prevention, Control, and Countermeasures.

Mrs. Samora reported her research was essentially looking into how the company she works for addresses SPCC Plans. She stated her company views it as an EPA template that gets filled out by a member of the firm's environmental team, but it is not stamped by an engineer. Her company does not consider it as providing engineering services. The team member working on it may pull data from other designs but is not personally working on designs.

Mr. Tonander mentioned that there are several forms of SPCC Plans. He concurred with Mrs. Samora that the work done for an SPCC is not usually considered engineering because while it has a site map, it doesn't contain changes in design at the site nor does it contain ideas for secondary containment at the site. He clarified that there is a path for self-certification. His company doesn't do SPCC Plans that are self-certified, but rather ones that require PE certification. He stated that the EPA determined under certain circumstances they don't need a PE seal on SPCC Plans, but the State may decide differently. He continued that if a PE seal is required given the circumstances of the SPCC Plan and the SPCC Plan refers to a site within the State of New Mexico, then a New Mexico licensed PE must be the sealant.

Mr. Brasher clarified that if the SPCC Plan is on a New Mexico site owned by an out-of-state company (Wal-Mart, for example), that an in-state PE must still seal the plans.

Dr. Gerstle asked whether the SPCC Plan was self-certified or not. Mr. Brasher asked what the original question was and directed Mr. Valdez to read it.

Mr. Valdez read aloud, "...it is of my understanding that if an SPCC plan is prepared and signed (not sealed or stamped) by an engineer, and the plan is considered a "self-certify" plan (meaning an engineer was not required to prepare the plan), it is not considered the Practice of Engineering in the state of New Mexico. If, however, an SPCC plan is not a "self-certify" plan (meaning an engineer must prepare the plan), it is considered the Practice of Engineering in the State of New Mexico. Could you confirm this?"

Dr. Gerstle stated, "The answer is yes, according to our policy." Mrs. Samora concurred that under self-certify an engineer is not needed to seal the plan, but that if an engineer is needed to prepare the SPCC then it is not self-certified.

Mr. Tonander stated that the EPA did not make a determination of what qualifies as engineering and that both types of SPCC Plan essentially contain the same thing. He clarified that the EPA has determined that if there is sufficient risk, then an engineer is generally required to review and seal the plans. If there is minimal risk and the firm has no history of accidents, then the site may qualify as low-risk and can self-certify.

Mr. Brasher asked what entity determines which firms can self-certify. Mr. Tonander responded that it's each firm's responsibility to report, "We haven't had any accidents, we have only this much storage capacity, etc, much like a small business self-identifies as a small business." Mr. Brasher clarified that self-certification is done by a firm on their own recognizance. Mr. Tonander responded that the business can then get in trouble with the EPA if they have wrongly self-certified themselves.

Mr. Brasher asked if SPCC was similar to SWPPP. Mrs. Samora and other Committee members responded, "not really," and Mrs. Samora clarified that one deals with storm water and the other deals with oil spill prevention.

Dr. Gerstle clarified that the answer to the question was that it is not Practice of Engineering in the state of New Mexico unless the plans require an engineer's seal on it.

Mr. Brasher informed Mr. Valdez that the action taken on the agenda item would be a letter with a formal response with the Board's consideration. Legal counsel reminded the Committee Members that if they wanted to refer to the advisory statement they could certainly look at that for input on the letter.

7. New Business

a. Clarification of the Application Process for 61-23-14.1

Mr. Valdez referred the Committee to material concerning this issue. Mr. Valdez stated this issue was raised at the April 2019 meeting, it was decided that it should be addressed at a future meeting. Mr. Valdez stated that a question that has come up among the staff regarding this issue.

Mr. Valdez clarified that the core question is, "How many years of experience does an applicant with a Master's degree need, and how many years of experience does an applicant with a PhD need to be licensed (regardless of whether they are applying via endorsement or exam.)"

Mr. Tonander stated that the language is very clear in the Act but that the Rules are lacking the same clarity. The rules lead to the conclusion that brought about the questions by staff. Mr. Tonander recommended that the Committee strike the conflicting language in the Rules.

Mr. Brasher stated that it appeared the Committee had no choice other than to enforce the Act and asked whether or not there was conflicting language within the Act itself. Mr. Valdez stated there was not. Mr. Valdez stated that one part of the Act was referring to license by examination and asked the Committee what the situation should be regarding license by endorsement.

Mr. Tonander responded by saying that processing applications under these circumstances would fall back to whether the applicant had passed the FE exam or not. If the applicant had passed the FE in another state, they could follow one path of licensure in New Mexico. If the applicant had received a bypass of the FE exam, they would follow the other path of licensure within New Mexico.

Dr. Gerstle asked if Mr. Tonander was suggesting that the Board strike 16.39.3.9 from the Rules entirely. Mr. Tonander directed the board to review it and suggested modifying it.

Mrs. Samora stated the Rules should further define the Act, not conflict or confuse them. She also stated that a rule hearing would have to happen to address it.

Mr. Valdez clarified that moving forward, Board staff would follow the Acts' language in regard to licensing applicants with Master's and PhD degrees.

Dr. Gerstle asked the board what qualifies as engineering experience or not and whether being a professor counted as engineering experience. Mrs. Samora said it is the Board's goal to get professors licensed, but it is difficult because teaching experience is different from practical engineering experience. Mr. Tonander recommended that the board include a list in the rules of what qualifies as engineering experience based on the NCEES Model Rules.

b. Election of Officers

1) Committee Chair

MOTION by Dr. Gerstle to nominate Mr. Brasher for Committee Chair, Mr. Brasher declines. **MOTION** by Mr. Brasher to nominate Mr. Bohannan for Committee Chair, **SECOND** by Mr. Tonander, **PASSED** unanimously.

2) Vice-Chair

MOTION by Mr. Tonander to nominate Dr. Gerstle for Committee Vice-Chair, **SECOND** by Ms. Samora, **PASSED** unanimously.

8. Application Review – Recommended Approval

a. Recommended for Approval List (*Exhibit A*)

1) PE Exam Application(s) – (12)

2) PE Endorsement Application(s) – (87)

- 3) PE Reinstatement Application(s) – (13)
- 4) PE Additional Discipline Application(s) – (1)

MOTION by Mrs. Samora to approve Exhibit A, as amended, the recommended for approval applications, **SECOND** by Mr. Tonander, **PASSED** unanimously.

Dr. Gerstle asked why the Board was not presented with a list of the new licensees since the last Board Meeting. Mr. Valdez responded that once the Committee had approved an applicant for Exam that their approval carried through until after the applicant passed the Exam. The initial approval guaranteed licensure as long as the remainder of the application is properly completed with approved work experience, references, and education experience. Mr. Valdez continued to state that the staff will bring any questionable applications to the Committee.

After further discussion, it was decided for staff to present a list of those who were licensed after passing the PE exam and earned the additional years for licensure. The list will be presented for informational purposes only; no formal action will be required by the Board of those listed as having achieved licensure after passing the PE exam and earned the additional years of required experience.

The Committee acknowledged the Exhibit A list contained an applicant who was listed under “Endorsement” who should have been listed under “Additional Discipline.”

b. PE Retired Status Request(s)

MOTION by Ms. Samora to approve Mr. Tachau and Mr. Dolan for retired status, **SECOND** by Mr. Tonander, **PASSED** unanimously.

9. Executive Session

MOTION by Mr. Tonander that the Committee enter into closed Executive Session to discuss the items listed on the agenda pursuant to NMSA 1978, Section 10-15-1 (H) (1) and (3) to discuss matters pertaining to the issuance, suspension, renewal or revocation of a license and to deliberate on pending cases. **SECOND** by Dr. Gerstle, **PASSED** unanimously.

Roll call vote taken, voting ‘Yes’: Mr. Brasher, Dr. Gerstle, Mrs. Samora, Mr. Tonander

10. Action on Items Discussed During Executive Session

Mr. Brasher brought the Committee back into open session and affirmed that while in closed session it discussed only those matters specified in the motion to close the meeting and listed on the agenda under executive session, in accordance with NMSA 1978 Section 10-15-1 (H) (1)

a. **Disciplinary Cases**

1) **RLB-02-28-2019 – Complaint Manger’s Report**

MOTION by Mr. Tonander to attempt to enter into a pre-NCA settlement agreement and that if no agreement is executed within 30 days, the matter will be automatically referred to the Attorney General’s Office for the issuance of an NCA, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

2) **DNS-11-27-2018**

MOTION by Dr. Gerstle to close the case, **SECOND** by Ms. Samora, **PASSED** unanimously.

b. **Licensee Self-Reporting Issues**

1) **AEM-04-23-2019**

MOTION by Dr. Gerstle to acknowledge receipt and take no action, **SECOND** by Mrs. Samora, **PASSED** unanimously.

2) **JGT-02-26-209**

Mr. Brasher noted that this case is a surveyor case which was mistakenly placed on the PEC Agenda and is not to be addressed by the PEC.

3) **JM-02-14-2019**

MOTION by Mr. Tonander to enter into a pre-NCA settlement agreement and that if no agreement is executed within 30 days, the matter will be automatically referred to the Attorney General’s Office for the issuance of an NCA, **SECOND** by Mrs. Samora, **PASSED** unanimously.

4) **RLB-03-28-2019**

MOTION by Mr. Tonander to acknowledge receipt and take no action, **SECOND** by Mrs. Samora, **PASSED** unanimously.

5) **RW-12-06-2018**

MOTION by Dr. Gerstle to enter into a pre-NCA settlement agreement and that if no agreement is executed within 30 days, the matter will be automatically referred to the Attorney General’s Office for the issuance of an NCA, **SECOND** by Mrs. Samora, **PASSED** unanimously.

6) **WNV-12-14-2018**

MOTION by Mrs. Samora to acknowledge receipt and take no action, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

c. **Status Review of Complaints and NCAs**

Mrs. Gonzales provided a report to the Committee on the status of pending cases and referrals for Notice of Contemplated Actions.

d. Applications for Review

1) PE Licensure

a) **Elaksher, A.**

MOTION by Dr. Gerstle to approve for PE Licensure in the Civil discipline, **SECOND** by Mr. Tonander, **PASSED** unanimously.

2) PE Endorsement

a) **Al Harash, M.**

MOTION by Dr. Gerstle to approve for PE Endorsement in the Structural discipline, **SECOND** by Mrs. Samora, **PASSED** unanimously.

b) **Cook, W.**

MOTION by Dr. Gerstle to approve for PE Endorsement in the Structural discipline, **SECOND** by Mrs. Samora, **PASSED** unanimously.

c) **Duday, O.**

MOTION by Mrs. Samora to approve for PE Endorsement in the Electrical discipline, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

d) **Ghosh, A. (Reconsideration)**

MOTION by Dr. Gerstle to approve for PE Endorsement in the Civil discipline, **SECOND** by Mrs. Samora, **PASSED** unanimously.

e) **Johnson, T.**

MOTION by Mrs. Samora to approve for PE Endorsement in the Civil discipline, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

f) **Kindrick, A.**

MOTION by Dr. Gerstle to approve for PE Endorsement in the Civil discipline, **SECOND** by Mrs. Samora, **PASSED** unanimously.

g) **Lewis, T. (Reconsideration)**

MOTION by Mr. Tonander to approve for PE Endorsement in the Electrical discipline, **SECOND** by Dr. Gerstle, **PASSED** unanimously.

h) **Mikloshev, J.**

MOTION by Dr. Gerstle to approve for PE Endorsement in the Civil discipline, **SECOND** by Mrs. Samora, **PASSED** unanimously.

- i) **Nacional, M.**
MOTION by Mr. Tonander to accept the request for a bypass of the FE and approval of PE Endorsement, **SECOND** by Mrs. Samora, **PASSED** unanimously.

- j) **Nyland, J.**
MOTION by Mrs. Samora to approve for PE Endorsement in the Environmental discipline, **SECOND** by Mr. Tonander, **PASSED** unanimously.

- k) **Polk, N.**
MOTION by Dr. Gerstle to approve for PE Endorsement in the Civil discipline, **SECOND** by Mrs. Samora, **PASSED** unanimously.

11. **Next Scheduled Meeting Date:** August 8, 2019 – Albuquerque, NM

12. **Adjourn**

Meeting adjourned at 3:53 p.m.

Submitted by:
s/ Gabrielle Schultz

Gabrielle Schultz, Executive Assistant

Approved by:
s/ Paul Brasher

Paul Brasher, PE, Committee Chair

August 8, 2019 **Approved Date**