

MINUTES
South Carolina Board for Registration of Professional Engineer and Surveyors
9:30 a.m., September 22, 2014
Synergy Business Park, Kingstree Building
110 Centerview Drive, Room 108
Columbia, SC

Call To Order

Chairperson Rickborn called the meeting to order at 9:38 a.m.

Statement of Public Notice

Chairperson Rickborn stated that public notice of this meeting was properly posted at the South Carolina Board of Registration for professional Engineers and Surveyors, Synergy Business Park, Kingstree Building, and provided to all requesting person, organizations and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

Introduction of Board Members and Other Persons Attending

Board members present included Timothy Rickborn, PE, Chairperson; Dennis J. Fallon, Ph.D, PE, Vice-Chairman; John P. Johnson, PE, PLS, Secretary; Gene L. Dinkins, PE, PLS; Miller L. Love, Jr., PE; Theresa Hodge, PE; and Nancy W. Cottingham.

Staff members present included Lenora Addison-Miles, Administrator; Britton Jenkins, Program Assistant; Darra Coleman, Esq., and Donnell Jennings Esq., Advice Counsel; Erin Baldwin, Esq., Office of Disciplinary Counsel; Sharon Cooke and Sharon Wolfe, Office of Investigations and Enforcement.

Others present included Marguerite McClam, George McCall, David Blackwell, Adam Jones, Joe Jones, Daniel Skinner, Tom Haselden, Joe Greenburg, Ed Owens, and Carla Dominick (Creel Court Reporting).

Approval of Minutes from July 15, 2014 Meeting

Mr. Rickborn suggested on page four, it should be added that an affidavit was requested from Mr. Robert Searcy for his testimony by phone in the Patel hearing and the affidavit has been received.

MOTION: To approve minutes with suggested change from Mr. Rickborn. Hodge/Fallon/approved.

Review of Agenda

Chairperson Rickborn asked if there were any proposed changes to the agenda for the September 22, 2014 meeting agenda. There were none.

MOTION: To approve the agenda for the September 22, 2014 meeting. Love/Fallon/approved.

Board Member Jeff Mulliken entered the meeting at 9:46 a.m.

Reports

- a. Office of Disciplinary Counsel Report – Mrs. Baldwin reported there were 10 pending cases in the Office of Disciplinary Counsel. Three cases are pending Consent Agreements/Memorandum of Agreements, and one case is pending expert review. Mrs.

Baldwin spoke with the board about the Recovering Professional Program (RPP), an organization which assists professionals who suffer with substance abuse. Mrs. Baldwin explained that participants in RPP enter into a five year contract and RPP monitors the professionals' progress and recovery. Mrs. Baldwin added that RPP offers programs both dealing with those that are referred to them as a result of a disciplinary action, and voluntary programs. Mrs. Coleman stated the agency has an annual contract with RPP that is re-visited every year, and there is a high volume of licensees participating in the program. Mrs. Coleman explained that when a person comes in to RPP, RPP refers them to assessment which would determine if addiction issues are present. If it is determined that there is a diagnosis, a recommendation is made for the licensee to enter into a monitoring agreement. RPP's ideal recovery time frame is five years. Mrs. Coleman added that the agency has worked with RPP over the years and the program has been very successful in helping professionals find sobriety and return to their professions safely. Mrs. Coleman explained that if there is an instance where RPP does not recommend the professional to practice, they would send a memo to the Board Administrator and with consultation with the board chair, the proper disciplinary procedures would follow. Nine boards are actively participating with RPP, and the cost for the program is allocated based on the number of licensees served. Mrs. Coleman added that if the Board of Engineers is interested in participating in RPP, the agency can revise their contract to simply add them to the current contract. Mr. Dinkins said he thinks that RPP is a good thing for the Board to participate in and it presents a very responsible and worthwhile effort on behalf of the Board.

MOTION: To enter into an agreement with the Recovering Professional Program (RPP) to offer services to professional engineers in South Carolina. Dinkins/Love/approve.

Mrs. Coleman added that she would work with Melina Mann, General Counsel for LLR, who will revise the RPP contract to add the Board of Engineers.

Mr. Love addressed the board about an email he received from an irate individual regarding a case that has been pending for approximately two years. Mr. Dinkins added he also received an inquiry about an older case and asked Mrs. Baldwin for further information regarding the status. Mrs. Baldwin stated there aren't any pending cases in ODC that old however; there may be some pending in the Office of Investigations and Enforcement. Mrs. Baldwin added there is one case pending in ODC that is a 2013 case and a 2010 case that is pending expert review on both the State and the Respondent's side. Mrs. Baldwin said she would check on the status of the pending cases and report back to the board. Mr. Love suggested that Mrs. Baldwin contact the individual regarding the status of the case. Mr. Dinkins asked if there was a way for the board to hear cases that the IRC cannot come to a decision about. Mrs. Baldwin said her issue with that would be bringing cases before the board that may not be a violation. Mrs. Baldwin explained that ODC cannot bring a case before the board without drafting a formal complaint and knowing what part of the statute was violated. Mrs. Coleman referred to the Practice Act which requires that the results of the investigation show a violation has occurred or a licensee has become unfit to practice engineering or surveying. Mrs. Hodge requested that aging statistics reports from ODC and OIE be provided at every board meeting, so the Board is up to date on older cases pending. Mrs. Baldwin said she would begin to provide those reports at the next board meeting. Mr. Love asked if there was a way to give the Board information on pending cases. Mrs. Baldwin

said the aging statistics report should help. Mrs. Coleman added that the aging report would provide the board with information so they can answer general questions. Mrs. Coleman also suggested that board members refer inquiries to Advice Counsel. Mr. Dinkins asked if it would be possible to get a status list of current cases, in the event members receive inquiries. Mrs. Coleman said the investigative process is intended to be anonymous and confidential until they are brought to the Board for action and that type of report would be a conflict.

MOTION: To enter executive session for legal advice regarding the IRC process with Mrs. Baldwin being allowed to participate. Fallon/Dinkins/approved.

MOTION: To exit executive session. Dinkins/Hodge/approved.

Mr. Rickborn reported that during executive session, the Board had an extensive discussion with both Advice Counsel and ODC about the IRC. Mrs. Coleman added the Board has requested that all members of the IRC attend the next scheduled board meeting for an executive session discussion on the IRC process. Mr. Dinkins requested that Mrs. Miles find additional information on the policy pertaining to IRC member term limits, the member appointment process, and a history of when members were appointed. Mr. Rickborn added the board is also requesting a CV from all standing members of the IRC.

- b. Resolution Guidelines – Mrs. Baldwin presented a draft of Resolution Guidelines to the board for review. Mr. Dinkins suggested the fine for aiding and abetting unlicensed practice should be \$500 to \$1000 per violation. Mrs. Baldwin added that the general recommendation from the July 15th meeting was that unethical conduct should result in the imposition of a \$500 fine instead of \$1000.

MOTION: To accept the Resolution Guidelines with suggested changes. Dinkins/Johnson/approved.

- c. Review of Spreadsheet for Calculation of Fines – Mrs. Miles presented the board with the spreadsheet used to calculate fines for review. Mrs. Miles inquired if the board wanted to apply a separate set of calculations for Surveyors. Mrs. Hodge indicated she created the spreadsheet and explained the calculation formulas. Mr. Dinkins suggested the spreadsheet be presented electronically at the next board meeting for further discussion. Mrs. Hodge requested that Mrs. Miles provide the equipment needed to present the spreadsheet to the Board.
- d. NCEES Examination Institution Reports (Executive Session) – The board decided to review the NCEES Examination Institution Reports during an Executive Session at lunch.

New Business

- a. Mrs. Coleman addressed the board about the security of board meeting materials and other documents. Mrs. Coleman noted after the Department of Revenue data breach, all cabinet agencies were asked to conduct security analyses. She explained that LLR did extremely well with security on the electronic materials, but there was an opportunity for improvement with the management of paper documents. Mrs. Coleman explained that as a result, the

agency is in the process of asking the boards to use the secure site as a primary source for viewing documents, as it gives the agency the ability to confirm in the event of any alleged breach that the materials have not been compromised. Mrs. Coleman added the agency has also requested all Board Members who have old board meeting materials bring them in to the agency so they can be shredded. This ensures all information is being properly secured and discarded. Mrs. Coleman asked the board what resources they would need to go to full secure site utilization. She added that they are looking into being able to provide all board members with laptop computers for use during meetings. Mrs. Coleman asked would the board feel comfortable if application reviews are sent through the secure site. Mr. Love said he would have an issue with reviewing computerized applications due to impaired vision. The board decided that all application reviews would be sent through the secure site, with the exception of NCEES records. Mr. Love will continue to receive paper application submissions and board meeting materials by mail. Mr. Rickborn added it is easier to have paper for board meeting materials, so they can be reviewed prior to meetings, but he can make the necessary modifications if needed. Mrs. Coleman said having paper board meeting materials still presents the same security concern. Mrs. Coleman asked Mrs. Miles if it would be more feasible to send paper board meeting materials with the exception of applications and disciplinary hearing scripts. Mrs. Miles said that would be fine. Mrs. Coleman added they have looked into assigning board members LLR email addresses to prevent the use of personal email correspondence. She will check on the status and work with IT to get the email addresses assigned. Mrs. Hodge suggested bookmarks be placed in the board meeting packets placed on the secure site so that they are easier to navigate.

MOTION: To enter executive session to review confidential NCEES Examination Institution reports. Johnson/Cottingham/approved.

MOTION: To exit executive session. Dinkins/Cottingham/approved.

The Board had lunch during executive session from 11:25 a.m. to 12:21 p.m.

- b. Mr. Dinkins spoke with the board about decoupling the PS exam and experience. He explained the board formally adopted a policy in January regarding the PE exam and it does not change the statutory requirements for obtaining a PE license. Mr. Dinkins referred to South Carolina Code of Laws, § 40-22-225(C) and South Carolina Code of Regulations 49-201 (A)(B). Mr. Dinkins said he does not see the requirement that individuals have to obtain four years of experience prior to taking the PS exam. He requested the board consider adopting the same policy as the PE exam that the PS exam can be taken at any time following graduation with an acceptable degree and passing the FS exam. He added the policy would not apply to the state specific surveying exam which requires a certain amount of experience. Mr. Love added it is important to treat both professions the same. Mr. Rickborn added both statutes should read the same.

MOTION: To make the appropriate changes in the South Carolina Code of Laws and South Carolina Code of Regulations to reflect changes with the PS Exam and experience. Dinkins/Fallon/approved.

- c. Mrs. Miles spoke to the board about the Tier B Surveying Exam. She explained that staff has not received an inquiry about the Tier B Surveying Exam since 2006. Recently, staff has received inquiries from individuals wishing to apply to take the exam. Mrs. Miles requested the surveying members of the Board review the current exam, to determine if the exam is acceptable. Mr. Dinkins agreed to review the exam.
- d. Mrs. Miles reported that Mr. Sid Shrum serves as a consultant to the exam re-write committee and provides exam preparation, grading, and analysis of the State Specific Exam. Mrs. Miles asked the board to reaffirm approval of Mr. Shrum's services.

MOTION: Reaffirm the services of Mr. Sid Shrum and ask him to continue.
Dinkins/Cottingham/approved.

- e. Mr. Love spoke with the board about reinstatement of lapsed licenses. He said he received a question about whether an individual whose professional engineering license lapsed has the ability to re-apply for a new license, without reinstating the lapsed license. Mrs. Miles said that an applicant has the ability to apply for a new license by comity if the applicant is licensed in another state. The lapsed license is not taken into consideration when the applicant is filing a new application by comity.
- f. Mr. Rickborn addressed the board about the Fire Protection Sprinkler Policy. He explained there have been several questions from the Rock Hill building official about whether an engineer is required in the implementation of Fire Protection Sprinkler Systems. Mr. David Blackwell, Chief Engineer with the Office of State Fire Marshal, explained there was an issue with a fire alarm system and his interpretation that an engineer has to be involved in a fire protection system. Mr. Blackwell explained that fire sprinkler systems and fire alarm systems are not treated the same in South Carolina. The South Carolina Fire Protection Sprinkler Act requires that an engineer be involved with implementation of fire protection sprinklers as a result of the transition from pipe scheduled sprinkler systems to hydraulically calculated systems. Mr. Dinkins noted all the board can rely on is what is defined in the statutes and if it states the work requires an engineer, they cannot deviate from that.

MOTION: To accept the Fire Protection Sprinkler Policy that requires the implementation of fire protection sprinkler systems be performed under the supervision of a duly licensed engineer. Dinkins/Hodge/approved.

- g. Mr. Rickborn addressed the board about the Successor Engineer/Successor Surveyor policy. Mr. Rickborn explained the board was forwarded a question regarding a situation where an engineer signed and sealed plans as a consultant to an architect, but suddenly passed away. An issue arose with the building official as to who would be in charge of the project being that the engineer is deceased. Mr. Rickborn noted there is no policy in South Carolina that addresses the issue of who would take control of the project if an engineer passes away. Mrs. Miles added she provided the board with an initial draft from the Florida Board from 2009 and a copy of the policy used by the Architects in South Carolina. She noted she received some responses from other states as well. Mr. Johnson explained this type situation would not be any different if an individual left employment in the middle of the project. Mr. Dinkins noted North Carolina has a policy that covers the issue. Mr. Rickborn

asked if the Board wanted to consider moving forward with a policy similar to other states to address the issue. The Board agreed to consider the North Carolina policy and revisit the issue at the November board meeting.

- h. Mr. Rickborn addressed the board about the process of automatic and manual approvals for the FE and FS exams. Mr. Dinkins noted the board first voted to do manual approvals last summer, and later decided to transition to automatic approval. Mr. Dinkins added the statutes have a provision that requires documentation of proactive measures taken to pass the exam after two failed attempts. Mr. Dinkins explained this provision makes it impossible to enforce the decision of the board to move to automatic approvals. Mr. Rickborn asked the board how the staff should proceed with automatic approvals with the statute conflicts.

MOTION: To reaffirm the decision of the board to transition to automatic approvals and institute the change in the Statutes and Regulations to reflect that decision when the time is appropriate. Dinkins/Fallon/approved.

Mr. Dinkins requested that Mrs. Miles contact Jerry Carter of NCEES to notify him of the State's status as automatic to prevent candidates from leaving the state to take the exam.

- i. Mr. Rickborn addressed the board regarding licensure outreach. He explained the number of FE candidates is lower than anticipated. Mr. Rickborn noted he spoke with some people who indicated they met with students at Clemson and the students expressed confusion about the process. He added the Board needed to work with the colleges and universities to make students aware of the registration process and licensing guidelines. Mr. Fallon noted the decrease in the number of FE candidates could be a result of there being no deadline to apply for the exam. Mr. Dinkins added that based on the last report in August, the numbers of individuals taking the exam were not significantly low. Mr. Dinkins noted in some instances, candidates have been registering early, as much as a year ahead of time. Mr. Fallon added there may be an increase in registrants in the spring semester, particularly at the Citadel. Mr. Rickborn stated he would work on getting a letter drafted to send to the universities. Mr. Fallon will work with the faculty at the Citadel to get the necessary information to students.
- j. Mr. Rickborn addressed the board about Remote Supervision. He noted the board has had several instances of applicants with employment references completed by a supervisor in a different office and location. He referred to a June 2013 "Licensure Exchange" article that gave three examples of remote supervision. Mr. Rickborn requested feedback on the Board's position. Mr. Fallon noted remote supervision is an issue that needs to be addressed. Mr. Love added this may be an issue for those that work for national firms with various offices and there are many variables that should be addressed. Mr. Mulliken noted the use of technology also helps with remote supervision and should be considered. Mr. Rickborn referred to the South Carolina Code of Laws, § 40-22-20(9), which defines direct supervision as "a clear-cut personal connection to the project or employee supervised, marked by first-hand knowledge and direct control and assumption." Mr. Dinkins noted the current definition of direct supervision is fine and should not be revised. Mr. Love added it is important to consider that although there may not be daily direct supervision; there may be instances where individuals are evaluated at certain milestones during the project.

- k. Mr. Rickborn spoke with the board about the statutory exemptions in Section 40-22-280(B) and the issue of incidental practice. Mr. Rickborn updated the board by noting the Joint Task Force met earlier in the summer and an additional meeting is tentatively planned for some time in November.
- l. Mr. Rickborn addressed the board about the definition of Building Systems. He explained there has been a dispute, between the City of Mauldin building official and a company that replaces HVAC units, about whether an engineer is needed to perform the work. The company is referencing Section 40-22-280(B) as an exemption that an engineer is not required. Mr. Rickborn added the building official requested clarification. Mr. Rickborn noted that from the standpoint of the building code, it is not routine maintenance and a design professional is required. Mrs. Cottingham added it appears if redesign work was performed, an engineer would be required. Mr. Dinkins added if the building official feels an engineer is needed, then he is in his right to require one. The board agreed.

Mrs. Hodge left the meeting at 3:00 p.m.

- m. The board reviewed the previously submitted proposed legislation. Mr. Rickborn asked the board if there was a need to revisit the proposed legislation. Mr. Love noted the Board needs to seriously consider the implication of what the proposed legislation means. Mr. Love referred to section 40-22-2 and noted the current statute works reasonably well with the purpose as set forth. Joe Jones added that the Practice Act did not move forward in the legislative process in the last two years, because of the Industrial Exemption bill. Mr. Jones said the Presidents of ACEC, SCSPE, and ASCE were at the board meeting to show support of the Practice Act and qualification based selection. Joe Greenburg, chair of the ACEC, said his organization strongly supports the changes the Board proposed last year, as well as qualification based selection and will continue to do so. George McCall, President of the SCSPE, added that the organization is willing to work with the board to get the measures passed. Mr. McCall explained they have to work with the Legislature to explain to them what qualification based selection really is. Mr. Jones said ACEC took every legislator, picked leadership and committees, and allocated \$30,000 to show their commitment to getting the Practice Act passed. Mr. Jones added they need the support of the board with the Practice Act. Ed Owens, President of the ASCE, said there has been overwhelming support of the Practice Act and qualification based selection within their organization. Mr. Dinkins explained they are in support of QBS, but the Board is very aware of what can happen when the statute is opened up for additional amendments. Mr. Love asked legal counsel what the parameters were for supporting the proposed legislation. Mr. Jennings said the biggest issue is determining whether board members are lobbying or just providing support. Mr. Jennings explained that board members are prohibited from lobbying and asking for votes and it would be important that they not cross that fine line. He added that board members are allowed to speak before committees to give information and facilitate the dissemination of information, however, the agency has a policy that prohibits board members from lobbying and that is what creates the hesitancy of participation on their behalf. Mr. Love noted it would be wise to get an update on the legislative process from Mr. Jones at the next board meeting and form an opinion at that time based on his report. The board decided the discussion will be taken up at the November meeting. Mr. Love requested Mr.

Jones be added to the meeting agenda to give a legislative report. Mrs. Coleman asked Mr. Jones to send the proposed amendments to Mrs. Miles for Advice Counsel to review.

Review of IRC, Portfolio, and Expert Reviewers

The board reviewed the list of IRC members, Portfolio Review Committee members, and expert reviewers. Mr. Love noted that since the Board does not know every member on the list, it would be good to follow Advice Counsel's recommendation of obtaining a CV from each member and a statement of commitment to the position. He added that if the committees do not have enough members, it would be wise to send out a request to get more members to serve. Mr. Rickborn added the list needs to be updated to reflect the current members and categories. Mrs. Miles added that there is a need for a former or current board member to serve on the electrical committee. There is currently one candidate for consideration, and Mr. Tibshrary will be unavailable for the rest of the year.

Mr. Dinkins left the meeting at 3:10 p.m.

Executive Session for Legal Advice

Mr. Rickborn noted the board discussed everything that needed to be discussed in earlier executive sessions and there was no need for an additional session.

Other Business

Mrs. Miles noted the Statutory Exemption item was placed on the agenda because staff received a specific inquiry regarding design of an HVAC system on a home that exceeds 5,000 square feet. The caller was previously cited by the board for unlicensed practice for designing the HVAC system on a residence. Mrs. Miles added the caller notes the exemptions do not specify whether single family dwellings are exempt. The caller is requesting clarification from the board regarding whether single family homes are exempt. Mr. Rickborn explained if the building official is saying a design professional is required then he is justified in his request. Mrs. Miles stated, in this case, the building official is saying a design professional is not required; however, the caller was previously sanctioned by the board. Mr. Jennings said he would look into the issue, get some additional information and report his findings back to the board.

Notice of Next Meeting

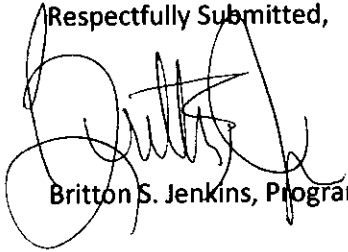
The next meeting of the SC Board of Registration for Professional Engineers and Surveyors will be held on Tuesday, September 23, 2014 at the SC Department of Labor, Licensing, and Regulation, Synergy Business Park, Kingstree Building, 110 Centerview Drive, Room 108 Columbia, SC and will begin at 9:30 a.m.

There being no further business:

MOTION: To adjourn. Fallon/Cottingham/approved.

The meeting adjourned at 3:24 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Britton S. Jenkins". The signature is stylized with large loops and a long horizontal stroke at the end.

Britton S. Jenkins, Program Assistant