# MINUTES OF THE REGULAR MEETING OF THE LOUISIANA PROFESSIONAL ENGINEERING AND LAND SURVEYING BOARD 9643 BROOKLINE AVENUE, SUITE 121 BATON ROUGE, LOUISIANA 70809-1433 November 25, 2013

At 8:00 a.m. on November 25, 2013, James E. Bowie, Jr., Ph.D., P.E., called the meeting to order in Baton Rouge, Louisiana, with the following members present:

James E. Bowie, Jr., Ph.D., P.E.	Chairman		
Miles B. Williams, P.E.	Vice Chairman		
M. Ernest Gammon, Sr., P.L.S.	Treasurer		
Theodore H. Thompson, P.E.	Secretary		

Ali M. Mustapha, P.E. Kevin E. Crosby, P.E., P.L.S. John W. "Billy" Moore, P.E. John T. Irving, P.E. David L. Patterson, P.L.S. Paul N. Hale, Jr., Ph.D., P.E. Christopher P. Knotts, P.E.

Also present:

Donna D. Sentell, Executive Director Joe H. Harman, P.E., Technical Support Staff Tyson Ducote, Board Investigator Justin Owens, Board Investigator D. Scott Landry, Board Attorney Richard L. Savoie, P.E., Emeritus Board Member

The invocation was led by Dr. Bowie and the pledge by Mr. Thompson.

Public comment time was recognized by Chairman Bowie.

The Board unanimously approved the motion made by Mr. Mustapha, seconded by Mr. Knotts, to accept the November 25, 2013 proposed Call for the Meeting and the Board Meeting Agenda.

The Board unanimously approved the motion made by Mr. Crosby, seconded by Mr. Mustapha, to approve the Minutes from the September 16, 2013 Board meeting.

The Board unanimously approved the motion made by Mr. Gammon, seconded by Mr. Crosby, to create an Emeritus Board Member Ad Hoc Committee and to appoint Richard L. Savoie, P.E. as the chairman of the committee.

The Board approved the motion made by Mr. Williams, seconded by Mr. Mustapha, with Mr. Williams, Mr. Mustapha, Dr. Hale, Mr. Irving, Mr. Patterson and Mr. Knotts for, Mr. Thompson, Mr. Moore and Mr. Crosby against, and Mr. Gammon abstaining, to allow licensees to obtain up to two professional development hours per meeting for attending regularly scheduled Board meetings. These hours may be applied towards satisfying the professional ethics requirements of the Board's rules.

Chairman Bowie charged the Liaison and Law Review Committee with drafting the appropriate language for this rule change and presenting it to the Board at the January meeting.

Chairman Bowie charged the Land Surveying Committee with reviewing the Petition for Declaratory Order and Ruling received from **Mr. Walter Ballard** concerning mineral unitization surveys.

Chairman Bowie charged the Architect-Engineer Liaison Committee with reviewing the request for declaratory order and ruling received from Ritter Consulting Engineering, Ltd. concerning value engineering, once the request is submitted on the appropriate petition form.

Mr. Williams exited the meeting at 9:15 a.m.

The Board unanimously approved the motion made by Mr. Crosby, seconded by Mr. Irving, to decline the request received from the Louisiana Council of Engineering Deans (LCED) to consider a law and/or rule change to allow individuals with an earned doctoral degree in engineering to obtain a professional engineer licensure in Louisiana without passing the examinations required by the Board in the fundamentals of engineering and the principles and practices of engineering.

Mr. Mustapha shared a newspaper article about Dr. Kam Movassaghi and his recent induction into the Louisiana Highways and Transportation Hall of Honor. Mr. Mustapha requested that Dr. Bowie write a letter on behalf of the Board expressing admiration, appreciation and acknowledgement of his significant career accomplishments and for receiving this recognition.

The Board recessed at 9:40 a.m. and resumed at 9:55 a.m. Mr. Moore was not present.

The Board unanimously approved the motion made by the Land Surveying Committee to decline the request received from the Louisiana Engineering Society to grant "four semester credit hours for the math courses included in an engineering degree curriculum towards the current 30 hour requirement for PLS licensure".

Mr. Williams returned to the meeting at 10:10 a.m. Mr. Moore returned to the meeting at 10:20 a.m.

Mr. Irving presented the Attorney General's opinion received concerning the Board's interpretation of La. R. S. 37:701(C).

Chairman Bowie charged the Industrial Licensure Ad Hoc Committee with developing a plan of action concerning the Attorney General's opinion.

The Board approved the motion made by the ad hoc committee, consisting of Mr. Williams, Mr. Knotts and Mr. Gammon, with Mr. Williams, Dr. Hale, Mr. Irving, Mr. Mustapha, Mr. Moore, Mr. Gammon, Mr. Patterson and Mr. Knotts for, and Mr. Crosby and Mr. Thompson against, to support in principle the concept of allowing applicants for professional engineer licensure to take the principles and practice of engineering examination immediately after they graduate from college and pass the fundamentals of engineering examination.

The Board approved the motion made by Mr. Williams, seconded by Mr. Thompson, with Mr. Williams, Mr. Thompson, Mr. Irving, Mr. Mustapha, Mr. Moore, Mr. Gammon, Mr. Patterson, Mr. Knotts and Dr. Hale for, and Mr. Crosby against, to decline at this time the request received from the Louisiana Engineering Society to consider allowing applicants for professional engineer licensure to take the principles and practice of engineering examination immediately after they graduate from college and pass the fundamentals of engineering examination, but to indicate that the Board has endorsed the concept in principle and has referred the matter to the ad hoc committee for further consideration.

The Board recessed at 11:55 a.m. and resumed at 12:35 p.m.

# **Committee Reports**

### **Enforcement Ad Hoc Committee**

The Board approved the motion made by the Enforcement Ad Hoc committee, with Mr. Crosby, Mr. Patterson, Mr. Gammon, Mr. Williams, Mr. Moore, Mr. Thompson, Mr. Mustapha, Mr. Irving and Dr. Hale for, and Mr. Knotts abstaining, to amend the Complaint Review Committee Procedure for Reviewing Investigative Cases Policy as follows:

# Complaint Review Committee Procedure for Reviewing Investigative Cases (Adopted March 20, 2012) [Amended November 25, 2013]

Three board members, plus the Executive Director or Deputy Executive Director, shall constitute a Complaint Review Committee (CRC), pursuant to LAC Title 46:LXI§707(E)(10).

The board attorney and the Executive Director/Deputy Executive Director will not complete CRC recommendation forms. However, it is the intent of the board that the board attorney will review all investigative cases after the CRC review is complete.

Depending on the complexity of the case, staff may draw on the expertise of the board's technical consultant and/or the board attorney for technical and/or legal advice.

# **Staff Responsibilities:**

- 1. Staff will appoint the board members on the CRC based on their geography, expertise, and rotation.
- 2. Staff will designate one board member on the CRC as the Reporter for the CRC.
- The investigator will send to each board member on the CRC the Investigative Case Report and a blank CRC recommendation form.
- 4. The investigator will communicate with the Reporter to ensure every effort is made to return a single, completed CRC recommendation form within 90 days.
- 5. If the CRC finds evidence of one or more violations and recommends a proposed consent order, the investigator will draft the proposed consent order and cover letter and submit them to the board attorney for review along with the Investigative Case Report and completed CRC recommendation form. After review by the board attorney, the investigator will send the proposed consent order to the Respondent via certified mail.
- 6. If the CRC finds no evidence of law/rule violations and recommends dismissing the case, the investigator will submit to the board attorney for review the Investigative Case Report and the completed CRC recommendation form. If the board attorney has concerns over the propriety of the CRC's finding of no evidence of law/rule violations, the investigator will communicate with the Reporter and the board attorney to resolve the concerns. Otherwise, the investigator will send the appropriate letter to the Respondent (and, if applicable, the complainant) and submit the case to the Director of Enforcement to close.

# **CRC Reporter Responsibilities:**

- 1. The Reporter will facilitate dialog with the other board members on the CRC to review the case and answer the following questions:
  - a. Are any law/rule violations substantiated?
  - b. Does the CRC require additional information?
  - c. If any law/rule violations are substantiated, what are the recommended sanctions?
- 2. The CRC will then vote on the questions above. The vote shall be made by a minimum two-thirds vote of the board members serving on the CRC, pursuant to LAC Title 46:LXI §707(E)(10).
- 3. After all board members on the CRC have voted, Once a unanimous/two thirds vote has been reached, the Reporter will sign and email the completed CRC recommendation form to the investigator,

with a copy to the other two board members on the CRC. The completed CRC recommendation form should clearly indicate whether there was a unanimous or two-thirds vote. The other two board members on the CRC will each send the investigator an email affirming their position as submitted by the Reporter. An example of the email – "I agree with the recommendations on the CRC recommendation form regarding (enter respondent's name and case number)", or "I disagree with the recommendations on the CRC recommendation form regarding (enter respondent's name and case number)".

- 4. The Reporter must include the following information on the completed CRC recommendation form:
  - a. List the specific laws/rules violated
  - b. Detail the facts which support the finding of each violation
  - c. Answer yes/no to all options for sanctions listed
  - d. If the recommended sanctions vary from the sanction guidelines, list the reasons for the variance

See the following applicable board laws/rules on the following page:

#### La. R.S. 37:698(L) and (M):

- L. The board may make informal disposition by consent order, agreement, settlement, or default of any disciplinary proceeding pending before it. Each such informal disposition shall have no force or effect unless ratified by the board at its next regular meeting. Consent orders may be considered disciplinary actions.
- M. The board shall establish complaint review committees to investigate, mediate, or initiate disciplinary or legal proceedings on behalf of the board with respect to complaints or information received by the board alleging that a licensee or certificate holder committed or engaged in any of the acts or offenses listed in Subsection A of this Section. Complaint review committees shall consist of at least three members of the board. Other employees or representatives of the board may be on the committees to provide administrative assistance, background information, legal advice, or any other assistance the committees deem necessary but shall not be granted voting privileges.

#### La. R.S. 37:700(L) and (M):

- L. The board may make informal disposition by consent order, agreement, settlement, or default of any enforcement proceeding pending before it. Each such informal disposition shall have no force or effect unless ratified by the board at its next regular meeting. Consent orders may be considered enforcement actions.
- M. The board shall establish complaint review committees to investigate, mediate, or initiate enforcement or legal proceedings on behalf of the board with respect to complaints or information received by the board alleging that a non-licensee or non-certificate holder committed or engaged in any of the acts or offenses listed in Subsection A of this Section. Complaint review committees shall consist of at least three members of the board. Other employees or representatives of the board may be on the committees to provide administrative assistance, background information, legal advice, or any other assistance the committees deem necessary but shall not be granted voting privileges.

#### LAC Title 46:LXI§707(E)(10):

Complaint review committees shall be composed of one standing member (the executive director or deputy executive director) and at least three board members appointed on a case-by-case basis. It shall be the responsibility of each committee to review the results of investigations against licensees, certificate holders and unlicensed persons, to prefer charges and/or to recommend appropriate action to the board. Any decision, including the preferral of charges, shall be made by a minimum two-thirds vote of the board members serving on a committee.

The Board disapproved the motion made by Mr. Gammon, seconded by Mr. Knotts, with Mr. Knotts, Mr. Gammon, Mr. Thompson and Mr. Crosby for, and Dr. Hale, Mr. Irving, Mr. Mustapha, Mr. Moore, Mr. Williams and Mr. Patterson against, to change the term "reporter" to "chairman" on complaint review committee forms.

The Board approved the motion made by the Enforcement Ad Hoc Committee, with Mr. Irving, Dr. Hale, Mr. Mustapha, Mr. Moore, Mr. Williams, Mr. Gammon, Mr. Crosby, Mr. Patterson and Mr. Knotts for, and Mr. Thompson against, to adopt the following policy on Classification of Cases for Complaint Review Committee Review:

# CLASSIFICATION OF CASES FOR COMPLAINT REVIEW COMMITTEE REVIEW

(Adopted November 25, 2013)

During its September 2013 meeting, the Board directed Enforcement Staff to develop and implement a process by which investigative cases are initially classified based upon the severity of the alleged violation(s). The Board's directive was issued in response to the peer review conducted in June 2013 by Bruce Pitts, the Director of Enforcement for the Oklahoma Board.

One of the recommendations made by Mr. Pitts was relative to an apparent need for Board member-time to be better prioritized. To that end (and prior to the Board's formal directive at its September 2013 meeting), the Board's *Disciplinary and Enforcement Sanction Guidelines for Consent Orders and Other Administrative Matters* was reviewed by (a) the Board's Technical Consultant Joe Harman, P.E., (b) the Board Attorney, Scott Landry and (c) the Board Investigators, Justin Owens and Tyson Ducote. After discussion, each violation listed therein was placed into one of three categories of severity, designated as "A", "B" or "C".

- A: Cases designated as "A", such as practicing with an expired license, typically require minimal effort from the Complaint Review Committee (CRC) and, as such, usually require a nominal amount of review time. The CRC, therefore, should make every effort to complete its review and return the completed CRC recommendation form to the investigator no later than seven (7) days from receipt of the Investigative Case Report.
- B: Cases designated as "B", such as unlicensed practice or major sealing infractions, are typically more complex than "A" cases and require more effort from the CRC. As such, the CRC should make every effort to complete its review and return the completed CRC recommendation form to the investigator no later than twenty (20) days from receipt of the Investigative Case Report.
- C: Cases designated as "C", such as gross negligence/incompetence, are usually the most complex and typically require the most effort and time from the CRC. As such, the CRC should make every effort to complete its review and return the completed CRC recommendation form to the investigator no later than forty-five (45) days from receipt of the Investigative Case Report.

To allow Board members on the CRC to quickly and easily identify the type of case they have been sent, Investigative Case Reports (which are typically sent to a CRC via email) will be titled as follows:

- A: "Investigative Summary Review A (Case #201X-XX)"
- B: "Investigative Summary Review B (Case #201X-XX)"
- <u>C</u>: "Investigative Summary Review C (Case #201X-XX)"

1	Practicing with an Expired License - La. R.S. 37:698(A)(9) and (16)	<u>A</u>	В	С
2	Failure to Respond to a CPD Audit or to obtain CPD hours – Rules 3117-19	<u>A</u>	В	С
3	Unlicensed Practice – La. R.S. 37:681 and 37:700(A)(1) and (7) and Rule 2301(B)(1) [SEE ALSO #12 BELOW]	A	В	<u>C</u>
4	Criminal Conviction - La. R.S. 37:698(A)(3), (4) and (5)	A	В	<u>C</u>
5	Failure to Meet Firm Licensure Requirements – Rule 2305	A	<u>B</u>	С
6	Misuse of Seals by a Licensee - Rule 2701	A	<u>B</u>	С
7	Fraud, Deceit, Gross Negligence, Material Misrepresentation, Gross Incompetence or Gross Misconduct – La. R.S. 37:698(A)(2)	А	В	<u>C</u>
8	Aiding or Assisting – La. R.S. 37:698(A)(12)	A	<u>B</u>	С
9	Failure to Comply with a Board Order, Ruling or Decision – La. R.S. 37:698(A)(19) and 37:700(A)(10)	A	В	<u>C</u>
10	Violation of Standards of Practice for Boundary Surveys - Rules 2901-13	A	<u>B</u>	С
11	Violations in Other States by Louisiana Licensees/Certificate Holders - La. R.S. 37:698(A)(7)	A	<u>B</u>	С
12	Use of Words "Engineer", "Land Surveyor", etc. by Non-Licensee (who is not licensed elsewhere and has not otherwise actually practiced/offered engineering/surveying services) – La. R.S. 37:681 and 37:700(A)(1) and (7) and Rule 2301(B)(1) [SEE ALSO #3 ABOVE]	A	В	С

#### **Liaison and Law Review Committee**

Mr. Moore presented the Liaison and Law Review Committee report. The Board unanimously approved the motion made by the Liaison and Law Review Committee to amend Rule 707(E) to read as follows:

#### §707. Board Organization

A. – D.4. ...

- E. Committees. The board may establish standing committees, including but not limited to the following: executive committee, engineering committees, land surveying committee, engineer intern committee, liaison and law review committee, education/accreditation committee, finance committee, nominations and awards committee, complaint review committees, continuing professional development committee, firm licensure committee, and enforcement committee. The board may also establish ad hoc committees from time to time as necessary.
- 1. Power to Appoint. Unless otherwise provided below, the chairman of the board shall have the power to make all committee appointments. All committee appointments shall be effective from date of appointment until <a href="March 31">March 31</a> of the following year.
- 2. Executive Committee. The chairman, vice chairman, secretary, and treasurer shall constitute the executive committee. The chairman of the board shall serve as chairman of the executive committee. The executive committee shall oversee the operations of the office of the board and shall advise the executive director as to the conduct of the business of the board between meetings. The executive committee shall also make recommendations to the board with respect to personnel, policies and procedures.

- 3. Engineering Committees. The chairman of the board <u>shall</u> appoint one or more engineering committees, with not less than two <u>board</u> members on each committee. At <u>least two of the board members on each engineering</u> <u>committee shall be professional engineers</u>. Each of these committees shall:
- a. review applications for licensure in each respective discipline of engineering; and
  - b. recommend approval or disapproval of applications.
- 4. Land Surveying Committee. The chairman of the board shall appoint a land surveying committee composed of not less than two board members. At least two of the board members on the land surveying committee shall be professional land surveyors. The land surveying committee shall:
- a. review applications for licensure as a professional land surveyor;
  - b. review applications for certification as a land surveyor intern;
  - c. recommend approval or disapproval of applications;
- d. conduct oral examinations or interviews <u>of applicants</u>, <u>as necessary</u>:
- e. supervise the selection of examinations on the Louisiana laws of land surveying; and
- f. recommend passing scores for the examinations on the Louisiana laws of land surveying.
- 5. Engineer Intern Committee. The chairman of the board shall appoint an engineer intern committee composed of not less than two board members. At least two of the board members on the engineer intern committee shall be professional engineers. The engineer intern committee shall review, as necessary, applications for certification as an engineer intern and shall recommend approval or disapproval of applications.
- 6. Liaison and Law Review Committee. The chairman of the board shall appoint a liaison and law review committee composed of not less than two board members. The liaison and law review committee shall work with similar committees of professional and technical organizations on matters of mutual concern. The liaison and law review committee shall also make recommendations to the board in matters concerned with the licensure law and the rules of the board.
- 7. Education/Accreditation Committee. The chairman of the board shall appoint an education/accreditation committee composed of not less than two board members. The education/accreditation committee shall evaluate and make recommendations to the board concerning the quality of the engineering and land surveying curricula, along with evaluation of the faculties and facilities of schools within Louisiana. The education/accreditation committee shall also have the power to make inspections in the course of its evaluations.
- 8. Finance Committee. The chairman of the board shall appoint a finance committee composed of not less than two board members. The treasurer will serve as the chairman of the finance committee. The finance committee shall make studies, reports and recommendations to the board on fiscal matters. The finance committee shall also prepare a budget for presentation to the board no later than the November meeting.
- 9. Nominations and Awards Committee. The chairman of the board shall appoint a nominations and awards committee composed of not less than two board members. The nominations and awards committee shall present to the board a list of nominations for election of board officers and for any applicable awards.

- 10. Complaint Review Committees. Complaint review committees shall be composed of <u>not less than</u> three board members appointed <u>by the enforcement staff</u> on a case-by-case basis. <u>Complaint review committees shall</u> review the results of investigations against licensees, certificate holders and unlicensed persons; <u>decide whether or not</u> to prefer charges; and/or recommend appropriate action to the board. Any decision, including the preferral of charges, shall be made by a minimum two-thirds vote of the board members serving on a committee.
- 11. Continuing Professional Development Committee. The chairman of the board <u>shall</u> appoint a continuing professional development committee composed of not less than two <u>board</u> members. <u>The continuing professional development committee shall</u> review and make recommendations to the board regarding continuing professional development rules, <u>policies</u> and providers/sponsors.
- 12. Firm Licensure Committee. The chairman of the board shall appoint a firm licensure committee composed of not less than two board members. The firm licensure committee shall review and make recommendations to the board regarding applications for firm licensure and other issues relating to firm licensure.
- 13. Enforcement Committee. The chairman of the board shall appoint an enforcement committee composed of not less than two board members. At least one of the board members on the enforcement committee shall be a professional engineer and at least one of the board members shall be a professional land surveyor. The enforcement committee shall make recommendations to the board regarding the board's investigative, disciplinary and enforcement policies, procedures and practices.

The text of this proposed rule change will be circulated to all Board members and then presented for a final approval at the January 2014 Board meeting.

The Board approved the motion made by the Liaison and Law Review Committee, with Dr. Hale, Mr. Irving, Mr. Moore, Mr. Thompson, Mr. Williams, Mr. Gammon, Mr. Crosby, Mr. Patterson and Mr. Knotts for, and Mr. Mustapha abstaining, to request that the Louisiana Engineering Society, the Louisiana Society of Professional Surveyors and the American Council of Engineering Companies of Louisiana support and assist with pursuing a revision to La. R.S. 37:3651 during the 2014 legislative session and to provide to them drafts of the two alternative statutory revisions (with order of preference) that would address the Board's concerns.

#### Firm Licensure Committee

Mr. Crosby presented the inquiry from Atchley & Atchley, Inc. concerning the death of its only supervising professional and only professional engineer and professional land surveyor. The Board unanimously approved the motion made by the Firm Licensure Committee to allow the firm to continue as a dual-licensed firm under the following circumstances:

- a. For a period of up to 120 days from today, the firm will be permitted to have supervising professionals who are not employees or owners of the firm.
- b. However, the firm and the supervising professionals so designated during said period must comply with all requirements of the board's laws and rules, except those that require supervising professionals to be a full-time employee or a part-time employee/owner.

# **Nominations and Awards Committee**

Mr. Williams presented the following list of nominations for election of Board officers for 2014-15:

M. Ernest Gammon, Sr., P.L.S. – Chairman Theodore H. Thompson, P.E. – Vice Chairman John W. "Billy" Moore, P.E. – Treasurer Kevin E. Crosby, P.E., P.L.S. – Secretary

#### **Finance Committee**

Mr. Gammon presented the report for the Finance Committee. The Board unanimously approved the motion made by the Finance Committee to approve the FY 2014-15 budget as presented.

The Board unanimously approved the motion made by Mr. Irving, seconded by Mr. Moore, to schedule the November 2014 Board meeting for Monday, November 17, 2014.

# **Closing Business**

The Board unanimously approved the motion made by Mr. Williams, seconded by Mr. Crosby, to approve all committee recommendations and actions.

The Board unanimously approved the motion made by Mr. Thompson, seconded by Mr. Moore, to acknowledge and confirm all licenses and certificates issued by the Board.

The Board unanimously approved the motion made by Mr. Mustapha, seconded by Mr. Crosby, to approve all Board expenses.

The Board unanimously approved the motion made by Dr. Hale, seconded by Mr. Mustapha, to adjourn.

The meeting adjourned at 3:30 p.m. on Monday, November 25, 2013.

Theodore H. Thompson, P.E.