



Oregon

STATE BOARD OF EXAMINERS
FOR ENGINEERING &
LAND SURVEYING

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Minutes of Meeting November 10, 2015

CALL TO ORDER

President Kent called the meeting to order at 9:02 a.m. in the Conference Room of the Board office. **Please note:** The Consent Agendas referenced throughout these minutes are provided as attachments to this document.

ROLL CALL

Members present:

Jason Kent
Christopher Aldridge
Shelly Duquette
Ken Hoffine
Logan Miles
Amin Wahab
Oscar Zuniga

Members absent:

Bill Boyd
Ron Singh
Dave Van Dyke

Others Present:

Mari Lopez, Administrator
Jenn Gilbert, Executive Assistant
Jennifer O'Neill, Social and Communications Media Specialist
Katharine Lozano, Assistant Attorney General
Matt Cash, PE, Professional Engineers of Oregon, American Council of Engineering Companies
Darrell Fuller, Professional Land Surveyors of Oregon Lobbyist
Bob Neathamer, PLS, Oregon Specific 4-hour Land Surveying Examination Liason
Art Noxon, PE, Oregon Specific Acoustical Engineering Examination Liason
Tamera Pittman, PE
Belinda Rasmussen, Executive Director for Professional Engineers of Oregon
Shantu Shah, PE
Kerrie Standlee, PE

PUBLIC COMMENT

Mr. Standlee inquired if it was through the Public Comment period that the Board would discuss the Acoustical Engineering examination. President Kent clarified that the topic was placed on the agenda as its own item for discussion. There was no further discussion.

BOARD CONSENT AGENDA

Kent pulled the September 8, 2015 Board meeting minutes (Item 2). It was moved and second (Kent/Duquette) to approve the Board Consent Agenda (Attachment A) as amended. The motion passed unanimously. President Kent provided minor revisions to the President's Report section of the September 8, 2015 Board meeting minutes, it was moved and second (Kent/Duquette) to approve the September 8, 2015 Board meeting minutes as amended. The motion passed unanimously. There was no further discussion.

ADMINISTRATOR'S REPORT

Oregon Specific Examinations

Ms. Lopez announced that Brianna and Veronica staffed the Acoustical and the Oregon Specific Land Surveying examinations at the OSBEELS office and the Best Western Plus – Mill Creek Inn. The Geotechnical examination was conducted by computer and administered by Prometric Test Centers.

The numbers of “No Shows” for the California Geotechnical administered examination are yet to be reported.

The numbers of “No Shows” for the Oregon Specific administered examinations were as follows:

- 0 - Acoustical; and
- 6 - Oregon Specific Land Surveying.

Amendment to Mapping Sciences Exam Agreement (photogrammetry examination)

As a result of SB 297, Ms. Lopez requested an amendment to the agreement to which OSBEELS will administer a Mapping Sciences Examination with the Colonial States Boards of Surveyor Registration (CSBSR). CSBSR is meeting on November 20 in Frankfort, KY at which time Doyle Allen, CSBSR Executive Director plans to seek an approval of the amendment.

Registration

Ms. Lopez informed the Board that annual renewal activity for December is underway. Staff mailed courtesy reminders in the month of October; approximately 3,800 renewals were sent.

Joint Compliance Committee (JCC) / OSBEELS and the Oregon State Board of Geologist Examiners (OSBGE)

On October 1, a JCC meeting was held via teleconference. During that meeting, the May 7, 2015 meeting minutes were approved. Copies were provided to the members for convenience.

Hydrographic Surveying Work Group - Oregon Legislature

On October 1, Ms. Lopez and Board Members Jason Kent, Ron Singh, Chris Aldridge met with Representative Holvey, Jan Nordlund, Committee Administrator for the House Committee on

Business and Labor, along with representatives of professional associations and organizations, and other parties interested in the subject. The meeting went well and although many questions were not answered, Rep. Holvey invited each of the parties in attendance to develop proposals for his review and consideration. He expressed his concerns concerning the lack of oversight of the practice for public safety. He mentioned that a future meeting may be requested to further discuss the matter.

Professional Land Surveyors of Oregon (PLSO) – Blue Mountain Chapter

OSBEELS Investigator, JR Wilkinson, attended a meeting of the Blue Mountain Chapter of PLSO in Pendleton on October 22. He provided a presentation on Oregon Revised Statute (ORS) 209.250, its requirements and timelines, and allowed for questions regarding the enforcement of the land surveying statutes and rules. The presentation was well received.

Board Vacancies

The Governor's Office has yet to fill the engineering position vacated by Mr. Burger (ORS 672.240(1)(c)).

Staffing

Ms. Lopez, Denise Warburton, JR Wilkinson and Jen O'Neill attended the Conference of "Building a Stronger Oregon Through Diversity and Inclusion" provided by the State on September 29 & 30 in Salem.

Lisa Montellano was hired to fill a Compliance Specialist 2 (Investigator) position. She began employment on November 2.

Interviews for the Administrative Specialist 2 (Registration Specialist) position were conducted during the 1st week of November.

Office Specialist 1 (File Clerk), Jenifer Schmidt, submitted her resignation on September 21; her last day was September 30. Interviews for the position will be conducted during the week of November 16.

Due to several new hires and the hiring of an HR Manager, the OSBEELS Employee Handbook has been revised and is currently being reviewed by a DOJ Labor and Employment AAG. July 2008, is the previous time that the Employee Handbook was reviewed and adopted by the Board. New policies have also been drafted for consideration. Pursuant to ORS 182.460(5), Ms. Lopez informed the Board that they must meet to review and adopt personnel policies. Staff proposed to organize a special Board meeting for December 11 from 12:30 p.m. to 1:30 p.m. for review and consideration. There was no further discussion.

PRESIDENT'S REPORT

President Kent informed the Board that as policy for future meetings of the Law Enforcement Committee (LEC), LEC members must appear in person and not by telephone. He stated that it is imperative that members are present in person when holding informal conferences. He then mentioned that the list of new Committee Assignments would be issued prior to the December Committee meetings.

He further requested input from the Board regarding the block scheduling of the October 2015 Committee meetings. A brief discussion was held regarding the structure in which Committee meetings are scheduled. President Kent asked if in the future the Board would like to begin Committee meetings at 8:00 a.m. and move through each Committee meeting sequentially. The Board agreed. There was no further discussion.

EXAMINATIONS AND QUALIFICATIONS COMMITTEE

Ms. Duquette briefly summarized the matters contained in the EQC minutes (Attachment A, Item 3: Examinations and Qualifications Committee Meeting Minutes of October 9, 2015). It was moved and second (Duquette/Hoffine) to approve the EQC Consent Agenda (Attachment B). The motion passed unanimously.

Registration List

It was moved and second (Kent/Duquette) to approve the list of applicants for registration containing 79 individuals. The motion passed unanimously.

Registration Applications

Martin Chase and Kishor Naik's registration applications were removed from the agenda.

Staff then explained to the Board that historically based on former ORS 672.148, the Board considered the National Council of Examiners for Engineering and Surveying (NCEES) Structural (SE) I examination as substantially equivalent to the NCEES Civil examination. AAG Lozano explained that with passage of Senate Bill 297 (SB297), the substantially equivalent language was removed. As a result, the applications for Brian Crump and Andrew Lane would warrant a denial. However, staff further explained that the Board has the option to revise OAR 820-010-4000 if the Board continued to consider the SE I equivalent to the NCEES Civil examination. For those reasons, Ms. Duquette recommended that the discussion regarding the registration applications of Brian Crump and Andrew Lane be tabled to follow the Rules Hearing scheduled at 1:30 p.m.

Staff Update: The registration applications of Brian Crump and Andrew Lane will be placed on the December 11, 2015 EQC meeting agenda, they were not discussed after the Board's Rules Hearing.

OREGON SPECIFIC EXAMINATION TASK FORCE

Mr. Standlee addressed the Board regarding the discontinuation of the Acoustical Engineering examination. There was discussion regarding universities that offer acoustical degree programs. AAG Lozano indicated that staff has searched for accredited acoustical programs and have found only one listed on the Accreditation Board for Engineering and Technology (ABET) Web site.

Ms. Duquette specified that the Board's mission is to safeguard life, health and property; she questioned how public safety would be affected should the Board decided to discontinue the development and administration of the Acoustical Engineering examination. She explained that the documents provided did not demonstrate how discontinuing the acoustical examination would adversely affect the safety of the public. Mr. Noxon suggested that a subcommittee be assembled to determine the effects on the public welfare. It was moved and second (Duquette/Wahab) to approve the OSETF Consent Agenda (Attachment C). Mr. Aldridge

wondered how other states are regulating the practice of acoustical engineering. AAG Lozano clarified that it was recommended by the OSETF to discontinue the examination, but to continue recognizing the acoustical branch; if that recommendation were adopted, acoustical engineering would still be recognized as an engineering discipline in Oregon, Oregon simply would not offer a state-specific exam for that branch.

Mr. Zuniga summarized the discussion contained in the OSETF minutes of the October 9, 2015 meeting (Attachment Item 4: Oregon Specific Examination Task Force Meeting Minutes of October 9, 2015). He further explained that it is a great deal of responsibility for the Board to rely on the consistency of exams created by the team, to create new questions, and maintaining a standard of quality that ensures the integrity of the examination.

Ms. Lopez mentioned a similar situation regarding the previously recognized Traffic Engineering discipline. She explained that the Transportation Professional Certification Board, Inc. (TPCB) provides a Professional Traffic Operations Engineer certification to engineers. However, TPCB requires that individuals be professionally licensed in order to take their examination; whereas the Institute of Noise Control Engineering (INCE) does not require an active engineering license in order to take their examination and attain a certification.

AAG Lozano explained that if the Board determined to discontinue the acoustical engineering examination, but continued to recognize the acoustical engineering branch, individuals who are either a registered acoustical engineer in Oregon or become/are registered in Oregon in a discipline other than acoustical engineering, may practice acoustical engineering services as long as it is in their area of competency (see OAR 820-020-0020).

President Kent expressed concern regarding examination security. He explained that the Board needs to keep up with the evolution of technology. He asked if the OSETF members had any concerns with the security of the acoustical examination. A lengthy discussion was held regarding the security of Oregon Specific Examinations and the policy of those examinations.

President Kent shared three specific concerns regarding the acoustical engineering examination: security, communication, and registration. He then requested the registration statistics for applicants whose qualifying PE was the Oregon acoustical exam. Staff reported that in 2014 one individual became registered, in 2013 five individuals became registered, and in 2012 two individuals became registered.

Ms. Lopez added another concerning issue being the delay in response from INCE when questioned how the determination of substantial equivalency was made between the INCE examination and the Oregon Acoustical Engineering examination.

Regarding exam integrity, through her experience with the NCEES SE examination development team, Ms. Duquette shared her understanding of some of the steps NCEES takes when developing their examinations. They first take a survey of industry and assess what kind of knowledge is pertinent to be minimally competent in the field. Based on those answers, a matrix is created. Subsequently, examination questions are created based on the matrix and each examination is then tested against the same matrix.

AAG Lozano recommended a third party psychometric evaluation of the examination, particularly in light of the small number of examinees, the high pass rate for this examination, and concerns about this exam's security. President Kent wondered if that same evaluation would apply to all Oregon Specific examinations. AAG Lozano recommended that they all be evaluated, but noted that the strength of her recommendation is strongest for any exam with a pass rate significantly higher than national PE exam pass rates. Ms. Duquette withdrew her motion.

It was moved and second (Kent/Aldridge) that the OSETF,

1. Set guidelines for examination security and integrity of all Oregon Specific exams; AND
2. Solicit proposals from psychometricians to conduct evaluations of all Oregon Specific examinations; AND
3. Conduct research with other NCEES member Boards and other practicing professionals to determine the pertinent knowledge to being minimally competent in Acoustical engineering. Staff will also reach out to ABET for assistance in obtaining information and feedback from Acoustical engineering programs that meet the Board's requirements.
4. Assemble a voluntary subcommittee of practicing Acoustical engineers to create a redraft of the acoustical engineering examination.

The motion passed; Hoffine opposed.

It was moved and second (Kent/Duquette) to suspend the administration of the Acoustical Examination until the charges listed above are completed. The motion passed unanimously. There was no further discussion.

The Board recessed at 11:00 a.m. The Board reconvened at 1:15 p.m.

Oregon Specific 4-Hour Land Surveying Exam Report

Mr. Neathamer reported on the October 31 Oregon Specific 4-hour Land Surveying examination. There was no further discussion.

EXTERNAL RELATIONS COMMITTEE

Mr. Wahab reported that the ERC met on October 9 and discussed the matters contained in the Committee minutes (Attachment A, Item 5: External Relations Committee Meeting Minutes of October 9, 2015). It was moved and second (Wahab/Kent) to approve the ERC Consent Agenda (Attachment D). The motion passed unanimously. There was no further discussion.

FINANCE COMMITTEE

Since Mr. Hoffine was absent from the October FC meeting, Mr. Zuniga summarized the discussion held during the October 9 FC meeting and the matters contained in the Committee minutes (Attachment A, Item 6: Finance Committee Meeting Minutes of October 9, 2015). There was no further discussion.

LAW ENFORCEMENT COMMITTEE

Since Boyd was absent from the October LEC meeting, Mr. Wahab summarized the discussion held during the October 9 LEC meeting and the matters contained in the LEC minutes (Attachment A, Item 6: Law Enforcement Committee Meeting Minutes of October 8, 2015).

President Kent pulled the following items off of the LEC Consent Agenda, to be discussed individually: Item 1 case #2291 – Dale Marx, Item 3 case #2903 – Mitchell Duryea. It was moved and second (Wahab/Duquette) to approve the LEC Consent Agenda (Attachment E) as amended. The motion passed unanimously. There was no further discussion.

Case #2291 – Dale Marx

AAG Lozano summarized the history of the settlement agreement regarding Dale Marx. It was moved and second (Wahab/Zuniga) to approve the settlement agreement made and the second peer reviewer. The motion passed unanimously. There was no further discussion.

The Board recessed at 1:30 p.m. for its Rules Hearing. The Board reconvened at 1:36 p.m.

Case #2903 – Mitchell Duryea

AAG Lozano briefly explained the case status of Mitchell Duryea. It was moved and second (Kent/Wahab) to accept the recommendations from the Administrative Law Judge's Proposed Order, and issue a Final Order assessing the civil penalty proposed in the Board's Notice of Inent. The motion passed unanimously. There was no further discussion.

PROFESSIONAL PRACTICES COMMITTEE

Since Hoffine was absent from the PPC meeting, Ms. Duquette reported that the PPC met on October 9 and discussed the matters contained in the PPC minutes (Attachment A, Item 9: Professional Practices Meeting Minutes of October 9, 2015). President Kent requested to place the discussion regarding Mr. Troy Hull's question on stamping of foundation recommendations on the January 2015 Board meeting agenda. There was no further discussion.

RULES AND REGULATIONS COMMITTEE

Mr. Aldridge requested to pull Oregon Administrative Rule (OAR) 820-010-3020 from the consent agenda (Item 1, Attachment F). After a brief discussion, it was moved and second (Aldridge/Wahab) to forward OAR 820-010-3020 to the Board for approval to begin the Rulemaking process. The motion passed unanimously. There was no further discussion.

President Kent pulled OAR 820-020-0040 from the consent agenda for discussion. After a brief discussion, it was moved and second (Kent/Duquette) to forward OAR 820-020-0040 to the Board for approval to begin the Rulemaking process. The motion passed unanimously. There was no further discussion.

820-010-0621

The Board determined to table the discussion until the January 2015 Board meeting.

UNFINISHED BUSINESS

CPD Grace Periods

AAG Lozano explained the current internal process for the CPD Grace Period. She further explained how the process is affected by ORS chapter 183. She further explained that the two general processes that are available, going forward, are: (1) to continue granting grace periods to qualifying requestors, determine the appropriate penalty for individuals who fail to obtain their delinquent professional development units during the grace period granted to them, issue a Notice of Intent to impose that penalty on those individuals, and understand that while the administrative process is pending, and unless and until a final order suspending or refusing to renew registration is issued, the delinquent individuals may continue to practice, even if their registration expires (“lapses”) during the pendency because the Board has not actively renewed it; (2) discontinue offering CPD grace periods, including repeal the rules that allow them and define their parameters, and, instead, issue a lacking letter to individuals who do not provide the necessary information on the required PDH units at renewal, with a specific deadline. Then, if the individual does not provide the necessary information by the deadline, the Board could issue a Notice of Intent to refuse to renew that individual’s registration, and commence the administrative discipline process, with the understanding that, unless and until a final order refusing to renew registration was issued, the individual may continue to practice, even if that person’s registration expires (“lapses”) during the pendency of the administrative process because the Board has not actively renewed it. A discussion was held regarding the pros and cons of offering a CPD grace period. AAG Lozano explained that there are differences between individuals who fail to demonstrate that they qualify to renew their registrations versus those whose renewal applications are incomplete. If the item missing from the application, even after a lacking letter is sent, is an item that shows the individual is qualified to practice (e.g., has maintained his or her professional competency), an NOI to refuse to renew the license should be issued, with the APA’s accompanying due process rights. The Board would not affirmatively renew these individuals’ registrations unless and until they provided the necessary CPD information, but this first category of individuals could lawfully practice, even if their registrations expired (“lapsed”), unless and until a final order refusing to renew the registration was issued. If, on the other hand, the missing item is not related to whether or not the individual is qualified to be a practicing professional (e.g., fails to pay the renewal fee – failure to pay a renewal fee is not an indication that the individual is not a qualified and competent engineer, land surveyor, or photogrammetrist), the application can be considered incomplete, can be rejected, and no due process rights are triggered. This second category of individuals may not lawfully practice once their registrations expire (“lapse”). She further explained that, practically, repealing the grace period, potentially only shortens the individual’s window to make up the delinquent PDH units without penalty by a few months. AAG Lozano recommended that if the Board decides to keep the CPD Grace Period, a CPD Matrix be made for those who don’t comply by the given deadline of the grace period granted. It was moved and second (Hoffine/Kent) to begin the Rulemaking process to eliminate the CPD Grace Period. The motion passed; Duquette opposed. There was no further discussion.

NEW BUSINESS

CPD Matrix - Not necessary per the Board action to eliminate the CPD Grace Period.

BOARD MEMBER COMMENTS

Ms. Duquette expressed that the Joint Compliance Committee (JCC) MOU may be understood differently between the two boards involved. A discussion was held regarding the concern that the JCC was not honoring the MOU or properly understanding where the scope of geotechnical engineering does and does not overlap with the scope of engineering geology. AAG Lozano suggested pulling a previous JJC Law Enforcement case to see how the same scopes of practice determinations were made in the past. Ms. Duquette also suggested that the next engineer appointed to the Board be specialized in geotechnical engineering. Ms. Duquette added that engineering geologists are not required to have accredited degrees. There was no further discussion.

ADJOURN

The meeting was adjourned at 5:31 p.m.

November 2012 ACTION ITEMS:

- Draft an RFP for research and consulting services to better understand the public's perception of OSBEELS.

March 2013 ACTION ITEMS:

- Complete CA Geotechnical examination contract – awaiting a return draft from California.

NEXT MEETING

Special Board December 11, 2015

Tuesday, January 12, 2016