

S.C. Department of Labor, Licensing and Regulation

**Contractors' Licensing Board Quarterly Meeting
110 Centerview Drive, Room 111, Columbia, S.C.**

Minutes of the October 20, 2005, Quarterly Board Meeting

BOARD MEMBERS PRESENT

Joe Chandler, Chairman
Frank Walker
Daniel B. Lehman
Mark Plyler
Doug Greer
Lewis Caswell
Bill Neely

ABSENT MEMBERS:

Wendi Nance
Kim Lineberger

OTHERS PRESENT:

Fernando Cruz-Alarcon, (RE: Experience Approval)
Mr. & Mrs. Isaac Pressley, (RE: Complainants)
Edwin Farnell, OIE Supervisor of CLB Investigators

OTHERS PRESENT:

Sharon Dantzler, Board Advice Attorney
Geoffrey Bonham, Staff Attorney
Shirley Robinson, Hearing Advice Attorney

BOARD STAFF PRESENT

Ron Galloway, Administrator
Joyce Thurber, Program Coordinator
Chas Nicholson, Investigator

Where action is recorded below, it is taken in each case on motion duly made, seconded and carried unanimously unless indicated otherwise.

Call to Order:

Chairman Joe Chandler called the meeting to order at 10:05 A.M with a quorum of members present.

Mr. Chandler announced that the meeting was being held in accordance with the Freedom of Information Act by notice sent to The State, The Charleston Post & Courier, The Greenville News, The Myrtle Beach Sun newspapers, and all other requesting persons, organizations, or news media. In addition, notice was posted on the bulletin boards located at both of the main entrances of the Kingtree Building where the board office is located.

Vote on Absent Board Members:

Ms. Lineberger asked to be excused because of an important bid opening for her company occurring at the same time as the board meeting, and she had to be there.

Motion: Mr. Caswell moved that the absence of board member, Kim Lineberger, be approved. The motion was seconded by Mr. Neely and passed.

Ms. Nance asked to be excused due to a presentation she must make on a grant for the USC Development Division, which couldn't be rescheduled. A discussion followed of how many meetings Ms. Nance had missed. Records revealed that since the January meeting of 2004, Ms. Nance has missed five of the nine board meetings held to-date.

Motion: Mr. Walker moved that the absence of At-Large member, Wendi Nance, not be approved because she has missed five meetings of the last nine board meetings since January of 2004. The motion was seconded by Mr. Chandler and passed.

Approval of Agenda:

Mr. Chandler asked if there were any changes to the Agenda. Mr. Galloway pointed out that under New Business, the IRC Report of August 3rd, should be changed to August 31st.

Motion: A motion was made by Mr. Caswell to approve the Agenda with the noted correction in the IRC Report changing August 3rd to August 31st. The motion was seconded and passed.

Approval of Board Minutes for July 21, 2005:

The minutes of July 21, 2005 were reviewed.

Motion: A motion was made by Mr. Caswell to approve the Minutes of July 21, 2005 as printed. The motion was seconded and passed.

Public Comment:

Mr. Walker announced that on Sunday, October 23, 2005, at 1:00 P.M., the S.C. Highway Commission would be going to dedicate highway Interchange 75 on Interstate 77 in honor of his father and former long-term board member, Marshall Walker. He invited the board members and staff to attend the dedication ceremony at Neeley's Creek ARP Church in Rock Hill, S.C.

Chairman's Remarks:NASCLA Conference

Mr. Chandler reported on the following issues discussed at the National Association of State Contractor's Licensing Agencies (NASCLA) Conference he attended in Salt Lake City, Utah, September 27 – 31, 2005:

- 1) There was discussion on a national general contractor building examination that is being developed vs reciprocity (waiver of examinations with state boards, with which the board has agreements). Some states just use a licensing board to make sure that contractors have worker's compensation. They don't have code enforcement. In most other states, they have boards for every discipline, Mr. Galloway commented that this board regulates general, mechanical, burglar and fire alarm, and fire sprinkler contractors.
- 2) There is a movement for a national construction ethics declaration, and NASCLA is soliciting its recognition in Washington. Support is also being solicited from all industry organizations and licensing boards to see how the construction industry can be made better and improve its public reputation.
- 3) Mr. Chandler commented on his recent trip to the Gulf Coast after Hurricane Katrina. The Louisiana Board lost half of its licensing staff, who had lost their homes and had to quit. The Louisiana Board has been overwhelmed with contractors coming into the State to do work. He commented that it would behoove the South Carolina Board to review our emergency plan. Louisiana allowed a six month suspension of licensure, if licensed in another state and in good standing, and were issuing temporary license cards throughout the disaster area. The Gulf Coast states of Louisiana and Mississippi have no enforcement at this time

Next year's NASCLA Conference will be held in Hot Springs, Arkansas. Mr. Walker commented that the conference is most worthwhile and urged other board members to try and attend. He asked Mr. Galloway if there was a way to allow more board members go attend the NASCLA Conference? Mr. Galloway responded that LLR policy only allows two Board members to attend and the Department continues to be strict regarding travel expenditures. Ms. Lineberger was to attend, but had to cancel due to business matters at the last minute. Mr. Walker thought the conference so worthwhile that he urged board members who wished to go, to pay their own way to attend.

Waiver of Examinations States

Mr. Galloway reviewed the policy of examination waiver of examinations with other states. Louisiana and Alabama waivers of certain license classifications have been added within the last year and a half.

Emergency Licensing Plan

Mr. Galloway reported that about two years ago, LLR Deputy Director, Randy Bryant, was in charge of constructing a emergency licensure plan and held meetings with local and county building officials to talk about a plan for issuing licenses during a declared disaster. Mr. Galloway commented that LLR has an emergency plan in place. Three residential investigators, living near the coast, and Mr. Galloway would be stationed in county building officials' offices in the disaster areas and would have laptop computers to issue licenses. For those contractors living in the other states and those covered under the Southern States Reciprocal Compact (including states from Tennessee to Florida and Texas), upon confirmation that they have a valid license in good standing in another state and working on projects within the scope of their licensure, a temporary license would be issued for the duration of the declared disaster. A copy of the Emergency Disaster Procedures and the Emergency Operations Plan were distributed to each board member.

Administrator's Remarks:

New Board Member

Mr. Galloway introduced and welcomed a new fire sprinkler contractor board member, Douglas E. Greer, Jr. from Greenville, S.C. He was appointed October 19, 2005, with his term of appointment from July 1, 2005 through July 1, 2009. Mr. Greer is president of American Fire Protection, Inc. and was an officer in the S.C. Fire Sprinkler Association, instrumental in getting the fire sprinkler law passed in 1986. The statute was totally revised in June 2005.

Unfinished Business:

- 1) Approval of Corrected Business Management and Law Exam and the S.C. Code of Laws Exam Policy.

Mr. Galloway reviewed the corrected policy with the members as advised by legal counsel, Rick Wilson. The policy waives (1) an applicant that has taken the South Carolina Residential Builders Commission Business Management and Law examination; and (2) an applicant that is licensed with another state that has a written exam waiver for general or mechanical contractors with South Carolina. All applicants are required to take the South Carolina Code of Laws examination on Chapter 11.

New Business:

- (1) Discussion of Proposed LLR Statute Changes to the Generic Statutes (Engine Bill.).
Sharon Dantzler, board advice counsel, discussed the changes to Title 40, Chapter 1, LLR's generic statute known as the "Engine" bill, (H.3781) proposed legislation to be taken up in the 2006 Legislative Session by the South Carolina House of Representatives.
- (2) Approval of Investigative Review Committee (IRC) Recommendation from the August 4, 2005, August 31, 2005, and October 6, 2005 reports.
The IRC did not meet in September, 2005.
 - (a) Following a review and discussion of the IRC Recommendations for August 4, 2005, a motion was made.

Motion: Mr. Caswell made a motion to approve the IRC Recommendation Report of August 4, 2005. The motion was seconded and passed.

Mr. Lehman asked about the number of backlogged cases. Ed Farnell, Chief Supervisor for the Contractors' Licensing Board, Office of Investigation and Enforcement (OIE) evaluates all cases and was present to comment on the question. Most cases in 2004 have been resolved. The Office of General Counsel has mandated that by the end of January one half of the 2005 cases under investigation should be completed. There are approximately 120 open investigations. The goal is to have the

investigation on a case complete in no more than 180 days. There are other aspects of each case the investigator has no control over, however. Joseph Martin has been hired as an investigator to handle contractor cases in the upstate, and will begin November 2, 2005. Other investigators handling contractor cases are Stan Bowen, Andrew Dempsey, Jerry Wingard and Chas Nicholson (part-time).

(b) Following a review and discussion of the IRC Recommendations for August 31, 2005, a motion was made.

Motion: Mr. Lehman moved to approve the IRC Recommendation Report of August 31, 2005. The motion was seconded and passed.

(c) Following a review and discussion of the IRC Recommendations for October 6, 2005, a motion was made.

Motion: Mr. Caswell moved to approve the August 31, 2005 IRC Recommendations. The motion was seconded and passed.

(3) Request to Review Experience for Licensure of Fernanndo Cruiz-Alarcon.

Mr. Cruiz was present and presented his experience to the Board. Upon questioning Mr. Cruiz as to what work he wished to perform, it was found that he only wanted to perform residential construction. Therefore, the Board directed him to the S.C. Residential Builders Commission for application and testing.

(4) Approval of Biennial License for Fire Sprinkler Contractors.

Mr. Galloway discussed the implementation of the new fire sprinkler legislation (ACT 177), which passed June 14, 2005. The new statute is legally in effect. However, due to some administrative issues and notification of current licensees, the Contractors' Licensing Board will continue to accept either statute as meeting acceptable professional standards for licensure purposes, until January 2, 2006. The General, Mechanical and Alarm Business programs are all on a two year license. Mr. Galloway requested that the board officially approve biennial licensure for fire sprinkler contractors retroactive to the renewal period August 1, 2005 through July 31, 2007.

Motion: Mr. Caswell moved to approve biennial licensure for the fire sprinkler contractors. The motion was seconded and approved.

Old Business:

Legal Interpretation of "Total Cost of Construction" for Mechanical Contractors by Rick Wilson.

Sharon Dantzler, was present for Rick Wilson to discuss a question with the board and get a sense of the industry thinking on the issue of "Total Cost of Construction" for mechanical contractors, particularly on private projects, pursuant to Section 40-11-30 of the S.C. Code of Laws (1976, as amended). Ms. Dantzler commented that a single mechanical contractor may not have any way of knowing what the conglomerate total is for all mechanical work on a particular project. The interpretation of "total cost of construction of mechanical work" in previous interpretations and understanding has been the total cost of construction of the mechanical work in a particular classification exceeding \$5,000. But the issue has risen again, and Mr. Wilson needs the sense of the industry on this issue. Is the sense of the industry, the total cost of construction of all the mechanical work clumped together, greater than \$5,000, or is it the total cost of construction for the mechanical work in each classification, greater than \$5,000? Section 40-11-30 of the S.C. Code of Laws, (1976, as amended) states " No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction isgreater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter." Mechanical contracting under Chapter 11 consists of classifications: electrical, plumbing, packaged equipment, air conditioning, lightning protection systems, heating, refrigeration, and pressure and

processed piping. The statute states that if the total cost of construction is over \$5,000, properly licensed contractors must be hired. Mr. Caswell, mechanical member of the board and Mr. Walker, electrical member of the board, stated that what the members intended when the legislation was written was that the total cost of construction should be what the contractor is actually doing in a particular discipline. Mr. Caswell clarified that what the legislation should say is the "cost of the contract" is greater than \$5,000.... However, the job cannot be divided up between the cost of the equipment and the cost of the labor. Example: A prime general contractor who wants to perform \$2,000 of electrical work, \$3,000 of plumbing work, and \$2500 HVAC work, cannot do it because the total cost of the mechanical construction is over \$5,000, and he is not licensed to perform any of those disciplines. However, if he hires three individual people who may or may not be licensed to perform that work and each is working in their discipline under \$5,000, they can do it. Mr. Lehman questioned whether we can legally interpret how the law was intended, if the current wording does not state that, and he questioned how it can be interpreted any other way that what is written. Mr. Walker commented that he wrote the law and did not intend for all mechanical work to be clumped together. Following further discussion, Ms. Dantzler stated that the law does have ambivalent wording and needs to be clarified. Mr. Wilson will decide what the statute says and will write a formal interpretation to be presented to the board at the next board meeting.

Board Hearing in the Matter of:

C03/04-80, 108 and V03/04-162 CLB vs Joe McCray and Joe McCray, qualifying party, G-14558

The State was represented by Geoffrey Bonham, Esquire, assistant general counsel. Shirley Robinson, Esquire, served as hearing advice counsel. The Respondent, Joe McCray, was not present. Complainants, Mr. and Mrs. Isaac Pressley, were present.

The Notice of Hearing and Complaint was sent August 18, 2005 by Certified and US Mail. The Certified Mail came back unclaimed on September 9, 2005, but the US Mail was not returned. Regarding the service issue, Ms. Joyce Thurber, Program Coordinator for the Contractors' Licensing Board, was sworn in as a witness. She testified that she received a call from the Respondent on August 26, 2005, and testified that the Respondent asked her to send a copy of the Notice of Hearing and Complaint to him. Mr. McCray stated that he did not know of any complaints against him. A copy of the Notice of Hearing and Complaint was sent by U.S. Mail to the home address of record of the Respondent, but was not sent certified. The U.S. Mail was not returned.

Case # C033/04-80

Mr. Bonham explained that the Respondent entered into a contract with the Complainant, Isaac Pressley of Andrews, South Carolina, to construct a funeral home, with a chapel, located in Andrews, S.C. on March, 25, 2003, for \$141,000. On November 21, 2003, a complaint was received alleging that the Respondent had abandoned the project. Mr. Nicholson sent a notice of the complaint to the Respondent, but the Respondent failed to respond to the board concerning the matter. The plans were shown as prepared by the Respondent and did not bear an architect's seal and signature.

Mr. Bonham called Investigator Chas Nicholson to testify for the State. Photos were presented as evidence, each explained by Mr. Nicholson. Mr. Nicholson testified that his inspection on January 7, 2004, revealed that the footings, foundation, under-slab plumbing and concrete floor were in place, that the exterior wall framing with sheathing had been installed. The bottom plate of the exterior walls was anchored by nails and not by the required engineered anchoring system. He further stated that the interior walls were not braced, causing the exterior walls to move laterally, that there was no roof/ceiling system and that the project was open to the weather.

Mr. Bonham stated that the Respondent had abandoned the project. On March 12, 2005, the owner reported that the building had collapsed. Mr. Nicholson testified that upon re-inspection conducted on March 15, 2005, the entire building had collapsed and that the nails securing the bottom plate to the slab failed and did not penetrate the slab more than one and one-half inches.

Case # C03/04-108

Mr. Bonham presented the facts of the case that on February 14, 2002, Mr. McCray had submitted a bid for the demolition and new home construction for a residence of Annie Chandler in Kingstree, South Carolina. The bid was submitted in the name of S & M Construction and signed by the Respondent as CEO, S&M Construction. Mr. McCray contracted for the residence at the proposed price of \$120,000. On May 1, 2002, Mr. McCray pulled a permit for construction of the residence in the name of S&M Construction. However, S&M Construction is not a licensed entity with the Board, thus, is a violation of Section 40-11-270(B) of the S.C. Code of Laws (1976, as amended), engaging in construction under a name other than the exact name which appears on the license. On March 9, 2004, a Citation and \$500 fine were issued and is unpaid to-date.

A complaint was received noting construction defects on the residence. Mr. Nicholson testified that he issued a report of inspection. Rev. William Scott attended the inspection for the Respondent and admitted the complaint items were valid. Complaint items included: no footings under the house; no insulation in the attic; electrical wires unattached to framing; different riser heights on stairs in garage; new counter top put on top of old counter top, but not supported; bathroom fan exhaust routed to attic instead of outside the house; and facet under the house was turned upside down. Photos of the defects were presented and explained in testimony by Mr. Nicholson. The Respondent has not communicated with the department regarding the fine or complaint items in this case.

Mr. Bonham concluded his case and presented it to the board for their consideration.

A motion was made by Mr. Caswell to go into Executive Session to receive legal advice. The motion was seconded and passed. A motion was made to come out of Executive Session by Mr. Caswell and was seconded and passed.

Motion: Mr. Caswell made a motion to revoke the general contractor's license of Joe McCray, G14558, and fined him \$5,000 for each count totaling \$15,000. The motion was seconded by Doug Greer and passed.

The next regularly scheduled board meeting will be held on Thursday, January 19, 2006, at 10:00 A.M. in Room 201-03 in the Kingstree Building in the Synergy Office Park, 110 Centerview Drive, Columbia, South Carolina.

There being no further business, the meeting was adjourned at 12:40 P.M.

Respectfully submitted,

Ronald E. Galloway, Administrator